

International
Institute of
Social Studies



**Examining the Legal and Security Frameworks on Refugees' Right
of Movement: Case Study of Dadaab, Kenya**

A Research Paper Design

by:

DAISY CHELANGAT

KENYA

MASTER OF ARTS IN DEVELOPMENT STUDIES

Major:

SJP

Supervisor: DR. JEFF HANDMAKER

Second Reader: DR. ZEYNEP KASLI

The Hague, The Netherlands

November 2024

Disclaimer:

This document represents part of the author's study programme while at the International Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

Inquiries:

International Institute of Social Studies
P.O. Box 29776
2502 LT The Hague
The Netherlands

t: +31 70 426 0460
e: info@iss.nl
w: www.iss.nl
fb: <http://www.facebook.com/iss.nl>
twitter: [@issnl](https://twitter.com/issnl)

Location:

Kortenaerkade 12
2518 AX The Hague
The Netherlands

Table of Contents

List of Figures	v
List of Acronyms	v
Acknowledgements	vi
1. Introduction.....	1
1.1. Research Justification and Relevance to Developments studies	5
1.2. Objective of the study and Research Questions	6
Chapter 2. Contextualizing the research problem.....	7
2.1. Background	8
Chapter 3: Conceptual Basis of Analysis.....	15
3.1. Rights-Based Approach	15
3.2. Securitization Approach.....	19
3.3. Crimmigration Approach	23
Chapter 4. Research Methodology.....	25
4.1. Introduction.....	25
4.2. Sources of literature.....	25
4.3. Case study	25
4.4. Research Design	25
4.5. Ethical considerations.....	26
4.5.1. Confidentiality.....	26
4.5.2. Data use/accuracy.....	26
4.6. Limitations.....	26
Chapter 5: Analysis of the Results.....	28
5.1. Legal and Policy Frameworks in Kenya	28
5.1.1. National Legislation Governing Refugees in Kenya.....	28
The Refugees Act (2006) and Its Amendments	28
The Security Laws (Amendment) Act (2014).....	30
The Prevention of Terrorism Act (2012).....	31
5.2. National Security vs Refugees rights	32
How legal and security frameworks affects Refugee Movement.....	32
Designated areas/Refugee Camps	33
Arbitrary detention.....	34
Principle of non-Refoulment	35
Local integration towards self-reliance	36

Chapter 6: Impacts of restricted movement on social and economic development of Refugees	39
6.1. Economic Impacts	39
6.2. Social Impacts.....	40
Chapter 7: Conclusion	42
References	43

List of Figures

Figure1- Refugee statistics or global trends	8
Figure 2-: Total refugees and asylum seekers in Kenya	10

List of Acronyms.

UNHCR - United Nations High Commissioner for Refugees

DRA/DRS- Department of Refugee Affairs/Secretariat

HRW- Human Rights Watch

IPOA-The independent Policing oversight authority

UDHR-Universal declaration of human rights

OHCHR -Office of the United Nations High Commissioner for Human Rights

UN/Un -United Nations

MOD -Ministry of Defence

POT -Prevention of Terrorism

IAD-Intergovernmental Authority on Development

RBA -Rights Based Approach

Acknowledgements

First and foremost, I want to thank God for bringing me this far, it's not been easy being away from home and my son, but all glory and honour goes to him because we survived.

I am grateful to my amazing supervisor who worked extra hard to ensure the meetings took place through reminders etc, his tough support was evident because there were days, I felt like just giving up, Dr. Jeff thank you. To my amazing second reader Dr. Zeynep your unwavering supports goes along way from the feedback to the encouragements thank you.

I am grateful to my peer discussants Sophia and Naaif thank you for your guidance and support amidst the fact that you were busy with your research, yet you took time to support me.

To my mother, my siblings and the kids thank you for the amazing video calls, prayers and above all the encouragements when I wanted to give up.

To all my amazing friends, Peter, Cedrick, Hope, life group, Nishi and Renee thank you.

Final word goes to my friends in ISS, the teachers and above all OKP scholarship-Nuffic for enabling me to take part in this programme.

Special thanks to myself for keeping the Faith even when the weather almost crushed all my hopes, I kept pushing with the hope of another day.

ABSTRACT.

Refugees are often faced by different challenges that have made them to flee their homes in search of safety, most of the refugees come from hot bed areas of conflict that have necessitated many to abandon their families. The abandonment of the life, culture and employment that they are used is often met with crippling realities of the host country, their freedom to move is now reduced to encampment that restricts them from social cohesion. The encampment of refugees has been highlighted by many authors as a way for the governments to contain and be able to manage the refugees from one control zone, this is because the security of the country is paramount and the perception that most of the refugees come from conflict areas, they are associated with conflict and that there is possibility of the refugees bringing conflict to the borders. The research tries to contribute to the discussion by examining the security and the legal frameworks in place on how it affects the refugee right of movement. Through the use of secondary data, the research found out that the existing legal frameworks on refugees have been framed around the idea of the security of the nation, refugees are seen as terrorist that justifies the need for restrictive measures. In contrast there is no clear evidence that has been linked to refugees when it comes to the insecurity in the country, without generalizing one could argue that the insecurity in the country is not directly linked to the refugees instead the country has find a balance when it comes to implementation of policies that relates to national security and the protection of refugees, by establishing the root cause of the insecurity in the country.

Key Words:

Rights of refugees, legal frameworks, refugees, securitization, crimmigration, right based approach, refugee movement, encampment policy, national security, economic and social impacts, Dadaab, asylum, human rights

Refugees and Terrorism

Encounters and challenges in navigating the security policies in the wake of terrorism attacks in Kenya

1. Introduction

In this part I introduce the importance of understanding the existing legal and national security frameworks and its inconsistencies and how that impacts on the right of movement among refugees in Dadaab Kenya. Kenya ratified the 1951 convention in 1966 and other conventions like OAU convention relating to the refugee status, in addition the existence of the Refugee act 2006 which stipulates on the right of movement for refugees. The Kenya refugee act 2006 article 28(4) states that ‘subject to this Act, refugees shall be enabled to contribute to the economic and social development of Kenya by facilitating access to, and issuance of, the required documentation at both levels of Government, however the policies in place like Operations Usalama watch 2014-2015 do not provide the refugees the right of movement. In 2015 Kenya introduced Operations Usalama watch 2014-2015 which was meant detect illegal immigrants, arrest and prosecute people suspected of engaging in terrorist activities, identify places harbouring criminals and prevent acts of crime and lawlessness in general Alingo (2014). ¹The introduction of these policy saw arrest and detention of many refugees and migrants as reported by Independent Oversight Authority (2014) due to the increasing number of refugees to Kenya mainly from the neighboring countries like Somalia that has seen an increase in conflicts and terrorism (Security distillery 2020) especially from attacks by Al-Shabaab (Wikipedia is Sunni Islamist military and political organization based in Somalia) in Kenya. According to BBC (2019) there was an attack of Garissa University college that saw killing of 148 students in 2015, another attack reported by Amnesty international (2019)² in Dusid2 in Westlands Kenya led to the killing of 21 civilians. Al-Shabaab claimed responsibility of the three attacks as reported by Miller (2013), United state department (2022) highlighted a series of other attacks that Al-Shabaab has claimed responsibility in Kenya.

After adversely being faced with terrorism attack the government of Kenya called for closure of Dadaab refugee camp and disbandment of the Department of the refugee affairs in 2016 (UNHCR 2017) which plays an integral part in