RECONCILING NATIONAL SECURITY AND PROTECTION OF REFUGEES:

THE CASE OF SOMALI REFUGEES IN KENYA

BY

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647245

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DECLARATION

I, the undersigned, declare that this is my original work and has not been submitted to any other college, institution or university other than the United States International University in Nairobi for academic credit.

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ABSTRACT

The increase in the number of Somali refugees in Kenya has been associated with the increased national security concerns. This study makes the case that refugee protection and national security should be viewed as complementary and not as conflicting state goals. Whereas the perception of Somali refugees as a threat is not without merit, it is possible for this to be done without violating refugee rights. The study endeavored to explain refugee presence and national security questions in Kenya and proposed course of action to address the securitization of Somali refugees in the country. To achieve the stated research objectives the Securitization theory and Realism theory were used as the main framework which the study was grounded on and as the lens in which the key attributes of the research were analyzed. The study was conducted using the descriptive design that involved qualitative research approach that centered on review and critical literature analysis. Secondary data was obtained from books, published scholarly materials, internet publications, field research report, theses, journals, government reports, newsletters and newspapers. The analysis of the study revealed that growing national security concerns in Kenya have affected and undermined the protection regime of refugees especially Somalis. Hence the study suggested that national security and the protection of refugees are complementary and mutually reinforcing.

Key Words: Refugee, National Security, Non-refoulement
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*It always seems impossible until it’s done – Nelson Mandela*
DEDICATION

This work is dedicated to Hoyo, Faiza, Dush, Hafsa Katra and Abti Abdulrazak. Further Dedication goes to refugees and all the people around the world who had to leave their homes and rebuild their lives elsewhere amidst many adversities.
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<tr>
<td>ACHPR</td>
<td>African Commission on Human and Peoples’ Rights</td>
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<td>AMISOM</td>
<td>African Union Mission in Somalia</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination Against Women</td>
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<td>DRA</td>
<td>Department of Refugee Affairs, Kenya</td>
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<td>EU</td>
<td>European Union</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural rights</td>
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<td>KNCHR</td>
<td>Kenya National Commission on Human Rights</td>
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<td>NGOs</td>
<td>Non-Governmental Organisations</td>
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<td>OAU</td>
<td>Organisation of African Unity</td>
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<td>RAS</td>
<td>Refugee Affairs Secretariat</td>
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<td>RCK</td>
<td>Refugee Consortium of Kenya</td>
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<td>RSD</td>
<td>Refugee Status Determination</td>
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<td>UN</td>
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OPERATIONAL DEFINITION OF TERMS

**National security:** The protection against internal and external threats to a nation’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests by other nation states.

**Non Refoulement:** A fundamental principle of international law that forbids a country receiving asylum seekers from returning them to a country in which they would be in likely danger of persecution based on "race, religion, nationality, membership of a particular social group or political opinion.

**Realism:** A set of related theories of international relations that emphasizes the role of the state, national interest, and military power in world politics.

**Refugees:** Persons who are outside their country of origin for reasons of feared persecution, conflict, generalized violence, or other circumstances that have seriously disturbed public order and, as a result, require international protection.

**Securitization:** An inter-subjective establishment of an existential threat, which demands urgent and immediate attention, as well as the use of extraordinary measures to counter the threat.

**Tripartite Agreement:** Tripartite agreement between the Kenyan Government, the Somali Government, and the United Nations High Commissioner for Refugees governing the voluntary repatriation of Somali refugees living in Kenya.
CHAPTER ONE
INTRODUCTION

1.1. Background of the Study

Taking into account the obligation of the international community, the mandate to protect refugees in the world has a lengthy and honorable history. This was the premise laid down in the first organizational stipulations under the League of Nations and continued at the core of subsequent iterations (Goodwill-Gill, 2001).

The current international refugee protection regime is a diverse collection of formal and informal standards and rules based on the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees supplemented by international human rights and humanitarian law (Ahlborn, 2010). While the international refugee protection system evolved gradually in the 1960s and 1970s, refugee and asylum policies became alarmingly stringent from the 1980s onwards with countries breaching international rules and norms in letter and spirit in specific (Hargrave & Pantuliano, 2016).

This constraint in asylum policies had illustrated painfully the shortcomings in the international reaction to both mass controlled and uncontrolled immigration. Attempts to guarantee international protection for asylum seekers were continuously frustrated from the Balkans to the African region of the Great Lakes, as countries had expressed greater reluctance to grant asylum (Milner, 2000).

The world has experienced the biggest refugee and humanitarian crisis since the Second World War and as of June 2018, the figure of forcibly displaced people including 24.5 million refugees had already soared to 68.5 million (UNHCR, 2018). Debates and discussions about migration and asylum for refugees had therefore abruptly gained substantial media coverage to become one
of the main issues shaping refugee and asylum policies in most developed countries in the global north (Peters & Besley, 2015).

Furthermore reactions to such large scale movement of refugees have varied considerably from one country to another. Some countries had judiciously received refugees ensuring their safety and providing them with all the assistance needed while other nations harshly treated refugees by preventing them from entering their borders, restricting their movement putting their safety at risk (Jacobsen, 1996).

Migration was not always perceived as a threat to national security as it had proved to be a facilitating factor of capitalism's production and development over the years (Ibrahim, 2005). However, the shifts in security studies that emerged with the fall of communism intensified the perception of refugees as potential security threats. Critical security studies theorists, who redefined and extended the definition of security to include non-military threats in their security threat analysis challenged the realist narrative that dominated international security that focused primarily on external military aggression and national security. This allowed non-military concerns like immigration, environmental concerns, population, human trafficking, drugs, terrorism among others to be seen as existential threats to the survival of the nation state (Mogire, 2009).

In overall, the presence of large number of refugees has had negative security consequences and after the September 11th attacks, countries around the world were strongly interested in domestic security issues in relation to asylum seekers. In many of these countries especially the Western States immigrants were portrayed and seen as threat to national security. Consequently the prevalent speech about refugees had turned progressively radical and dehumanizing with
politicians and the media often pushing for negative narratives by associating refugees with terrorism and other security concerns (Murillo, 2009).

The scope and complexity of security problems stemming from mass uncontrolled migration and massive refugees influx presented enormous challenges for refugee hosting countries and as a result refugee issues had moved focus from the traditional humanitarian angle to a security dimension. The growing national security concerns in many parts of the world affected refugees by undermining their international protection regime as states struggled to keep equilibrium between managing domestic issues within their boundaries and providing a safe environment for the millions of displaced people (Odutayo, 2016).

The ever increasing international terrorism threat coupled with the heightened security concerns has thus enhanced the adoption of restrictive asylum policies in many countries. The implementation of these stringent policies is the result of associating refugees with insecurity in world politics (Murillo, 2009). Unfortunately, these negative views were emulated in low-income countries in the global south that often hosted large influx of refugees for long time due the protracted nature of conflicts in these regions. Indeed, the burden of hosting refugees fell on some of the poorest nations of the world and such countries experienced difficulties in coping with such large influxes (Hargrave & Pantuliano, 2016).

In reality, one quarter of the world’s refugee population is housed in the Africa continent. This is due to the many interstate and intrastate conflicts and disputes witnessed in the Africa over the years that led to the death and displacement of millions of people from their homes. Such forcible migration had violated the rights of people affected as majority of displaced persons found themselves in conditions that fall short of requirements needed for a dignified life (Kerwin, 2016).
For several decades Kenya has been a generous host to refugees and asylum seekers fleeing conflict from its unstable neighbouring countries. Kenya's refugee history can be traced back to the 1970s when countries in East African region were experiencing internal conflict and civil strife that led to instability and total collapse of governments in some cases. The resulting violence from the coup d'état in Uganda by General Idi Amin, the overthrow of Said Barre’s regime in Somalia, the 1995 Rwandan genocide and the numerous civil wars in South Sudan inflicted enormous cost at regional level by claiming millions of lives and forcing millions more to flee their home and becoming refugees in relatively stable neighbouring countries like Tanzania and Kenya (IRIN, 2016).

Due to its relative peace and stability Kenya received a large number of refugees from the Horn of Africa and the Great Lake regions as well. As of May 2019 a total number of 476,695 refugees called Kenya home; the majority (54.5%) originated from Somalia followed by South Sudanese making up 24.4%, the Congolese, Ethiopians and Eritrean making up the remaining 21.1% of the refugee population in Kenya (UNHCR, 2019).

Throughout the years the Kenyan government was accredited regionally and internationally for having generous and open asylum policies that were characterized as “laissez faire” as asylum seekers from Ethiopia, Uganda, Rwanda, and Somalia were basically free from restrictions from the government. Refugees in Kenya enjoyed full status rights, including the right to reside in urban centers, to move freely throughout the country, the right to obtain a work permit and they could access educational opportunities, as well as the right to apply for legal local integration (Veney, 2007).

As the result of the political crises in Somalia Sudan and Ethiopia and later in the Great Lake regions in the early nineties, large number of refugees fled to Kenya to seek refuge from the
ongoing clashes. This considerable number of asylum seekers overwhelmed Kenya’s capacity to comfortably host such large number of refugees making the Kenyan Government transfer majority of its obligations towards the refugees to the office of United Nations High Commissioner for Refugees (Ikanda, 2008).

With such a large influx of refugees there was a significant shift in Kenya’s attitude towards refugees as numbers increased in the 90s. As a result of the growing national insecurity concerns, the Kenyan authorities were less hospitable and their stance towards refugees was characterized by the encampment policy, increased xenophobia and few local integration opportunities. This huge influx of Refugees was a real headache for the Kenyan authorities in terms of heightened levels of insecurity attributed to the high population of refugees residing in the country (Karanja, 2014).

Consequently, the relatively open and welcoming policies turned harsh. Kenya’s response towards the refugees became less tolerant. This was evident when Kenya briefly closed its border with Somalia in 2007, signifying the start of the hard-line position of Kenyan authorities on Somali refugee issues. Although at the time the closure of the border had little impact, the denial of entry to refugees mostly women and children to Kenya from Somalia was a predictor of the harsh times ahead of Somali refugee in Kenya (Human Rights Watch, 2009).

In the last two decades the refugee situation in Kenya underwent drastic changes. As the number of asylum seekers in Kenya continued to soar, the asylum regime in Kenya experienced major policy and administrative changes following heightened insecurity in many parts of the country refugees were now seen as economic burden and security threat (Karanja, 2014).

The links between insecurity, radicalization, terrorism and the refugee presence was repeatedly cited as justification for Kenya’s restrictive policy. Cases such as: terrorist attacks aimed at
government installations, civilians and security staff in Garissa, Wajir, Mandera, Mombasa, Nairobi and Lamu had raised serious concerns over insecurity. The government asserted that Al-Shabaab planned and coordinated these attacks from refugee camps (Hargrave & Pantuliano, 2016). Consequently, the Kenyan Government consolidated its refugee laws and policies with national security and as a result the relatively open and welcoming policies turned harsh and restrictive (Botha, 2014).

In justifying the restrictive nature of its refugee policies, Kenya has continuously associated hosting refugees with insecurity and this had clearly presented a serious challenge for refugee protection in Kenya (Hargrave, Pantuliano & Iddris, 2016). The United Nations High Commissioner for Refugees (UNHCR) recognizes the right of States to ensure security and control its borders. However, it is necessary to ensure that the legitimate security interests of states are consistent with their international human rights obligations and that security concerns do not indiscriminately affect refugees in need of protection (Murillo, 2009). In an era marked by terrorism and the biggest refugee crisis since World War Two, countries around the world are grappling with issues national security and while trying to fulfill their obligations of protecting refugees at the same time.

1.2. Statement of the Problem

In previous decades, the protracted predicament refugees have found themselves in Kenya has seen significant developments. Increasingly, the Kenyan government has viewed refugees through a security lens and has acted accordingly. Concerns about national security and related issues are now major drivers of the government refugee policies. While Kenya struggled to balance its national security demands with the expected international refugee
commitments, refugees displaced by the ongoing conflicts in Somalia have found their rights as provided by international law severely curtailed (Lindley, 2011).

Despite the efforts to provide Somali refugees safety as required by the law, the Kenyan government has implemented measures that frustrated the rights granted to the refugee population. Although the Kenyan authorities have recognized the need to fulfill its obligation to protect Somali refugees, managing the refugees has remained a headache (Wilson, 2014).

Following the ongoing effort to grant to refugees their rights under the law, the Kenya authorities have put in place measures to consolidate national security with its asylum policies. Consequently, relatively open and welcoming policies turned restrictive resulting in abuse of the right of refugees (Brankamp, 2016). Instead of being mutually exclusive, national security and protection of refugees are complementary, and reinforces each other. This study calls for an integrated approach that would ensures that the both aims are mutually achieved.

1.3. Objectives of the Study

The general objective of the study is to explore how the Kenyan government can find a proper balance and reconcile bolstering national security with regards to protection of refugee rights.

The study specifically aims to:

a) To assess the impact of Kenya’s national security concerns on refugee rights and protection.

b) To investigate the challenges of Refugee Protection in this era of terrorism

c) To explore ways the Kenyan government can find a proper balance and reconcile bolstering national security and the protection of refugee rights.
1.4. Research Questions

(a) What is the impact of Kenya’s national security concerns on refugee rights and protection?

(b) What are the challenges of Refugee Protection in this era of terrorism?

(c) How can the Kenyan government find a proper balance and reconcile bolstering national security and the protection of refugee rights?

1.5. Justification and Significance of the Study

Much literature on refugees and asylum has focused more on refugees, their effects on the host state and communities rather than refugee protection and the effects of national security concerns of refugees. This study contributed to the debate on the perception of refugees as a national security threat to Kenya. It helped giving solutions to the existing problem in the country where the leaders and the citizens continue to perceive and portray refugees as threats to Kenya’s national interests.

This research further endeavoured to provoke a debate on the protection of refugees living in Kenya. It explored the policy and legislative gaps in security and protection of refugees in Kenya and sought interventions on how best refugees can be protected in light of national security. It also aimed to make a great contribution to academic research and for policy makers involved in asylum policy making and decision making concerning refugee matters in Kenya.

The findings from this study informed the relevant stakeholders to engage the government and civil society in achieving the mandated goal of safeguarding the rights of refugees. Consequently the study has advanced the discourse that national security and refugee rights can be achieved concurrently without sacrificing any of the two.
1.6. Scope of the Study

The important role of Kenya in the region when it came to matters refugee is one of the reasons for the case to be selected. Kenya hosts a large asylum-seeking and refugee population and the recent link between refugees and security concerns has raised many questions as to the commitment of the Kenyan government to fulfill its international mandate to protect refugees in its jurisdiction. The current clash of national security concerns and refugee rights and protection in Kenya raised important questions answered in this study. Hence this study focused on the aspect of national security in relation to refugee rights in Kenya from 2006 onwards when the Refugee Act was enacted. This period marked the start of the tightening of refugee and asylum rules and regulations to counteract the rising security concerns from Somalia.
CHAPTER TWO
LITERATURE REVIEW

2.1 Introduction

According to the United Nation High Commissioner for Refugees as at March 2019 there were about 70.8 million forcibly displaced people in the world and of this number 25.9 million were refugees fleeing their homes and squatting up in special camps either in their own state or a host country (UNHCR, 2018). They fled their homes due to violence and persecution and were compelled to settle in places where they were considered hostile intruders and denied residency rights. Due to multiple crises experienced in the world and often lasting for years, large-scale movements of refugees and migrants are a common occurrence and this situation had stoked xenophobia and refugee intolerance (Lindley, 2011).

According to Miller (1999) the shortcomings of the international response to mass migration have unfortunately become clear in recent history. Over the years attempts to ensure international protection of refugees from the Balkans to the Central African Great Lakes region had been repeatedly frustrated as countries across the world were reluctant to grant asylum (Milner, 2000).

Since the 1980s the narrative that immigration presented a threat to national security has been prevalent. The Schengen Agreement and the Dublin Convention associated terrorism, international crime and border control to immigration (Huysmans, 2000) and after the September 11th attacks, immigration had been strongly on the counter-terrorism agenda. By linking immigration with security threats like terrorism, countries had since tightened immigration policies making it hard for refugees to seek asylum and access residency rights (Spencer, 2008).
Furthermore Adamson (2006) stated that immigration in the United States became an issue of national security shortly after 9/11 attacks. Consequently, the Patriot Act was entered into law, tightening boundary checks, increasing foreign nationals’ surveillance and giving powers to security agencies to detain, prosecute, and deport people suspected of terrorist offences. In the subsequent "Global War on Terror" campaign, immigration and border control policies became tools for harsh refugee policies (Adamson 2006) and the resulting pressure from the rising refugee crisis generated less tolerance and more hostility to refugees. Countries in the north and south alike erected fences in an effort to safeguard their borders from foreign threats and in the process refugees were securitized and labeled security threat (Aiken, 2001).

Following such politicization of the refugee issue, many states in different parts of the world associated refugees with insecurity, terrorism and other related security concerns. To bring it closer to home Kenya is currently dealing with multiple concurrent crises namely political, humanitarian a national security crisis. With the ongoing inflow of refugees and threats to national security these crises represent components that Kenya as a country is struggling to deal with (Burns, 2010).

2.2 Refugees and Security Concerns

According to Loescher (2001) the link between national and international security and humanitarian issues is not a new phenomenon as it can be traced back to the emergence of organized refugee support systems in post Second World War Europe (Loescher, 2001). Goodwin- Gill (1999) noted that in the late 1990s, a number of United Nations Security Council resolutions characterized the growing focus on issues related to security emerging from movement of refugees. These resolutions acknowledged that massive displacement of people presented a threat to both regional and international peace (Goodwin-Gill, 1999).
In relation to a host country's security, refugees were considered both as political and humanitarian problem. In reality refugee issues are deeply political in nature and their presence in many host countries exacerbated internal conflicts and intense political debates. However international humanitarian organizations view refugees mostly as a humanitarian issue as opposed to security and political concern as portrayed (Lischer, 2017).

To put emphasis on this point Hargrave & Pantuliano (2016) posited that large number of asylum seekers presented a threat to the national security of a host state. Over the years the ever-rising number of refugees in Kenyan increasingly became a headache for the Kenyan government as Al-Shaabab, a Somali terrorist group allegedly linked to Al-Qaeda carried numerous attacks in Kenya including the 2013 bombings of Westgate shopping mall in Nairobi and attack in Garissa in 2014 to name but a few (Hargrave & Pantuliano, 2016).

Furthermore the Government of Kenya asserted that refugees posed an imminent threat to the national security of Kenya as the refugee camps like Dadaab and Kakuma meant for hosting refugees become a logistical center used for planning attacks in Kenya. They argued that the camps are full of militias and with the help of refugee, the Al-Shabaab operated within the camp to plan and carry out attacks in Kenya. Although no evidence was ever found, the Kenyan security authorities claimed the Westgate attacks were planned in Daadab (Brankamp, 2016).

Besides coordinating attacks, these camps are home to thousands of unemployed youth vulnerable to radicalization and according to Karanja (2014) recruitment was rife among Somali refugees living in the Dadaab as the Al-Shabaab used religious and political agendas to recruit Somalis into joining Jihadi groups. He further stated that the government estimated about 600 Somali youths joined extremist groups to carry out attacks both in Somalia and Kenya (Karanja, 2014).
Similarly Mogire (2009) noted that regional instability, readily available arms, long porous borders together with the presence of large number of refugees played a significant role in proliferation and trafficking of illicit firearms in Kenya. The vulnerability of Kenya to arms trafficking is due to combination of factors including its geographic location and endemic corruption and the availability of weapons undermined security and led to the spread of violence. However the question is who is responsible for such proliferation, is it refugees or scrupulous business men who profit from this business. To answer this, the government has not provided solutions in fighting proliferation of small arms as legislations are outdated and not enough resources are dedicated to fight this vice (Mogire, 2009).

To further bring out the insecurity linked to the refugees Ikanda (2008), stated that it is common knowledge that refugee camps like Dadaab and Kakuma are believed to be hiding places for criminal elements among refugees. Government officials claimed that refugees frequently committed crimes such as robbery, rape, homicides and other misdemeanors outside the camps before retreating to the protection of the camps where it is challenging for the authorities to track and hold them accountable because of the sizeable refugee population that are housed in such camps (Ikanda, 2008).

Additionally a study by Kirui, & Mwaruvie, (2012) revealed that even though the encampment policy by Kenya was aimed at containing the security threats constituted by refugees to the country, the encampment policy did not have the projected impact on security. On the contrary it was discovered that refugee camps presented security challenges for host countries such as Kenya. Terrorist factions around the globe like the Al-Shabaab were using refugee camps as strategic locations for logistical purposes like for recruitment, hiding spots and meeting points (Kirui, & Mwaruvie, 2012).
There have been concerns that refugee camps are a fertile recruitment grounds for radicalization as evidence pointed to Al-Shabaab taking advantage of the uncertain situation of the Somali refugees to radicalize and recruit vulnerable youths who cross over to Somalia to join Al-Shabaab training camps. Such recruitment drive was coordinated by Somali nationals operating from Dadaab camp enticing youth with high pay and using religious indoctrination to carry out attacks that resulted in many casualties and destruction of property (Mogire, 2011).

Moreover, the financial bankrolling of the Al-Shabaab is said to involve multiple actors both in Somalia and the Diaspora. According to Kagwanja (2012), it was an established facts that Somalis in both the diaspora and Kenya were actively engaged in financing Al-Shabaab by exploiting and using the trust-based hawala system used by the Somalis in the diaspora to transfer money into the camps that funded the Al-Shabaab activities and operations in Somalia and across the region as whole (Kagwanja, 2012).

Milner (2009) also attributed the existence of large refugee camps in the remote North Eastern regions of Kenya together with the lengthy porous border with Somalia to providing a perfect environment for terrorist activities while the disenfranchised and hopeless camp inhabitants offered a fertile ground for recruitment. There was therefore a link between Kenya’s terrorist attacks and the presence of refugees in Kenya (Milner, 2009).

However, contrary to the above arguments Al-Bulushi (2016) pointed out that the government of Kenya has never corroborated its allegations that refugees were liable for the attacks witnessed in the Kenya. Instead, she argued the Kenyan authorities used the refugee populace as a distraction tactic for existing domestic political problems and as a negotiating chip for more aid funds from humanitarian organizations and donor states (Al-Bulushi, 2016).
Even though Somali refugees were often blamed by the Kenyan government for insecurity and terrorist attacks, no evidence linking refugees to such acts has ever been produced to that effect. So targeting and labeling Somali refugees as security threats was never the appropriate answer to security concerns in Kenya, however good intelligence services, efficient border protection systems and effective registration of refugees should curb the insecurity concerns faced by Kenya. Hence Kenyan authorities cannot simply scapegoat and blanket the whole Somali refugee community as threat to national security (Konzolo, 2010).

Additionally, Veney (2007) stipulated that perceived threats influence the actions of a state more significantly than actual threats. She asserts that the threat to the state lies in a country's strategy including border and immigration policies. This concludes that the large number of refugees in Kenya posed a perceived danger and causes tension in the government security regimes that prompt their reaction (Veney, 2007).

From the above it is clear that the influx of Somali refugees and their prolonged presence in Kenya has caused the Kenyan authorities to view them with distrust and spite because of the belief that they pose a risk to their territorial integrity, national sovereignty and security. Kenya has therefore reacted to the influx of Somali refugees in multiple ways including the implementation of harsh policies in the context of national interests. However various groups particularly the Non Governmental Organizations and civil societies have raised concerns about the linking of refugees to national security and questioned the national security narrative being used to push for harsh policies that violate refugee rights. They urged the government to end harassment and abuse of refugees as they do not present any threat to Kenya. They also encouraged the government to establish strong asylum systems which will protect genuine refugees and exclude any criminal element from refugee status (Al-Bulushi, 2016).
2.3 Host State Behavior

According to Phuong (2013) discussions on which countries should provide asylum to refugees and how it should be done is not new debate. However, over the past couple of years the refugee debate took on a new angle as countries considered elaborate plans to "manage" movements of refugees and "enhance" refugee protection. At the core of these debates often lies the confusion as to precisely what obligations and responsibilities countries owed to asylum seekers and refugees under international law (Phuong, 2013).

Even though the ongoing refugee crisis has a worldwide reach, it has disproportionately affected some countries in regions with large proportions of displacement as witnessed in the Middle East, Africa and South Asia. Whereas much attention of the crisis has centered on refugees heading to Europe and the ongoing crisis in Syria, nearly eighty percent of the total refugee population lives in middle and low income countries. Wars, conflicts and political instability in parts of Africa, South Asia and Central America have led to the rapid increase of refugee populations in these areas. The current developments in Africa is a growing concern as the number of refugees in Sub-Saharan Africa mainly Horn of Africa and the Great Lake Countries continue to rise (Zetter & Ruaudel, 2016).

To reiterate on the above point Knoll and Sherriff (2017) opined that developing countries take in most refugees in the world, who come from fragile states where conflict and social upheavals have led to the displacement of millions of people. In these situations refugees often found themselves in difficult living arrangements in camps with limited economic opportunities as large refugee influxes placed extra burden on the host nations that have limited resources even to take care of their own citizens. Such scenario strained the already overburdened capabilities of many host nations, particularly when no support is offered from the well to do states and
international organizations. Such circumstances has created tensions between host communities and refugees, sometimes prompting host authorities to further limit or tighten asylum regimes and domestic refugee policies in order to repel asylum seekers (Knoll & Sherriff, 2017).

According to Bariagaber (2006), nations in the advanced global north such as the United Kingdom and United States have lately regarded immigrants and refugees as threats to their national security given their historic liberal stance of viewing the refugee crisis as humanitarian concern and advocating for adherence to international humanitarian laws. Unfortunately such negative narratives gained momentum and have been replicated in the developing world especially in African where governments have started to view asylum seekers as a domestic security risk threat. This has marked the decline of protection standards of refugees in the continent (Bariagaber, 2006).

Milner (2009) pointed out that the continuous stay of refugees in a host country has contributed to the instability and domestic security issues. As a result refugee hosting countries in Africa have rationalized the implementation of stringent asylum measures on the grounds of the insecurity and prolonged stay of the refugees in their territories, such as the situation of Somali refugees find themselves in Kenya. With lack of support from the international community, struggling host states are faced with challenges of tackling the security concerns from such a large number of refugees in their jurisdiction (Milner, 2009).

Although Kenya is a signatory of various international laws, treaties and instruments in regards to refugees, it has implemented numerous official and unofficial policies to ensure that refugees are afforded the necessary minimum and bare necessities to make their stay in Kenya bearable. Therefore, Kenya is placed in a dilemma; should the government give priority to defending its
national security interests or should it continuously abide by its international commitments in relation to protection of refugees (Aronson, 2011).

2.4 National Security Impact on Refugee Rights

The world has become a hostile place for refugees as discussions about immigration have been dominated by focus on security and potential threats posed by refugees. National security was the narrative used to legitimize such hostilities and justify the harsh policies by governments to limit asylum access to refugees. Located in a conflict prone region, this struggle is not new to Kenya as it hosts hundreds of thousands of refugees from its neighboring states (Okoth, 2017).

According to Omata (2016) Kenya perceived refugees as a threat to security, added economic burden and unwelcome environmental degraders. To deal with the threat posed by refugees, Kenya endorsed and implemented various legislations among them being policies that confined refugees to designated refugee camps and settlements (Omata, 2016).

According to Maina (2016) the recent terror attacks made the Kenyan Government to revisit its stance on refugees by amending its refugee policies. One significant shift was the implementation of the much criticized encampment policy that required all refugees and asylum seekers to relocate to designated camps, failure to which a refugee was liable for a criminal offence. Currently, refugees and asylum-seekers are still required by law to reside in refugee camps and cannot venture out without a movement pass. Infringement of this right incurred a penalty of a six-month jail term, a fine of 20,000 Kenyan shillings or both. Such limitations curbed and limited refugees rights like freedom of movement and right to work and exposed them to chronic injustice and insecurity (Maina, 2016).

The linking of refugee presence to terrorism related activities has put refugees in a precarious situation. The increased border insecurity, threats from Al-Shabaab militia and the proliferation
of arms and weapons from Somalia due to the porous border led to the government’s closure of its Somalia border in 2007. This is led to the suspension of refugee’s registration services which left large number needy refugees stranded. This border shutdown had a devastating impact as it trapped between 5000 to 7000 asylum seekers in urgent need of humanitarian assistance in Somalia where they faced starvation, drought and renewed displacement (Ikanda, 2008).

Further in response to the attacks on Mombasa and Eastleigh in 2014 the Government launched a security operation called Usalama Watch where thousands of Somalis and Kenyans of Somali origin were subjected to arbitrary detentions, forcible relocation to Dadaab and Kakuma and deportation to Somalia. Also scores of immigrants and refugees alike from different countries were also rounded up and indefinitely held in Kasarani stadium. It is unclear to date of how many people were ultimately charged and found guilty of the attacks (Alingo, 2014).

According to Amnesty International Operation Usalama Watch was marked by arbitrary arrests and detention of thousands of refugees in inhuman conditions. Police mistreatment, harassment and the abuse of refugees was the hallmark of the operation as it was carried out in total disregard for both domestic and international laws. It is argued that such profiling and collective punishment fed resentment and grievances and ultimately increased the likelihood of future attacks, rather than enhancing security in Kenya (Amnesty International, 2014).

Additionally, it has been noted that the current anti-Muslim and anti-refugee sentiment tapped into pre-existing biases and fears that were clearly evident in the association of refugees and terrorism. Undeniably, the linking of refugees and terrorism has had a direct influence on public policies internationally and across States. For example, in an effort to deal with the serious incidents of terrorism in Kenya, the Kenyan government introduced a number of legislative changes including the 2006 Refugee Act, the 2012 Prevention of Terrorism Act and, the 2014
Security Law Amendment Act, among others. With the implementation of such laws and policies it was argued that the security concern was used to justify the erosion of protection and the rights of refugees in Kenya (Nanima, 2017).

While the government of Kenya defended the implementation of these new policies, civil rights organizations have heavily refuted such arguments as laws and policies clearly violated not only the spirit of the law but also the commitment of Kenya under the refugee convention (Hassan 2015). Security is indeed a sensitive issue, and governments are entitled to ensure that the security and safety of the citizens within their borders is maintained. However the best way to go about it is to ensure that large-scale security operations are carried out in accordance to the law, guided by clear intelligence and conducted in a planned and well thought out manner. This would aid to decrease the likelihood that security operations leading to further radicalization, as it is not feasible to identify all those engaged in insecurity throughout Kenya on the basis of such security operations (Alingo, 2014).

2.5 Effective Protection of Refugees

According to Nyaoro (2010), Kenya is a member state and has ratified a number of conventions and treaties dealing with refugee protection. In accordance to Section 16 of the Refugee Act, 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees have been domesticated and are application in Kenya. As such all registered refugees and their families members living in Kenya are entitled to rights and are subject to the obligations set out in the international conventions to which Kenya is a member (Nyaoro, 2010).

Despite Kenya being a signatory to all the major international conventions on refugees, Kenya did not have a national legal structure in place or the ability to deal with the fast-
changing refugee situation. The Refugee Act was ratified in 2006 with the objective of expediting the application of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. However, the rights that refugees can enjoy in Kenya were severely limited by serious implementation gaps created by the law that dented hope of full application of the international instruments. Refugees found difficulties in implementing the full enjoyment of right they are entitled to in courts as the constitution denied them rights like freedom of movement a right exclusively reserved for Kenyan citizens. As a result, refugees have almost no legal capacity to appeal before a court as they do not have the financial means to do so and they are not afforded legal aid to assist them to go to court for their rights (Muigua, 2010).

In addition to many challenges including the violation of their rights, refugees in Kenya are literally incarcerated in camps and live in horrible conditions where they don’t have access to basic life necessities like food, water and decent sanitation. Prospective refugees in Kenya are sometimes refused residency status and those who manage to escape authorities and make their way to towns and urban areas are arrested and jailed for being in the country illegally (Ndege, 2012).

To effectively protect refugees Ndege (2012) suggested that refugees in Kenya should be accorded rights and protection mechanisms given by international refugee instruments, the Kenyan constitution and the Refugee Act. For refugee rights to be met and guaranteed protection and decent living conditions, adequate financial planning, burden sharing between the government with other institutions like the United Nations is required (Ndege, 2012).
2.6 The Institutional Framework for Refugee Protection

In Kenya, the Refugee Act established the Department for Refugee Affairs (DRA) within the Ministry of State for Immigration and Registration of Persons and it is responsible for the administration, oversight and management of refugees issues and affairs including developing strategies and policies, promoting sustainable solutions, coordinating international assistance, receiving and processing asylum requests, issuing travel documents and identity cards, and management of refugee camps (Pavanello, Elhawary & Pantuliano, 2010).

Section 7 of the Refugee Act established the Office of the Commissioner of Refugees, an office in the public service, to be headed by the Commissioner of Refugee Affairs. The Commissioner is the Secretary to the Refugee Affairs Committee. He or she is to, among other things, coordinate all measures needed to promote refugee welfare and protection, like formulating refugee policy in accordance with international standards, and advise the Cabinet Secretary on how to apply for funding for refugee assistance programmes. Additionally section 8 of the Refugee Act stipulated that there is a Refugee Affairs Committee, responsible for advising the Commissioner for Refugee Affairs. The Committee's primary function is to assist the Commissioner in issues relating to the recognition of individuals as refugees, evaluating asylum applications, and advice on accepting or rejecting of asylum status of refugees.

Even though the Refugee Act established a legal framework for refugee governance and set up institutions and methods for its implementation, in reality these institutions lacked the capacity and effectiveness to implement the needed changes to realize refugee rights and protection. The Department of Refugee Affairs is limited in terms of employees, most of whom are just beginners with little or no operational experience in addressing refugee problems. Generally, there is no national refugee and asylum policy to help implement the Refugee Act, and the
government's formal position is somewhat puzzling as there is confusion on the organization and implementation of refugee concerns in Kenya (Pavanello, Elhawary & Pantuliano, 2010).

2.7 Refugee Management in Kenya

In collaboration with the government of Kenya and other partners, the office of United Nations High Commissioner for Refugees coordinated the planning and implementation of assistance and aid programs for refugees and asylum seekers in Kenya. Under the Refugee Act the responsibility of managing refugees in Kenya is entrusted with the Department of Refugee Affairs under the Ministry of Interior and Coordination of National Government, and it has the overall responsibility for all administration, coordination and management of refugee matters (Refugee Consortium of Kenya, 2012).

The United Nations High Commissioner for Refugees is mandated by International Law with the responsibility to supervise the implementation of the 1951 Convention Relating to the Status of Refugees throughout the member states and supervise the protection of refugees. Following the increased influx of refugees from Somalia in the early nineties the Kenyan government relinquished its obligation and delegated the management of refugee concerns to the United Nations High Commissioner for Refugees who took over the responsibility of managing refugee affairs and Refugee Status Determination. Over and above its own mandate to protect and provide humanitarian assistance, United Nations High Commissioner for Refugees had responsibility to receive, conduct eligibility interviews, hear appeals, camp referrals and appointment for status determination for refugees. The United Nations High Commissioner for Refugees had in effect assumed the role of a government ministry and in so doing has seriously compromised its autonomy and its effectiveness in providing refugee protection (Refugee Consortium of Kenya 2004).
It was not until 2014 that the Department of Refugee Affairs took over certain Refugee Status Determination functions in particular status determination processes and the issuing of recognition notifications to refugees that fulfilled the required criteria under the Refugees Act. The United Nations High Commissioner for Refugees is presently moving all Refugee Status Determination responsibilities to the Department of Refugee Affairs however this transfer is yet to be formalized (Garlick, et al., 2015).

2.8 Refugee Rights and Duties

According to Freudenthaler (2011) countries around the world have adopted restrictive policies in regards to refugees in order to mitigate the growing security concerns arising from migration and the growing number of refugees. The incorporation of such restrictive policies in the domestic legislations in countries across the world infringed on the implementation of refugee rights as envisaged by the 1951 Convention Relating to the Status of Refugees Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees (Freudenthaler, 2011).

The rights of refugees are wide and include, right of non-refoulement, right to acquire movable and immovable property, intellectual property rights, right of association, right to access courts, right to employment, right to housing, right to education and freedom of movement. Kenya has a duty to grant and honor the freedoms laid down and provided in the constitutional bill of rights and international instruments they ratified. The refugee Act of 2006 and the 1951 Convention Relating the Status of Refugees provided for refugee rights in Kenya. Some of these rights include the right of non-refoulement where an asylum seeker is not to be forcefully returned to a country where they face persecution and abuse, the right to engage in business activities, such as farming and accorded favorable treatment in respect of the procurement of property. Further
refugee’s duties and obligations towards a host state include the duty to comply with the laws and to live in peace and not participate in criminal and illegal activity (Halperin, 2013).

2.9 Refugee Protection Challenges

The sheer increase in the number of refugees and asylum seekers over the last decade has put significant pressure on the asylum systems and structures of many countries especially the industrialized states to the point that their confidence in the applicability and relevance of the 1951 Convention Relating the Status of Refugees has been shattered and their historic generosity towards refugees turning harsh (Esses, Et.al, 2017).

According to Bacaian (2011) following the September 11th attacks on America, many governments throughout the world turned their backs on refugee rights by enforcing draconian security legislations that ultimately targeted vulnerable refugee populations by stifling many of their guaranteed rights. Instead of focusing on promoting refugee rights and easing up refugee determination processes to accommodate genuine asylum seekers, many countries especially the developed states have implemented measures to deny refugees entry in to their territories and restrict their access to asylum processes (Bacaian, 2011).

According to Seipel (2003) refugee protection principles under the 1951 Convention Relating the Status of Refugees has been going downhill and worsened by the rash new security measures put in place in the name of national security. Indeed, many countries became less keen to meet the standard humanitarian obligations to refugees with some even redefining the various refugee conventions and instruments to help reduce their obligation towards asylum seekers (Seipel, 2003).

Additionally the repercussions arising from the global war on terrorism has affected millions of refugees. Governments across the world have been encouraged to embrace tougher anti-terrorism
regulations by politicians who took advantage of the terrorism narrative to create fear and anxiety to turn host communities on refugees. Public sentiments have since soared in the United States of America, Australia, Europe and other host countries against refugees and asylum seekers (Seipel, 2003).

It is evident that governments are increasingly becoming restrictive in their asylum policy initiatives and measures as a response to national security concerns. Fueled by the media and politicians with anti-refugee agenda, states have put in place overly restrictive policies that led to refugees being detained in camps and many also prevented from entering countries or pressured into leaving. Such action by governments became a symbol of human rights campaigns (Goodwin-Gill, 2001).

The continuing political and social and security crisis in Somalia and the threats presented by terrorism in the region are largely unfolding against the context of insensitivity and hostility to the problems faced by refugees. Kenya's refugee regime has since shifted considerably from tolerance in the 1970's and 80's to hostility in 1990's and now refugees are considered a cause for domestic and regional insecurity and instability (Okoth, 2017).

Kenya is home to a large number of refugees and there has been evidence that such a large number of asylum seekers posed credible security problems. Refugees were traditionally viewed as a humanitarian and social issue as opposed a political and security concern. However refugee issues in Kenya are highly political as a large number of asylum seekers have generated domestic security concerns and debates causing tensions between the host community and the refugees (Kirui, & Mwaruvie, 2012).

To bring this point home Kirui and Mwaruvie (2012) posited that the constantly growing influx of refugees heading to Kenya for asylum demonstrated the risk Kenya faces as the terror groups
are likely to find their way into Kenya as refugees or impersonating citizens by getting a fake identification as it is hard to differentiate between Somalis in Kenya and Somalia. The Kenya security agents were concerned that the ongoing displacements in Somalia will lead to a large influx of refugees into the country which will pose unprecedented security issues (Kirui, & Mwaruvie, 2012).

2.10 Harmonizing National Security and Refugee Protection

Although viewed from different perspectives and with different emphasis, refugee protection and national security generally respond to human security aspirations. National security underscores that states have an obligation to protect the lives and guard the rights of their residents, while refugee protection talks of countries having the responsibility individually and collectively to defend the rights of individuals or groups at danger of persecution whether from their own countries or groups which their states are unwilling or unable to control. States have a responsibility to prevent terrorist attacks, protect the lives and rights of their residents. However, they also have a responsibility to protect members of other states who are fleeing persecution and violence (Kerwin, 2016).

According to DeSilver (2015) refugees are often regarded as a threat to national security in public and political discourse and in specific as a source and a catalyst for terrorism. Refugee related terrorism issues in recent years have been gaining momentum, contributing to the harsh reaction against refugees in the United States, Europe and Kenya and elsewhere leading to unfair and parsimonious reactions to the global refugee crisis (DeSilver 2015).

Refugee hosting states in both the developed and developing world have alluded to a broad range of security issues for imposing limits on asylum for refugees. Host countries in Africa were among the most vociferous about the security impacts of hosting refugees as they linked
refugee presence in their territories to insecurity stretching from the radical elements infiltrating refugee camps and conflict spillover from refugee’s country of origin (Milner, 2009).

According to Turk (2016), the issues of refugee protection and security concerns are not contradictory instead they reinforce each other and thus it is best accomplished by a comprehensive approach in which complementary and mutually supporting measures guarantee that those in need have access to security while preserving the safety of the host country (Turk, 2016).

The 1951 Convention relating to the Status of Refugee and the 1967 Protocol on Refugee Status are the two fundamental devices of international humanitarian law relevant to this study. As regards terrorism and the initiatives adopted to combat it, such global instruments include a robust system of checks and balances which fully reflects the security interests of states and host countries while protecting the freedoms of individuals who in contrast to other classifications of foreign nationals are no longer protected by their nation of origin (OHCHR, 2008).

According to Murillo (2009) the legitimate interest of states is of course national security. States have the right to preserve its security and to implement policies and initiatives aimed at the protection of its inhabitants, national or non-national alike under its jurisdiction. Also countries have also implemented international refugees’ and human rights laws and this entitles asylum seekers protection and residency status. This is highlighted by the Universal Declaration of Human Rights of 1948 that states that every person has the right to seek and enjoy asylum protection in cases of persecution (Murillo, 2009).

However, Murillo (2009) further underscored that it is crucial to remember that legitimate security interests are reconcilable with international refugee protection and have to be carried out
with respect to human rights. After all, the issue of security and the war against terrorism equates to international protection for refugees and should not be considered in conflict and contradictory to each other (Murillo, 2009).

In a world wherein security concerns influenced the concept and the implementation of domestic policies as the affirmation of the lawful interests of nations, it is essential that states balanced their valid security interests and international commitments for protection of human rights. Countries have invoked national security concerns in implementing rigid asylum measures, giving priority to the controls on immigration, without providing adequate protection to recognize and safeguard refugees and asylum seekers (Lindley, 2011).

Peters & Beasley (2015) argued that in pursuance of national interest while at the same time observing its international law obligations, states are forced to balance their policies in a way that refugees still have faith that they have safe sanctuary within the country wherein they are seeking asylum; at the same time the government needs to keep a close eye to ensure smooth but secure passage at the entry and exit points. However, most states have a challenge in maintaining this balance and in choosing between local law and international law; most states opt to protect their borders adequately by enforcing their domestic legislation in a way to limit migration, as opposed to imposing their human rights obligations (Peters & Besley, 2015).

Despite being a member state of various international laws, agreements and conventions as regards to refugees, Kenya adopted and implemented many policies that ensured refugees are afforded strictly the needed minimum. Therefore, Kenya is stuck in a dilemma; should the government offer priority to defending its national security concerns or should it continuously comply with its international commitments to ensuring refugees are protected (Lindley, 2011).
In accordance with The Human Rights Watch, Kenya is legally obligated to support refugees by making sure that its domestic legislation on asylum is in line with the prevailing international regulations. The international community recently criticized Kenya for implementing laws that were considered too stringent leading to violation of refugees rights (Human Rights Watch, 2013).

The current position of Kenya on refugees demonstrates that Kenya is in a position where it would preferred to affirm its national security instead of honoring it humanitarian obligations as it is convinced that it can no longer commit to both. Kenya is facing immense pressure from the international community to balance its fight against terrorism and ensuring its safety and accommodating the refugee population it hosts (Burns, 2010). The argument is that the government has the machinery for ensuring the security within its boundaries. This implied that the governments have the means to investigate and prosecute anyone including refugees who helped terrorist organizations like Al-Shabaab to commit crime (Nyaoro, 2010).

Hence to end this debate the government of Kenya is obligated to honor its national and international responsibility to protect refugee rights. Judicial and law enforcement officials have to constantly be trained and made aware to abide by the stipulations of the Refugee Act to prevent unjust treatment of refugees. In order to best understand the obligations of the different legislation tools and allow stakeholders to address challenges, the state should develop room for dialogue on issues that concern refugees and other forced migrants in Kenya (Refugee Consortium of Kenya, 2012).

2.11 Theoretical Framework

The theories below were used to provide the basis for undertaking the study;
2.11.1 Securitization Theory

With the emergence of new types of conflicts in the 1990s, one version of constructivism that sprouted up and came to be associated with the academics such as Barry Buzan, Ole Waever and Jaap de Wilder of the Copenhagen School argued that security required to be defined not just by what countries did militarily and economically but also by what states said and did to improve their security in sectors like politics, environment and human security (Kilroy, 2018). The fall of the Soviet Union and the end of the Cold War which compelled countries to take sides in the ideological struggle, gave way to countries coming up with new concepts of security outside the restrictive traditional aspects of national power. Security was far too wide of a concept to be restricted to those confining and limiting ideas. Rather, the mechanism of what the Copenhagen scholars called "securitization" encompassed expansion into other fields that offered a more nuanced idea of security that enabled countries not just to redefine their interests, nationality, and even organizations nationally, but also globally (Kilroy et al., 2012).

According to Does (2013) securitization was composed of a security act (by speaking the language of security and asking for the adoption of extraordinary counter-measures and a political act (a political decision to articulate the threat in such a way as to convince the target audience). Hence the explanation of the securitization process by the Copenhagen School relied on the portrayal of certain issues as existential threats and an audience being convinced or accepting that a specific referent object is indeed existentially threatened. So an issue became securitized when an audience collectively agreed on the nature of the threat and supports taking extraordinary measures (Does, 2013).

As regards to refugees, securitization is the construction refugees via political and media discourse as a social threat, which led to the speech actor taking extraordinary measure to combat
the constructed threat. Refugee securitization in Kenya is partly a recent phenomenon that arose as a result of the global war on terrorism that took a center stage in international discourse after the September 11th attack on New York (O’Driscoll, 2017).

In Kenya, the government was identified as the securitizing actor. The government, having been elected into office, had the authority a securitizing actor requires. The government had the legitimacy to speak security; since the citizens accepted that they are in a position to voice concerns on their behalf. Therefore, the expertise that the government officials are deemed to have when being responsible for issues of national security provided them with the social and political capital to securitize an issue. The discourse of linking security or lack thereof to Somali refugees was constructed for many years. The government had regularly made a link between a deteriorating security situation and housing of refugee in Kenya. They portrayed refugees as being synonymous to terrorism by increasingly viewing refugees, in both cities and camps, through a security lens and painting them as a potential threat to Kenya’s internal stability (Mwangi, 2018).


Unable to respond to the attacks, the Kenyan security apparatus and the media reacted by putting the blame on Somali refugees. Somali refugees and inhabitants were generally stigmatized and portrayed as terrorists and this informed the security measures to be taken by the Kenyan authorities. Such strategy of stigmatization of Somali refugees gave the Kenyan government the
leeway to implement harsh policies that jeopardized the rights of refugees. Politicians demanded
the closure of refugee camps and crackdown on refugees especially those hailing from Somalia
(Lind, Mutahi & Oosterom, 2017).

2.11.2. Realism

Realism is perhaps the oldest and the most influentially dominant theory of
International Relation discipline. To begin with, realism as a concept forwarded the idea that
states are the main actors in international politics with no higher authority to answer to in a
global political structure that is anarchic in nature. Further according to realists national interest
is the foundation of states behaviour where sometimes power play, war and conflict are the
constant characteristic of international political relation between states. Realism hence
viewed international organizations role in international relations as insignificant as they are
entirely subordinate to the whim and abuse of great powers and are efficient only to the extent
that they are allowed to be by the powers that be (Amitav, 2019).

Realism suggested that the protection of national security is of utmost importance and in this
anarchical setting; every country must act out of its own self-interest and thus strive to remain in
power. If it is not in the interest of a country to aid asylum seekers, then they won’t. For instance,
it would be difficult for a realist leader in the world, like the United States to justify the entry of
thousands of Syrians without insinuating terrorist activity or general domestic discord. In this
way, a realist would not allow a nation to risk its security, when it is already at risk by other
foreign powers (Chatterjee, 2018).

Realism instead equated national interest with power; it is therefore not most appropriate
to inspire positive humanitarian intervention policies in regards to the cause of refugees.
This is because realism dismisses humanitarianism by acknowledging that powerful states may
pursue such non-security objectives so long as they do not interfere with the national interest (Balzacq, 2011).

In the international system, the State is the central actor mandated to ensure its survival and that of its citizens. In doing so, the state primarily gives priority to the defense of its national interest over other countries national interests and concerns as this often is the pursuit of all countries. World politics therefore tends to be characterized by distrust and geo-political competition that results in self-help and reliance becoming a vital means of survival for states. Thus, the realists claim, only if they advance their national interests can they call on international cooperation and international law (Ole, 1998).

The realist further argued that governments have to control international migration to safeguard their national interest, which may include many problems ranging from race, culture, and religion, to issues of population and labour markets. There was a notable shift in Kenya policies regarding refugees and asylum seekers as assessed from a realist perspective as evidenced by the gradual change in Kenya’s policies and relations with its refugee population (Diskaya, 2013).

Realism hence informed my theoretical view to justify the change of Kenya's foreign policy towards refugees. Realism has forwarded the thinking that the pursuit of effective political action by governments in world politics does not allow universal moral principles to be applied to state decisions owing to the nature of the anarchic nature of international politics. States act in favour of their own interests of survival and, where possible, will merely claim morality as justification for their conduct (Strizel, 2014).

Realist stated that the iron law of necessity for states is to promote and safeguard their national interests, hence the response of Kenya could be seen as a state defending its national interest and
therefore the policies it adopted were intended to guarantee its survival and safeguard its national interests.

2.12 Summary and Gaps to be filled by the Study

The question of protecting refugees and vulnerable populations is intertwined in two of the current most divisive and contentious topics of our time being immigration and terrorism. As a consequence, the bipartisan desire to protect refugees has deteriorated considerably. Although there is broad agreement in the literary works on refugee rights on the existence of a conflicting and common ground between International Human Rights Law and International Refugee Laws, there are still gaps in the state mandate to implement refugee rights, as concepts of sovereignty, national security and border control continue to play an important role.

Based on the arguments presented, the study takes cognizance of the fact that much focus was placed on the importance national security. A little or no mention has been made to the refugees that are affected by harsh stances taken by countries around the world like Kenya as they tend to be the last to be thought of or even blamed and made scapegoats for many security issues facing the world. Kenya’s responses to the Somali refugee influx have been more vocal following various terrorist attacks in the country. Hence this study comes in to fill knowledge gap that Kenya is international mandated to protect refugee while amidst security concerns and on how to carry out the delicate balancing act is where this research comes to fill the void.
CHAPTER THREE
RESEARCH METHODOLOGY

3.1. Introduction

This chapter examined the research design on which this study is based and the techniques used to gather the necessary information. It also outlined how the study was administered and how the information gathered was analyzed. Finally, it outlined the challenges and limitations that the research encountered.

3.2. Research Design

The research used a cross-sectional descriptive case-study method. The strategy involved qualitative research methods predominantly centered on review and critical literature analysis to address the relevant issues the study posed.

3.3. Data Collection

To support the assessment of reconciling national security and refugee protection, the study used secondary data sources. The research was mainly conducted through desk-based research. A literature review and desk study was conducted by analyzing published books, journals, articles, internet publications, field research reports on refugee issues, government policy papers such as the Kenya Foreign Policy Documents, Acts of parliament, United Nations High Commissioner for Refugees affairs reports and publications from state and non-state actors such as intergovernmental organizations.

3.4. Data Analysis

The qualitative data analysis of this research was done according to content analysis process. The study began with an investigation to learn what is already known and what remains to be learned about the topic. Further, an in-depth literature review of the area of study was conducted
examining the previous and current work of experts in the field of refugee and security studies to answer the pertinent question that the study raises in reconciling the legitimate security interests of Kenya with their obligations to protect refugees.

3.5. Ethical Considerations

This study was carried out with the highest possible ethical standards. The study avoided plagiarism and fully acknowledged the work of others referred to. The findings were reported accurately and honestly.
CHAPTER FOUR
CRITICAL ANALYSIS OF RECONCILING NATIONAL SECURITY AND REFUGEE PROTECTION IN KENYA

4.1. Introduction
This chapter is a critical analysis of reconciling national security and refugee protection in Kenya. It analyzed the efforts or the lack thereof made by the Kenyan government and the international community to protect refugees. The study further examined the provisions of various international and domestic laws and policies on refugees in relation to the realities on the ground. Further the implementation of the Refugee Act and other international instruments on refugees was discussed and the extent of their implementation investigated. This chapter lastly looked at the challenges faced by Kenyan authorities in protecting refugees amid the security concerns and how reconciling national security and refugee protection efforts in Kenya has advanced in relation to its international obligation to protect refugees in Kenya.

4.2. Refugee Rights and Protection
There are millions of refugees and internally displace persons in the world and the protection of the rights of these vulnerable people is highly uncertain and unpredictable. Refugee rights are then aimed at improving the international community’s response to such massive displacement of people and create a structure for tough international reaction to the problems faced by displaced persons who are confined in camps often for decades. Refugee rights also responded to the requirements of refugees who are not protected in their countries, the countries they are hosted and from the international community as well (Hollenbach, 2008).
According to Thielemann & El-Enany (2011) the rights of every individual include the rights to leave and seek asylum. The right to asylum is not a customary right that is part of customary law,
but is a conventional right meaning it is based on international conventions. Unfortunately, the individual’s right to seek and enjoy asylum is not complemented in any convention by the state’s corresponding obligation to grant asylum. States retain absolute discretion in deciding whether or not to grant or refuse asylum in any given case. This has led to disparities between different states as countries developed crafty asylum legislation depending on their background with refugees, national security concerns and political situations (Thielemann & El-Enany, 2011).


Further, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa highlighted that member states undertook to apply the provisions of this convention to all refugees without discrimination as to race, religion, nationality, membership of a particular social group or political opinions. It further affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination (Loper, 2010).

Kenya is a party to the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Although Kenya is a key destination for asylum seekers, particularly from southern Sudan and Horn region countries such as Somalia Eritrea and Ethiopia and a signatory to the above mentioned conventions, when it comes to responding to her obligations arising from international refugee obligations, Kenya is in a class of her own (Kamanga, 2002).
Before 2006 Kenya did not have a specific or unified national legislation and policies with regards to refugees despite having hosted and involved with refugee and asylum issues for over five decades. Due to the lack of a central consolidated legal refugee framework, Kenya drew authority from a host of different statutes and instruments. This made coordination difficult and denied Kenya the institutional and regulatory framework on which to fulfill its commitments under international refugee law (Kamanga, 2002).

With the developments in Kenya from the 1990s, including strides in political, social economic and legal development, and with the quest to measure-up to international standards, the government of the day came to see that the existing policies in place in relation to refugee management was wholly unsatisfactory. The process of enacting a new Refugees Act began in 1991 and culminated with the final enactment of the Act in 2006. Overall, the Refugees Act reflects international legal standards of refugee protection provided in the 1951 Convention Relating to the Status of Refugees and its 1967 protocol and the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa (Omata, 2016).

The Refugee Act then provided refugees with the rights to be recognized as a refugee and not to be subjected to refoulement. They were also entitled to certain standards of treatment which include security rights, including protection from physical attack, and assistance to meet basic human needs, basic dignity rights, including protection against discrimination, family unity, freedom of movement and association, and freedom of religion and self-sufficiency rights, including rights to work and education. These rights were derived from the 1951 Refugee Convention and a number of human rights instruments which were domesticated by dint of section 16 of the Refugees Act (Maina, 2016). There were however some deficits, loopholes, inadequacies, room for excesses, and glaring omissions in the Refugees Act, all of which eroded
the progressive and protection orientation of the Act and threatened to lower its compliance with international protection standards considerably.

4.3. Role of the State in Refugee Protection

The protection of refugees emanated from a human rights context where every person in the world has the right to life, security and liberty which can readily be threatened by infringement of these principles. Protection in the framework of refugee law involved unfettered human rights competence and is founded on the link between refugee rights and the resolve to the refugee predicaments. Protection therefore examined the reinstatement of asylum seekers within a society and its consequences in broader political as well as sociological aspects (Goodwin-Gill, 2001).

Historically the right to grant asylum was exercised by the states in the light of its own interest, and every state has exclusive control over the individuals in its territory, including all matters relating to exclusion, admission, expulsion, and protection against the jurisdiction by other states (Edwards, 2005).

With respect to granting asylum states have a right, rather than a duty and this originated from their sovereign right to control admission into their territory. Principally, it is in the state’s interest to determine who to admit into its territory and whom to deny entry. However, in as much as every state has the right to adopt its own asylum adjudication process in pursuit of its national interests, it has to ensure that the adjudication process aims at ensuring that the minimum standards set out in the international human rights framework, refugee treaties and customary international law are met (Phuong, 2013).

The permissive nature of the ‘right to seek and enjoy asylum’ is contained in the Universal Declaration Human Rights, the failure to include duty to grant asylum in the Declaration on
Territorial Asylum, and in the failed attempt to draft a binding international convention on the subject of asylum clearly indicated the position of states as regards asylum. The right is also not found in the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees as well and neither is it mentioned in the 1950 United Nations High Commissioner for Refugees (UNHCR) Statute. However, the final act of the conference that adopted the 1951 Convention, recommended that governments continue to receive refugees in their territories and act in a true spirit of international co-operation in order that these refugees may find asylum and the possibility of resettlement (Phuong, 2013).

Similarly, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa did not also specifically speak of the right to be granted asylum but rather, asylum is influenced by the hospitality of the host country. Asylum is granted for humanitarian purposes and not as a right. However, despite there not being an international law obligation on states to grant asylum, states are still bound by the customary international law principle of non-refoulement. A State presented with an asylum request, at its borders or on its territory has the immediate responsibilities relating to admission, at least on a temporary basis. This responsibility extended to the provision of basic reception conditions and includes access to fair and efficient asylum procedures (Arenilla, 2015).

In so far as protection is concerned, states are also obligated by international law to guarantee protection of refugees in their territories. Although Countries hold the monopoly in granting asylum, they are required by the principle of non-refoulement not to forcefully expel and return of refugees to situations where they will be persecuted or their lives endangered (Edwards, 2005). Furthermore states are also responsible for protecting refugees residing within its borders by granting them the same standard of treatment as the citizens of the state. The host country
plays an important role in ensuring that refugees are protected against physical, emotional, and psychological harm. Kenya is then mandated to protect asylum seekers since it is a member of the international community (Loescher, 2011).

Kenya has since domesticated the above mentioned international human rights law instruments that protected refugees. The 2010 Constitution transformed Kenya from a dualist to a monist State by providing that all treaties ratified by Kenya would form part of the law of Kenya. Therefore Kenya was responsible for protecting refugees residing within its territory. They should be accorded the same standard of treatment as the citizens of the state. Further Kenya as a host nation was responsible for ensuring that refugees are protected against physical, emotional, and psychological harm. This obligation to protect refugees is highly encouraged since Kenya is a member of the international community. In this regard, the primary goal was to ensure that refugees are given a safe environment to live a dignified life (Loescher, 2001).

The Kenyan government is then obligated to guarantee that refugee rights and freedoms are protected and their basic needs provided. The basic needs will include food, shelter, clothing, health facilities, education, security amongst others (UNHCR, 2016). However, UNHCR and the international community have an obligation to assist the host countries, especially when there is a humanitarian crisis.

Kenya has also has the responsibility to support refugees through ensuring that its asylum and refugee laws are consistent with the international laws. Recently, Kenya was condemned by the international community for proposing laws that were deemed to infringe on the rights of the refugees. By responding to the security threats allegedly caused by the influx of refugees the Kenyan authorities implemented draconian policies that were deemed too harsh and inconsistent with the international refugee covenant (Human Rights Watch, 2013).
Kenya has a role to play in facilitating the integration of the refugees with the local people. The local population must be prepared to accept the refugees, and allow them to share the resources available. It is the responsibility of the Kenyan government to facilitate the process of integration. However this was more theoretical than practice as the government does not grant refugees work permit to enable them seek employment and make them self sufficient. The denial of permits made refugees dependant on aid and even forced some refugees to resort to illegal means to provide for themselves. Encampment policy in place basically killed any hope of refugees working and the lack of a path to a Kenyan citizenship hindered any hope of integrating refugees into the Kenyan society (Refugee Consortium of Kenya, 2012).

To sum it up Kenya has struggled to fulfill its mandate as a refugee hosting nation. Problems like bureaucratic obstacles caused inefficiency in refugee management in Kenya. Further the lack of commitment of the Kenyan government to adhere to its international obligations has been cited as one the major challenges facing refugees. The government has regarded refugees as an afterthought and a nuisance and as such it has been hard for the refugees to realize their rights as granted by the 1951 Convention Relating to the Status of Refugees.

4.4. Role of UNHCR in Refugee Protection

A humanitarian and non-political organization, the United Nations High Commissioner for Refugee is mandated by the United Nations to protect refugees and help them find solutions to their plight. It has an express mandate to be involved in the protection of refugees by the contracting states to the Convention and Protocol. In addition to monitoring and supervision, the United Nations High Commissioner for Refugees is often involved, formally or informally, with the process for refugee status determinations and with refugee repatriation processes (Milner, 2009). In fact it has been at the forefront of refugee affairs coordination. Prior to the
establishment of the Department of Refugee Affairs and the adoption of the Refugee Act in Kenya, protection of refugees and the management of refugee affairs was the mandate of the United Nations High Commissioner for Refugees. The organization performed critical functions such as refugee status determination, refugee admission as well as finding a lasting solution to the refugee concerns (Oluoch, 2017).

Prior to the 2016, the government had relinquished its own duties and responsibilities of managing refugee affairs and placed that burden on the United Nations High Commissioner for Refugees. In addition to its own responsibility to protect and provide humanitarian relief, agency was responsible for receiving and registering refugees, arranging appointments for status determination, undertaking eligibility interviews, making judgments on eligibility, hearing and making decisions on appeals and placement of refugees to appropriate camps. United Nations High Commissioner for Refugees had, in effect, assumed the role of a government ministry and in so doing has seriously compromised its autonomy and its effectiveness in providing refugee protection. As a result it was overwhelmed in executing its mandate and its dual role compromised its effectiveness (Oluoch, 2017).

However with the enactment and coming into law of the Refugee Act of 2006, Kenya had taken measures to fulfill its commitments under international law by establishing a national legal framework for management of refugee affairs and assuming share of responsibility with the United Nations High Commissioner for Refugees for Refugee Status Determination (RSD) (Abuya 2007).

The government of Kenya was responsible for assessing the status of refugees across its territory, but United Nations High Commissioner for Refugees acknowledged that if government failed in
its obligation they would step in and take over the mandate of determining the status of the refugees directly. It also acknowledged that ensuring refugees access to status determination processes was one of its most important protection measures. However in Kenya, the United Nations High Commissioner for Refugees did not have the ability to fulfill the mandate and principles set out in their own guidelines concerning status determination. Inadequate funding and constraints on the resources available is often presented as the reason for lack of efficiency and fairness in the status determination process (Pavanello, Elhawary & Pantuliano, 2010). Additionally, the United Nations High Commissioner for Refugees looked for durable solutions to the refugee problem by encouraging and supporting a safe voluntary repatriation of refugees to their home state if the conditions are favourable. The tripartite agreement signed in 2013 between Kenya, Somalia and the United Nations High Commissioner for Refugees set the stage for the voluntary repatriation of Somali refugees in dignified and humane conditions back to Somalia. Nearly 83,000 Somali refugees have been helped in returning home since the start of the pilot project to aid the voluntary return of refugees to Somalia in December 2014. Voluntary repatriation of refugees encouraged many Somalis to return to Kismayo, Mogadishu and many parts of Somalia in 2015. It was estimated about 10,000 Somali refugees to return home voluntarily in 2019 (Milner, 2009).

However this agreement did not not have the desired effects. The inability of this agreement to accomplish the scheduled repatriation of Somali refugees compelled Kenya to return refugees to Somalia against their will. This action was considered a forceful repatriation of refugees contrary to international conventions and national policies pertaining to refugees (Human Rights Watch, 2016).
Moreover the United Nations High Commissioner for Refugees also played a significant role in fostering the integration of refugees in host states by helping them attain legal asylum status. They called on host countries to grant refugees full citizenship who don't want to go back to their home nations (Milner, 2009). In Kenya, the Ministry of Interior and Coordination of National Government has the responsibility for creating a mechanism or a system to help with the integration of refugee in accordance with the Constitution. The process of local integration implied a gradual process that helps refugees to access to an alternative legal status, in line with the criteria established by Kenyan laws. Afterwards if they want to, refugees can apply for naturalization, in line with the requirements laid down in the appropriate domestic legislation (UNHCR, 2016). However to date no such mechanism is in place to help refugees attain citizenship in Kenya.

The frequent terrorist attacks in Kenya and the association of such insecurity to Somali refugees complicated the good will of the Kenyan authorities in hosting Somali refugee. The fact that the presence of Somali refugees were linked with insecurity made the Kenyan government lean towards implementing strict laws the encampment policy. Such actions and measures restricted refugee rights like free movement significantly curtailing their opportunities for local integration and naturalization (UNHCR, 2016).

Also, resettlement of refugees is another significant role of the United Nations High Commissioner for Refugees as it has the responsibility to determine the refugee status of an asylum seeker, to provide assistance and determine who is qualified for a third country resettlement. In Kenya the United Nations High Commissioner for Refugees has helped resettle vulnerable refugees to third countries due to the situation in their countries of origin. Resettlement involves the identification and transfer of refugees from a State in which they have
sought protection to a third State which has agreed to admit them as refugees with permanent
residence status (Turk, 2016).

However in Kenya this resettlement programme was dodged with controversies as investigations
into refugee processing centers in Kenya found widespread reports of United Nations High
Commissioner for Refugees (UNHCR) staffers accepting bribes from refugees in order to refer
them for resettlement in a Western country. Allegations of bribery and corruption not just at the
Agency’s office, but within its affiliate’s organizations were charged with providing services to
refugees (Rush, 2019).

4.5. National Security in Kenya

National security is one of the key ingredients in the preservation of life and protection of
people’s right from both internal and external threats. Security is taken to be about the pursuit of
freedom from threat and the ability of states and societies to maintain their independent identity
and their functional integrity against forces of change which they see as hostile (Stone, 2009).

The pressure from an increasing globalized refugee crisis has generated less tolerance and more
hostility towards refugees. Countries in the north and south alike are erecting fences and
patrolling their borders in an effort to safeguard their borders from foreign threats. In the process
refugees have been reconceived as criminals, illegal immigrants and worse terrorists. Pleas to
close the border and enact harsh polices are articulated within a calculus of political realism of
preventing security threats and promoting national interest (Aiken, 2001).

In Kenya national security is provided for under Article 238 of the constitution which defines
National security as the protection against internal and external threats to Kenya’s territorial
integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and
prosperity, and other national interests (The Constitution of Kenya). National security hence
protects against threats to Kenya’s territorial integrity and freedom from threats to the core value of the state.

According to Kirui, & Mwaruvie, (2012) refugee hosting states argued that their humanitarian gesture of housing refugees in their jurisdiction endangered their national security due to the refugee security dynamics. There have been debates on whether refugee camps in Kenya should be closed mainly due to the increased threats to national security. For this reasons the Kenyan authorities decided it would be best to close its refugee camps due to the persistent threats from terrorists. The presence of these camps with thousands of refugees posed serious national security threats to Kenya (Kirui, & Mwaruvie, 2012).

The Kenyan government has also accused the refugees of being a major source of insecurity. Refugees were linked to and deemed to play a significant role in criminal activities. Ensuring security at all cost mentality being propagated by the Kenyan authorities in the name of national security has led to negative effects on the rights of refugees. This move was criticized for being in contravention of refugees’ statutes and international humanitarian law (Mogire, 2009).

4.6. Refugees and National Security Concerns

Kenya takes on a crucial role as a refugee hosting country in a region plagued by protracted conflicts. As a result of years of political and social unrest in many of its neighbouring states like South Sudan, Somalia and Eritrea, Kenya received a huge influx of refugees and is currently hosting over four hundred thousand half of whom are from Somalia and reside in Dadaab refugee camp (Kirui, & Mwaruvie, 2012).

Heightened national security due to terrorism threats from the Al-Shabaab has had a negative impact on refugees in Kenya. The Kenyan Government saw such a huge refugee influx as considerable political and security threat and consequently it had put in place elaborate security
measures to prevent attacks (Kirui, & Mwaruvie, 2012). Some of the security concerns linked with refugees are discussed below:

**4.6.1 Terrorism**

The idea that asylum seekers are strongly linked to terrorism has been highly talked about topic throughout the world. Many governments and authorities have argued that they have established a link between the arrival of refugees seeking protection and an increased terrorism threat and this laid the foundation of recent implementation of controversial policies such as the Muslim ban in the USA and the Schengen agreement suspension in the European Union (Silvia & Denise, 2018).

Kenya is struggling to cope with the ongoing inflow of asylum seekers from Somalia and threats posed by the terror group Al-Shabaab to its national security. With such glaring security threats, the government of Kenya has grown wary of the Somali refugees residing and seeking asylum in its territory as they are fearful of militant infiltrating refugees to carry out attacks (Burns, 2010).

In recent years, Kenya has been attacked repeatedly by Somalia’s Al-Shabaab, a terror group affiliated to Al-Qaeda that has been in operation since 2006. With the Kenya’s military incursion into Somalia it was anticipated that Kenya would be subjected to retaliatory attacks from the Al-Shabaab and since then Kenya has suffered more than 100 terror attacks, the deadliest being the attacks on Garissa University in October 2015 killing 147 and the Westgate Mall in Nairobi in September 2013 killing 67 (Morrison, 2016).

With all this attacks and threats, Kenya attributed such insecurity with the presence of Somali refugees and the long porous border it shares with Somalia. The government claimed the flow of small arms and weapons into Kenya and the uncontrolled movement of people facilitated the
attacks as the Al-Shabaab used asylum channels to infiltrate camps and launch targeted attacks in Kenya. That link was once again reaffirmed by the government's announcement of plans to repatriate refugees back to Somalia and close refugee camps in Kenya. The Kenyan government's desires to ultimately have all refugees return home has never been a secret as it has been pushing for the closure of camps and the repatriation of refugees to Somalia in direct contrast to the terms of the tripartite agreement signed with the UNHCR and the Somali government (Halais, 2014).

However, contrary to the above arguments Al-Bulushi (2016) pointed out that the government of Kenya has never corroborated its allegations that refugees were liable for the terror attacks in the country. Rather, she claims that the state uses the refugee population domestically as a diversionary strategy and as a negotiating tool for more international assistance from humanitarian organizations. As European states are now willing to pay for other governments to assume the burden of hosting refugees, Kenya seems to be positioning itself not simply to attract more funds, but also to challenge the moral authority of Western states when it comes to international obligations (Al-Bulushi, 2016).

4.6.2 Proliferation of Arms and Weapons

The massive flow of refugees from one country to another during conflict situations is a major factor responsible for cross border movement of illegal weapons. The Addis Ababa conference highlighted the link between refugees and arms trafficking and proliferation especially as a result of the militarization of camps and refugees crossing the border to take part in military activities. It stated that, refugees are becoming the second supply line' of small arms and light weapons in the Horn (Mogire, 2003).
Refugees are said to have played different roles in the proliferation of illegal weapons into Kenya. First, refugees are accused of moving across borders move with illegal arms which they either sell or use to commit crime in the host countries. It is commonly believed that some refugees from neighbouring countries, particularly from Somalia, have carried weapons with them which they have then sold to criminals, cattle rustlers, drug traffickers, and carjacking syndicates in Kenya (Kirui & Mwaruvie, 2012).

The Dadaab refugee camp was established in 1991 due to the security concern presented by the large influx of refugees and their security impact in Northeast Province in Kenya. In the North Eastern region of Kenya where Dadaab was located security problems were particularly a cause of concern as the long porous border Kenya shares with Somalia facilitated easy movement of arms into Kenya. According to Kenya’s security agents, the inflow of Somali refugees into Kenya presented a threat as refugees were deemed major players in the smuggling of arms and weapons that were used in criminal activities (Njoroge, 2007).

In addition to this, refugee camps were also used as arms trafficking centers by illegal arms dealing networks. Because of being poorly policed and located in a remote area, the camps were an ideal place for storage and distribution of arms and weapons. Usually traffickers from Somalia and Sudan walk on foot across the national borders through the many unmanned crossing areas and deposit the weapons into refugee camps like Dadaab and Kakuma respectively. From these camps a distribution network of brokers transports the weapons to Nairobi and other major cities in the country (Oluoch, 2012).

Two significant factors that facilitated refugee involvement in the trafficking and cross border movement of weapons are the location of the camps and the porous borders. The camps are located in remote areas where the activities of some refugees are not properly monitored. They
are also close to borders with countries of origin where civil wars are still going on and weapons are easily available. Thus the refugees still continue with their illegal trades even long after settling in the host countries (Odhiambo-Abuya, 2004).

However, the fact that refugees are restricted in camps limits their options for fending for themselves as they are not supported to engage in legal business and they are restrict to move outside the camps. Since encampment curtails the freedom of refugees, it denied them the opportunity to fend for themselves. This makes them to engage in illegal activities of buying and selling small arms and light weapon for survival. This indicates the encampment policy is not working although still used by the Kenya government (Oluoch, 2012)

Also, Kenya as a host country has not succeeded in effectively managing and controlling refugees in the camps. Ideally the host government (Kenya) is supposed to control the camps, provide security for genuine refugees and humanitarian workers as well as ensuring the humanitarian and civilian character of the camps. However the camps are under the sole management of the United Nations High Commissioner for Refugees and the government provided limited security officers who at best are too few to manage the camp and at worst collude with the arms dealers (Mogire, 2003).

4.7. Effects of National Security on Refugee Protection

The world has become a hostile place for refugees and the narrative often used to justify such actions is national security. Kenya is no stranger to this struggle. Situated in a conflict-prone zone it hosts hundreds of thousands of refugees from a range of countries including Somalia, South Sudan, the Democratic Republic of Congo and Ethiopia (Okoth, 2017).

Traditionally refugees were viewed from a humanitarian perspective as victims of violence and human right violations, however with the advent of new security issues the classification of
refugees as a security threat in Kenya had led to serious violations of refugee rights. With such a change of perspective towards refugees, Kenya adopted policies whose main aim was refugee control and restriction in order to maintain their national security (Mogire, 2009). The impacts that arose when refugees are considered a security threat to a state they wish to gain access include;

4.7.1 Border Closure
Following the September 11th terrorist attacks in the United States and subsequent launch of the US-led global war on terror, refugees became the purported local and regional epitome of contemporary global terrorism. The external military intervention of Ethiopia and the US against the Union of Islamic Courts (UIC) in 2006 contributed to the emergence of Islamic extremism in Somalia, prompting a new wave of refugees to Kenya (Lind, Mutahi & Oosterom, 2017).

The long porous border that Kenya shares with Somalia coupled with the prolonged refugee crisis made it possible for the Al-Shabaab to seamlessly blend in with the hosted refugee population and move in and out across the border. Further, the ongoing political turmoil in Somalia offered conducive recruitment and training ground for extremist that posed a huge security risk for Kenya. The Kenyan authorities viewed its border with Somalia as a gateway that provided terrorist with easy access to Kenya to carry out attacks and refugee camps as a safe heaven that provided terrorist with a stage to plan and strategize on attacks on Kenyan soil (Ismail, 2015).

The political unrest and instability in Somalia has had security implications and it has contributed to the rise of terrorism attacks in Kenya by Al-Shabaab militants. Terrorism is not a new concept to the Kenya-Somalia border dynamics and it has changed the relationship between Kenya and Somali refugees as refugees were now considered a threat. Illegal smuggling of
people, goods and weapons across the border are among many transnational crimes associated with the refugee presence and political instability in Somalia. The refugee camps are now considered a hub for criminal activities and safe heaven for religious extremism. This has led to drastic changes in refugee laws and policies in Kenya (Menkhaus, 2012).

The growing security concern on the Kenya-Somalia border and the impact that terror attacks have had on Kenya's security and economy has led to the authorities rethinking their asylum policies to match the growing threat presented by the Al-Shabaab. To address this glaring threat many states around the world including Kenya have closed their borders to counter threats to their national security emanating from unstable neighbouring states (Menkhaus, 2012).

On 3 January 2007, the Kenyan officials announced that their border with Somalia was closed. This was in response to concerns raised by the fighting going on in Somalia between the government and the Union of Islamic Courts. Kenya saw fit to close its borders to ensure security and no spillover of fighters or insecurity from Somalia. The closure of the border however had an effect on the people fleeing the ongoing conflict as refugees were stranded on the wrong end of the border. Refugee registration was cancelled as well leaving thousands of people in limbo (Mwangi, 2012). Between 5,000 and 7,000 refugees in urgent need of humanitarian assistance were denied entry into Kenya as a consequence of Kenya-Somali border closure. Normally this would not have happened as refugees would have been ushered in screened and registered before being admitted to a refugee camp (Amnesty International, 2007).

While Kenya’s security concerns were real, the crisis in Somalia has exacerbated longstanding tensions and hostility towards the country’s own sizeable ethnic Somali community as well as the refugee population (Human Rights Watch, 2009). The border closure provided the police the
opportunity to send Somali asylum seekers back to Somalia, breaching the fundamental principle of non-refoulement. About 400 Somalis were refouled back into Somalia on the day of the border closure. The asylum seekers, mostly women and children, were loaded into trucks at Liboi in Kenya and driven to the Somalia side of the border and left without regard to any kind of accessible humanitarian assistance. Some of the Somali asylum seekers forcibly returned into Somalia had already been pre-registered with the United Nations High Commissioner for Refugees in Kenya a few days before the refoulement (Refugee Consortium of Kenya, 2012).

To counter the above arguments the closure of the Kenya Somalia border did not provide a permanent fix to the security problems experienced in Kenya. To prevent further attacks and manage security, the authorities in Kenya ought to manage refugee flow with proper working systems within their border.

4.7.2 Refoulement of Refugees

Before the Refugee Act came into play in 2006, the principle of non refoulement was not in play as the international refugee instruments were yet to be domesticated into the domestic laws. However with the enactment of the Refugee Act and the incorporation of International refugee instruments in the municipal law, the principle of non refoulement has became a cornerstone of Kenya refugee laws (Freudenthaler, 2011).

The principle of non refoulement is specifically provided for in Section 18 of the Refugee Act 2006. The section provided that;

“No person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or to subjected any similar measure if, as a result of such refusal, expulsion, return or other measure, such person is compelled to return to or remain in a country where—
(a) the person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion; or
(b) the person’s life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or the whole of that country."

The closing of borders to prevent entry of refugees was seen as a blatant disregard to the principle of non-refoulement. This is because the resulting effect from closure of the border entails refugee being arrested, detained and subsequently deported to a volatile situation that they are escaped from. Such action goes against the principle of non-refoulement. The upholding of this principle by countries whether signatories or not is imperative as returning refugees back to their home countries where they face persecution, torture and inhumane treatment is not ideal. From the aforementioned, although Kenya has implemented legislation specifically to prevent refoulement of refugees, the threat of closure of the Somali border continues to be a thorn in the realization of refugee rights in Kenya (Karanja, 2014).

The Security Laws (Amendment) Act of 2014 was enacted into law and it amended the Refugee Act of Kenya by placing a ceiling on the number of refugees to be housed in Kenya to 150,000 at any given time. Such changes in the Refugee Act would have heard a negative impact on the principle of non-refoulement. If at any time the number exceeded the needed one fifty thousand, Kenya would have forced out the remaining population out of the country in order to be in compliance with the law. By forcing out the excess refugees Kenya would be acting contrary to the non-refoulement principle as espoused in the Refugee Act and also in the Refugee Convention of 1951 (Nyamori, 2018).
In spite of the declining state of security in Somalia, Kenya has expelled thousands of Somali refugees including registered refugees back to Somalia. Expelling refugees back to Somalia where they face serious threats to their lives and well being violates the cornerstone refugee protection principle of non-refoulement. From the above Kenya has breached its own constitution well as international refugee laws by subjecting the refugees from Somalia to unlawful refoulement and degrading treatment under the guise of its counter-terror operation (Amnesty International, 2014b).

National security has been the elementary reason in all the cases where there has been a violation of the principle of non-refoulement by the Kenyan Government. Such a blanket view of the refugees as being the main cause of attacks was ill advised as under the Kenyan law national security and threat to a community are the main exceptions that would warrant refoulement of an individual who is within Kenya or who intends to make their way into Kenya (Amnesty International, 2014b).

The fundamental principle of non-refoulement implied that it is the responsibility of a country not to enforce refoulement or return a person to country from which they fled. Most human rights treaties have integrated the non-refoulement principle in their articles, such as the Article 22(8) of the American Convention on Human Rights and Article 3 of the Convention against Torture (Human Rights Watch, 2009).

4.7.3 Encampment Policy

Before 1991 both Refugee Status Determination processes and the task of refugee management in Kenya was carried out by the government. During this period the UNHCR played a minimum oversight role as the government of Kenya basically managed all refugee affairs in the country like supporting policies that encouraged local integration and
economic self sufficiency of the refugees. However, as many countries neighbouring Kenya experienced political and civil strife the number of refugees seeking asylum in Kenya ballooned from twenty thousand to over two hundred thousand overnight. This massive influx had a crippling consequence as significant changes occurred in Kenya's refugee policies (Verdirame, 1999).

Kenya could no longer support the overwhelming number of asylum seekers seeking humanitarian help because it did not have the economic capacity to fulfill its mandate of supporting refugees. Due to its limited capabilities, the Kenyan authorities shifted the obligation of managing refugee affairs and the process of Refugee Status Determination to UNHCR. Subsequently by transferring its refugee management responsibilities to the UNHCR, Kenya gave up its control of its refugee affairs to the UNHCR as the Kenyan government indicated that the insecurity presented by the refugees could be easier handled when they were housed in designated camps (Verdirame, 1999).

With the rise in insecurity linked with rise of refugees and the desired to starve off Somali irredentism the Kenyan government proposed that this insecurity issue could better be handled by housing refugees in camps. This made the United Nations High Commission for Refugees establish the Dadaab and Kakuma camps. By locating the camps in the borders of the countries where the refugees were coming from, it can be concluded that the Kenyan government viewed the refugees situation as a temporary problem to which the encampment policy was thought of as a quick solution as it was envisaged that the refugee problem would not last for a long time. However with the increased number of refugees and the escalation of insecurity in Kenya this led to the shift in Kenyans’ attitudes toward refugees (Maina, 2016).
Since the early 1990s, Kenya has adopted an informal encampment policy for most refugees in Kenya, restricting their movement to the limited confines of refugee camps. Further since the enactment of the Refugees Act 2006, the authorities came up with methods granting permission or movements pass to a limited number of refugees to move outside the camps. Only refugees residing in camps are illegible for such passes allowing them to move across Kenya. Passes were issued for a limited set of reasons, such as medical or higher educational requirements or due to protection concerns in camps. The limited opportunities for legal travel resulted in many refugees travelling either without permits, or gaining permits through false documentation or bribery (Refugee Consortium of Kenya, 2012).

Following grenade attacks in various parts of Nairobi, the Kenyan Government in 2012 enforced encampment policy by ordering all Somali refugees to move to Dadaab camp and those from other countries were directed to move to Kakuma. Citing national security the Department of Refugee Affairs halted the registration of refugees and ordered all urban refugees to move to camps with immediate effect (Yarnell, 2014).

Adopting such stringent encampment policy has led to the infringement of the rights of refugees in Kenya. This model of refugee ‘warehousing’ led to refugees being kept in prison like camps for indefinite time. Such restriction had seriously affected the mobility and the ability of Somali refugees to gain access to gainful employment. This has encouraged dependency of humanitarian aid and this led to refugees engaging in illegal activities to survive. Kenya’s de facto encampment policy has failed to meet any of the criteria of international law concerning the rights of refugees as their actions has clearly violated international humanitarian and refugee laws (Maina, 2016).
It is clear that national security concerns have greatly shaped Kenya’s policy towards its refugee population the adoption of strict policies. However Kenyan authorities have failed to show how the restriction of almost 300,000 refugees in Dadaab helps them achieve any of their aims. They have also failed to justify restricting all of Dadaab’s refugees to the camps is a proportionate measure to achieve their security aims (Human Rights Watch, 2009). Obviously it is evident that encampment policy ultimately hinders workable and long lasting solutions to kenya’s protracted refugee problem.

4.8 Legal and Policy Framework for Refugee Protection

Kenya initially pursued the policy of abdication of refugee affairs to the office of United Nations High Commissioner for Refugees. The effect and danger of adopting this policy was that most government officials believed that the responsibility of dealing with refugees was solely for United Nations High Commissioner for Refugees and not the host government. The continued abdication of responsibility to United Nations High Commissioner for Refugees was influenced by the state’s failure in 1991 to pass legislation to formalize its ad hoc approach to refugees and subsequently a legal basis for its responsibility for refugee affairs (Garlick et al., 2015).

The promulgation of Kenya's Constitution in 2010 marked a major turning point in Kenya with respect to its position on the application of international law. Furthermore, in accordance with Articles 2(5) and 2(6) of the 2010 Constitution of Kenya, all international conventions ratified by Kenya are now component of Kenyan law. With respect to international refugee legislations, Kenya is a signatory to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugees in Africa (Nanima, 2017).
After many years of advocating for a domestic refugee law by the United Nations High Commissioner for Refugees, the Kenyan government made refugee legislation a priority. In 2003 a draft refugee Bill was introduced in parliament and after many years of political back and for the Refugee Act was finally passed into law in 2006. It was not until 2007, when the Refugees Act entered into force, that Kenya had domestic legislation affirming its obligation to international conventions on refugees and establishing the rights and treatment of refugees and asylum seekers in Kenya. Hence the Refugee Act, 2006, is the first extensive codification of Kenya's international commitments to refugees and it outlines the minimal set standard that Kenya is obligated to grant refugees hosted in Kenya (Abuya, 2007).

The Act laid down the institutional and legal framework for the recognition, protection and management of refugees. It classified refugees into two main groups, statutory refugees and prima facie refugees, and laid out the conditions for the exclusion and withdrawal of refugee status. This included those who have committed crimes either outside or within Kenya, have dual nationality and are able to seek refuge in their second country of origin, or people from places where the conditions for seeking refuge no longer existed (Karanja, 2014).

The Refugee Act also established a Department for Refugee Affairs (DRA) which has responsibility for the administration, coordination and management of issues related to refugees. Its functions included developing policies, promoting durable solutions, coordinating international assistance, receiving and processing applications for refugee status, registration, issuing identity cards and travel documents and managing the refugee camps (Martyn, 2012). A Refugee Affairs Committee, also established under the Act, is responsible for advising the Commissioner for Refugees. The Act also stated that it should include representation from the host community and civil society.
The Act also determined the parameters for the Refugee Status Determination (RSD) process through which applications for refugee status are assessed. Upon entry into the country, asylum-seekers had up to 30 days to report to reception centers set up by the Department of Refugee Affairs. Their details were subsequently recorded and they were issued with an Asylum Seekers Certificate which provided protection against arrest as an illegal migrant. Asylum-seekers were subsequently interviewed to ascertain why they are seeking refuge (Martyn, 2012).

If refugee status is granted, it allowed refugees and their families to remain in Kenya until it was safe for them to return to their country of origin or move to a third country. If asylum-seekers were denied refugee status, they had recourse to an Appeals Board and, if unsuccessful, to the High Court. If these appeals are rejected they had 90 days to leave the country. If granted asylum, refugees received a refugee identification pass and can apply for a convention travel document, which enabled them to travel abroad without a passport. Those considered by the Department of Refugee Affairs to have a legitimate reason to leave the refugee camps would then receive a movement pass (Karanja, 2014).

However with the emergence of Al-Shabaab and the rise of insurgency in the Horn of Africa, Kenya was exposed to security threats emanating from such terror groups. Thus with the current security threat, there was to be a shift in policy where refugees' rights were severely curtailed and restricted (Kagwanja, 2012).

Kenya has since passed amendments to its existing security laws. The Security Laws (Amendment) Act 2014 amended sections 11, 12, 14 of the Refugee Act No. 13 of 2016 and introduced Section 16A (Nanima 2017). These amendments in the Refugee Act No. 13 of 2016 changed asylum policies in Kenya in two major vital ways: it sought to cap the number of refugees and asylum seekers in Kenya to 150,000, and it further limited the movement of
refugees by enforcing an encampment policy, keeping refugees in camps namely Dadaab and Kakuma (Wilson, 2014). The law that limited the number of refugees to be allowed in the country at 150,000 was eventually declared unconstitutional by the High Court of Kenya.

4.9 The Status of Kenya on Its International Obligation to Protect


Kenya is known for its willingness to sign instruments intended for protecting the rights of refugees and asylum seekers, but unfortunately not implementing them. It is has been more than 50 years since Kenya acceded to this instruments, however, many of these values that are advocated by these conventions have been breached by the Kenyan government continuously. Although it cannot be denied that Kenya presently fulfills its minimum obligation towards refugees in general, the level of protection afforded to these refugees does not conform to the standards set by the international refugee regimes (Jones et al. 2010).

Practically speaking, extension of rights to refugees in Kenya was not designed to promote a permanent solution it is apparent that the Kenyan government seems to have provided certain rights as provisional and with the hope that after a certain duration refugees would return to their
nation of origin. Consequently, refugees have almost had their basic rights denied or suspended hence it can be argued that refugees in Kenya have bought their right to life at the cost of all their other fundamental rights (Refugee Deeeply, 2017).

Further the Refugee Act of 2006, which sets out refugee management guidelines, was implemented in bits and parts and in a disjointed manner. The government only officially acknowledged and recognized the refugee camps in 2014, while the members of the Refugee Appeal Board, which is accountable for hearing and determining appeals on the determination of refugee status, were commissioned in 2015. The Refugee Advisory Committee, which is mandated for consulting and supporting the Commissioner for Refugees on matters pertaining to the recognition of refugees is yet to be established (Nyamori, 2018).

In addition, over the years the Kenyan government made knee-jerk amendments to its domestic refugee legislations by consolidating its refugee law with national security, threatening the well-being of the refugees. Despite hosting over 550,000 registered individuals, the government set a ceiling of only 150,000 for Somali refugees permitted to stay in the country in 2014. In 2016, the Government dissolved the Ministry of Refugee Affairs and requested repatriation of all Somali refugees and the closure of the Dadaab refugee camp, fortunately, the Kenyan High Court reversed both decisions for being unconstitutional and in breach of the country's international obligations towards refugees (Nyamori, 2018).

The conditions of refugee camps like Dadaab and Kakuma are far from adequate. Physical safety and refugee well-being in these camps had been a concern for numerous stakeholders in refugee management as the camps continued to be afflicted by safety issues including banditry, rape and deaths. Whereas the condition may have improved over the years, women and kids particularly
remain susceptible to abuse and exploitation. Despite the government's many attempts to address this serious condition, safety issues in the camp remained a concern (Jones et al. 2010).

Majority of refugees in Kenya were required to remain in the isolated settlements of Dadaab or Kakuma. The encampment policy put in place by the government severely restricted freedom of movement of the refugees restricting their opportunities to find employment, market for their goods hindering their self-reliance possibilities. In the event of violation of this policy, refugees are arrested and forcibly returned to these camps (Yarnell, 2014).

The encampment policy infringed on the freedom of movement of refugees as stipulated in Article 26 of the Refugee Convention. Under Article 26, countries should permit refugees legally the freedom to choose their place of dwelling and freely travel within their jurisdiction. Likewise, domestic refugee laws in Kenya does not provide legal grounds for the encampment policy even though refugee camps are stated in Kenya's Refugees Act, the Act doesn't include an official encampment strategy and failed to identify which classifications of refugees should live in camps. The Kenyan government therefore had no legal foundation for its compulsory encampment policy under both national and international law (Wilson, 2014).

This limitation affected other basic freedoms, such as the right to earn a salary, access to the court etc. Given these shortcomings, it is not easy to determine the application of Kenya's refugee act to refugees. Kenya's national refugee legislation has generally struggled to deal with the application of refugee rights, apart from certain rights such as non-refoulement principle and the right to have documents (Ayiera, 2013).

The practical application of the human rights legislation is fairly straightforward. Refugees are entitled to human rights including the right to a free, safe and dignified life. Even though Kenya has ratified and acceded to the International Covenant on Civil and Political Rights (ICCPR) and
International Covenant on Economic, Social and Cultural rights (ICESCR), it has the obligation to integrate the bill of rights as part of the state legal systems and to comply with the relevant provisions both internationally as well as domestically. As the United Nations High Commissioner for Refugees pointed out, a refugee should enjoy all fundamental human rights envisaged in all internationally acknowledged human rights conventions and should not to be subjected to any type of violence, inhumanity or unfair treatment (Ayiera 2013). Therefore, the reasons as to why the government failed to extend protection cannot be totally attributed to the legal regime. Legally the standard of treatment or protection to refugees in Kenya according to human right laws is not controversial. Even though the international and domestic refugee laws fail to address to most of the rights, the human right laws can be applicable. It is contended that any gap in the standard of treatment of refugees does not stem from the legal regime, rather from the decision of states to suspend or accorded limited conventional rights. This is true in the case of Kenya. Although, it is important at this juncture to understand as to why states opt to suspend and only provide the minimum standard. The immediate response in case of Kenya is rather domestic related issues, such as economical capacity, political willingness, security and other reasons depending on the specific category of rights violated (Huot, 2014). The quality of protection started to devaluate after 1990, with the arrival of large number of refugees, this overwhelmed the institutions and created strains on economic resources and its physical infrastructure (Chacha, 2004). Kenya as a developing country had limited resources available and dealing with refugees was beyond reach (Huot, 2014). The practical challenges that government faced in managing refugees were acknowledged however the Protection provided to
Refugees in Kenya is below the international standards set by the Geneva Convention, and various Human Right Conventions despite the various efforts made by the government of Kenya.

4.10 Refugees Protection and Terrorism

The war on terrorism, coupled with stricter immigration laws and practices of states to prevent entry or deport refugees brought into question the relevance and applicability of the Convention on Refugees to the contemporary migration, security concerns and refugee situations. States are unwilling to prioritize refugee protection as refugees are frequently classified with other irregular migrants (Murillo, 2009).

Due to the deemed security threat presented by refugees most countries intercepted refugees and migrants to prevent their entry in to their countries. Countries like Kenya now employed a mandatory detention policy which requires custodial holding of migrants without documentation until they are assessed. If their claims fail, they are returned to their countries or regions of origin (Mwangi, 2018).

Additionally, it has been noted that the current anti-Muslim and anti-refugee sentiment taps into pre-existing biases and fears that are clearly evident in the association of refugees and terrorism. Undeniably, the linking of refugees and terrorism has had a direct influence on public policies internationally and domestically. For example, in an effort to deal with the serious incidents of terrorism in Kenya, the Kenyan government introduced a number of legislative changes including the 2006 Refugee Act; 2012 Prevention of Terrorism Act; and, the 2014 Security Law Amendment Act, among others. Repeated serious terrorist incidents led the Kenyan government decision to refoule Somali asylum seekers and the closure of the Dabaab and Kakuma refugee camps, two of the largest in the world (Namina, 2017).
To enhance security, states have put in place law and policy measures and a range of programmes to raise the barriers to entry of refugees, tightening border controls and discourage asylum entries. While these measures were mostly applied in developed countries, the backlash has affected the policies and practices on refugee protection across the globe and seriously watered down the quality of refugee protection (Wilson, 2014).

Although the Kenyan government employed encampment policy, there is a large population of refugees living in Nairobi and other urban areas. With the heightened security concerns like terror threats, the government implemented encampment policy that confined refugees to the camps, severely restricting their freedom of movement and right to work. It is well acknowledged that camps violated the fundamental rights of the freedom of movement that is essentially to the enjoyment of all other rights. This restriction in the camps interferes with the enjoyment of other rights such as right to education, to gainful employment, to travel outside the country of asylum among others and therefore confinement of refugees undermined refugee protection in Kenya (Lind, Mutahi & Oosterom, 2017).

Declining refugee protection in Kenya is also connected to state suspicion and resistance to radical Islamic ideology among sections of refugees. With the advent of September 11th attacks and the rising threats from the Al-Shabaab reinforced the link between Islam and terrorism in Kenya. The response to Somali refugees was heavily influenced by negative perceptions and fears against Islam manifested in political and public domain. Consequently Somali refugees were saddled with heavy baggage of enduring prejudice and marginalization against their Kenyan counterparts. Besides state repression, the profiling of Somali refugees for security reasons was a common feature in Kenya and beyond. An example was when government
conducted an alien registration process in Eastleigh, Kariokor and Pumwani, with the aim of profiling Somali refugees and other aliens of Somali decent (Jaji, 2014).

Terrorism is, undoubtedly, driving the legislative agenda of many states to be more restrictive of asylum seekers. National security concerns are trumping human rights, despite the fact the two are intimately intertwined and interrelated. Nonetheless, the fight against terrorism must be compatible with the treaty obligations of States to uphold everyone’s innate human rights and inherent dignity as human beings (Government of Canada, 2017).

4.11 Balancing National Security and Refugee Rights and Protection

Security concerns and international refugee protection are not opposites on the contrary they complement each other. It is therefore evident that both security and protection are best achieved through an integrated approach, where complementary and mutually reinforcing measures ensure access to safety and protection for those in need, while safeguarding the security of transit and host countries and communities (Turk, 2016).

It is sometimes perceived that international refugee law is somehow an obstacle when it comes to addressing security concerns. This, however, is a misconception. Security concerns have been taken into consideration from the very outset of the international refugee protection regime to its present form. More than sixty-five years ago, the drafters of the 1951 Convention relating to the Status of Refugees were very much aware of national security issues, and they also aimed to ensure that the refugee protection regime would not provide a cover for persons involved in serious criminality or otherwise posing a threat to the security of host countries and communities (Turk, 2016).

Accordingly, specific provisions were included in the 1951 Convention relating to the Status of Refugees that provided a system of checks and balances, and which took full account of the
security interests of states and host communities while at the same time protecting the rights of refugees. This started with the refugee definition in the 1951 Convention, which established clear criteria for determining who is a refugee and entitled to international protection, and which provided for the exclusion of persons who are responsible for certain serious crimes or heinous acts, and who, therefore, should not receive international protection as refugees (Lindley, 2011).

Kenya has an obligation to support refugees through ensuring that its asylum and refugee laws are consistent with the international laws. Recently, Kenya was condemned by the international community for proposing laws that were deemed to infringe on the rights of the refugees (Human Rights Watch, 2013). By responding to the security threat presented by refugees Kenyan came up with laws with the goal of minimizing the number of refugees allowed in the country at any moment.

Despite Kenya being a signatory to numerous international laws, treaties and instruments in this context particularly the 1951 Refugee Convention, the 1967 Protocol and the 1969 OAU Refugee Convention, it has created numerous informal and unwritten policies to afford no extra rights or luxuries to refugees (Aronson, 2011). Kenya is therefore caught in a dilemma; should the government give priority to protecting its national security interests or should it continually abide by its international obligations.

In pursuance of their national interests while at the same time observing its international law obligations, states were obligated to balance their policies in a way that migrants still have faith that they have safe sanctuary within the country wherein they are seeking asylum; at the same time the government needed to keep a close eye to ensure smooth but secure passage at the entry and exit points. However, most states have a challenge in maintaining this balance and in choosing between local law and international law; most states opt to protect their borders
adequately by enforcing their domestic legislation in a way to limit migration, as opposed to imposing their human rights obligations (Dowd, 2008).

The Increasing insecurity and repeated acts of terror in Kenya have put the government in a dilemma where on one hand, it is under immense pressure to bolster national security and on the other hand, it is expected to uphold its international obligation of providing a favourable asylum environment. The asylum environment in Kenya underwent immense policy and administrative changes following increasing insecurity in various parts of the country. The spiraling insecurity in the country has been linked to the presence of refugees especially of Somali origin in Kenya’s urban areas (Otipi, 2013).

To avoid the negative backlash on refugees due terrorist attacks there was need for state actors and the general public to find a proper balance between bolstering security and upholding and preserving conducive asylum space. It must be appreciated that for refugees and asylum seekers to enjoy a favourable asylum space, there must be enhanced security within the country of asylum. In which case, there must be enhanced cooperation between the Government and humanitarian actors in the fight against terrorism and bolstering asylum management processes. The Kenya Government should put in place effective border control measures and properly document all foreign nationals and those seeking asylum. More importantly, the Government should commence registration of new arrivals and undocumented persons within the urban areas (Ciaran, 2008).

It is then important to acknowledge that this debate will not end any time soon, particularly with the increasing incidences of insecurity and repeated acts of terror. However, it must also be underscored that despite the challenging environment that the Government of Kenya finds itself in, it must strike a balance between enhancing national security and protecting refugees and
asylum seekers rights. Government concerns on security were legitimate. Nonetheless, the fight against terrorism must take place within the framework of international law. This required states to ensure national security while complying with their international obligations to the protection of refugees.
CHAPTER FIVE
SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1. Introduction
This chapter presented the summary, conclusions and recommendations to the study. This chapter is presented in line with the study's main objective of finding a balance between enhancing national security in regards to upholding refugee rights and protection. The study also contributed to this debate on how safeguarding national security and protection of refugee rights are mutually exclusive and can go hand in hand without sacrificing one. Kenya is now stuck in a conundrum as to whether to comply with its international commitments to guarantee refugee rights or to defend and safeguard its national interests in protecting its citizens and sovereignty from perceived threats from refugees.

5.2. Summary of the Study
Kenya hosts a large number of refugees mainly from the Horn of Africa and Great Lakes Region. These refugees are primarily housed in Kakuma refugee Camp in the north-western part of the country and Dadaab refugee camp in the North Eastern part of Kenya. Over the last two decades national security has gained momentum in Kenya as a talking point with the emergence of national and international terrorism and other security threats to warrant just about anything that Kenya does to protect its security. National security has been used in Kenya to justify various security policies and counter-terrorism measures spanning from the vague war on terrorism to stringent migration rules, detentions and expulsions.

Refugees have become synonymous with the terrorism narrative and this has resulted to extreme measures being employed to justify the bolstering national security leading to refugees being sub
jected to indefinite detentions, arbitrary expulsions and inhuman and degrading treatment and torture, under the guise of national security.

5.3 Key Findings

In regards to refugees and security concerns in Kenya, the study found out that Kenya faces a serious security concern when it comes to the threat that the Al-Shabaab presents and in recent years, Kenya has also been attacked repeatedly by Al-Shabaab terrorists at increasingly high costs in terms of innocent Kenyan lives lost. As a result the government asserted that that refugee camps especially the Dadaab establishment is a major concern as it has been a base from which the Somali terrorist group Al-Shabaab planned strategized and mounted attacks on Kenyan soil. Consequently the government decided to tighten refugee policies and asylum processes to protect its national security. Linked with the above the study found out that the conflation of refugees with insecurity and terrorism has led to a series of measures and legislative changes. This included a series of efforts on the part of the Kenyan government to stem the flow of Somali refugees into Kenya and reduce their numbers, including closing the border with Somalia and halting refugee registration. The government has also sought to tighten control of refugees through relocation and encampment.

Additionally, the study found out Kenya has implemented policies that are unfavourable and strict according to many stakeholders in the humanitarian world. By seeing Somali refugees as potential security threats Kenya sees such actions as necessary in order to win the war against Al-Shabaab. Following the attacks on the American embassy in Nairobi and the subsequent attacks that followed Kenya has actively pursued the encampment policy that pushed for confinement of refugees in camps. Such repression of refugees has been widely criticized and not in conformity with International Humanitarian Laws.
The study has further found out that Kenya has had challenges in protection of refugees in its territory. The presence of refugees in Kenya has come with economic, political, diplomatic and security challenges. Kenya is limited in terms of resources and with limited international support it faces problems in meeting refugee demands. The unprecedented surge in refugee numbers especially from Somalia and their prolonged stay is putting pressure on Kenya’s already overstretched economy.

The study found out that the security threat posed by Al-Shaabab made Kenya enhance its security apparatus. This in turn became a challenge in protecting Somali refugees in Kenya as the Kenyan Government had put in place law and policy measures and a range of programmes to raise the barriers to entry, tightening border controls and discourage asylum entries.

The study also found that Kenya faced a substantial immigration border control human resource challenges in its efforts to address terrorism and terror threats along and within its border line. Inadequate staffing levels, poor working environment, corruption and bureaucratic intelligence surveillance and sharing among security agencies increased porosity of the Kenyan border to increasing terror attacks and extremist activities. With all this challenges, it is wrong to blame refugees for insecurity in Kenya as they are victims in their own right. To stress this point it is not the outflow of refugees that cause terrorism in Kenya, it is tyranny, war and terrorism that create refugees.

Finally, the study found out that Kenya’s present stance on refugees illustrates that Kenya is in a position where it would rather assert its national security than honour humanitarianism because it is convinced it can no longer do both. Kenya is facing a serious dilemma and perceives that it cannot address its humanitarian crisis and its national security crisis simultaneously. Hence
Kenya is willing to sacrifice ideals of humanitarianism to secure its border with Somalia. It then remains a challenge for Kenya to create the balance between safeguarding its national security and protecting refugees.

5.4 Conclusion

The essential conclusion of this study is that Kenya, as a member of the international community has an obligation to adhere to international obligations. While pursuing its national security interests, Kenya should act liberally taking into consideration its international obligations. Protection of the national security and interest is vital; however, it has to be done within the ambit of the law and to successfully achieve this adherence to law and international cooperation is material.

Kenya cannot solve the insecurity problem in the country by solely shifting the blame on the refugees to the extent of limiting the numbers and forcefully repatriating them back to their country of origin. Due procedure must be followed. Further, it is imperative for the root causes of insecurity to be established before profiling an entire community for being a threat to national security interests. The essential conclusion of this study is that the enactment of the Refugee Act is indeed a crucial chapter in refugee protection in Kenya; however its proper implementation will be a commendable milestone in Kenyan history.

Given Kenya’s prominence in the promotion of peace and security in the region, it is important that Kenya sets the standards for proper management of populations displaced into her territory. Diverse challenges persist about the actual implementation of the Act, hence the need to take time to design and participate actively in a solid, broadly based initiative to build on the formal commitments enshrined in the Act.
Finally urgently needed is support for the institutional strengthening, including development of systems and procedures, adoption of management tools and skills related to the establishment and preparation of the Department of Refugee Affairs. This will support the effective and gradual transfer of responsibilities from the office of United Nations High Commissioner for Refugees to the government and ensure sustainable management of the process thereafter.

5.5 Recommendations

In line with the OAU Convention Governing the Specific Aspects of Refugees it recommended that Kenya moves and settle refugees far from the frontier of the country of origin. Concentrating refugees in large camps near borders like Dadaab and Kakuma in place within the easy reach of armed groups adds to the increase of insecurity in Kenya.

To effectively advocate for the rights of refugees and asylum seekers Kenya should promote the right to work for refugees and asylum seekers in accordance with Articles 17, 18 and 19 of the 1951 Convention Relating to the Status of Refugees. Kenya should engage with stakeholders at the highest levels and work with local lobbying organizations to use existing legislation and the courts to open labour markets to refugees to dissuade them from illegal activities.

Kenya should disarm refugees and wherever possible avoid putting them in camps by allowing them freedom to choose where to live until such time as they are able to be repatriated safely and with dignity. Where this is not possible, Kenya should endeavour to ensure that refugee camps are small enough to be properly managed and to maintain a satisfactory level of law and order.

Donor countries, relevant inter-governmental and non-governmental organizations should provide financial, material and technical assistance to Kenya. In the case of large-scale influxes, such assistance should necessarily be provided on a timely basis in order to save lives and ensure Kenya is not forced to close their borders to prevent further influxes of refugees.
Apart from the impact of refugees on host communities, other reasons for the growth of xenophobia in Kenya arise primarily out of the failure of the public to appreciate the special situation of refugees. Accordingly, the best way to tackle the problem of xenophobia is through public awareness campaigns and education at all levels of society by recasting Somali refugees as victims of insecurity rather than the cause of it hence the refugee situation should be viewed as a humanitarian problem.

Kenya will not commit itself to adhering to refugee conventions if other regions of the world especially the Western countries are moving away from refugee policies in place. If the Western world treats refugees and asylum seekers without regard to fundamental refugee principles, rest assured that other countries will cite that as a justification for their own misbehavior. If these powerful states treat refugees in a principled manner, this will give them a moral ground to call upon other states to live up to their obligations under international refugee law.

It is vital to ensure the provision of adequate documentation including travel papers, work permits and photo identity cards. National initiatives should be in place to train relevant officials to recognize and respect these forms of documentation. Support should also be given to professional certification and recertification. Many urban refugees have professional qualifications that are not recognized by national authorities or professional associations in asylum countries.

At the provincial or municipal level Kenya should work with local governments and businesses to help them identify their responsibilities to refugees and asylum seekers. With decentralization, local governments are increasingly responsible for primary health care, housing, policing and economic development. These are critical components of refugee protection and Kenya should ensure that refugees are included in such programmes.
The Kenyan government should collaborate more closely with local advocacy groups to identify challenges and monitor the effectiveness of measures in place to protect refugees. Such alliances must promote two-way communication in which local organizations can call on the government when they identify specific problems which cannot be resolved without the help of the government.

It is also recommended that the Kenyan government provides ongoing material assistance to refugees; it could develop a locally appropriate refugee ‘starter pack’. This might include paying housing deposits or providing small grants to acquire business tools or equipment. It is recommended that the Kenyan government should also work with local organizations to assist refugees in developing literacy, upgrading their professional skills, accessing education and securing credit. Efforts should be made to avoid parallel structures such as special refugee credit organizations, schools or clinics.

It is encouraging that the Kenyan government is revisiting its urban refugee policy. This creates opportunities for refugees, municipal governments, businesses, service providers, academics, and advocates engaging with the Kenyan government in developing a policy that can improve refugee protection. It is also recommended that Kenya immediately cease all refoulement of Somali refugees and asylum seekers.

There is also need to train Kenya’s military and police, particularly soldiers and officers stationed in north eastern province on the rights of Somali refugees and asylum seekers under the 2006 refugees act, investigate all incidents of refoulement where Kenyan police officers are known to have forcibly. In line with Kenya’s obligations under international and Kenyan law, allow Somali asylum seekers to cross all parts of Kenya’s border with Somalia, including at all official border post.
5.6 Suggestions for Further Research

Despite the findings of the study, there are still areas which may need further research to be able to understand this issue better. There is a need to further explore how the discourse about terrorism and securitization of refugees since the start of the global war on terror has impacted politics and refugee policy outcomes in many parts of the world.
REFERENCE


Somali refugees, *The International Journal of Human Rights*, 22:10, 1318-1334,


Spencer, A. (2008). “Linking Immigrants and Terrorists: The Use of Immigration as an Anti-


UNHCR, (2016). Refugees and Asylum-seekers in Kenya. available at:


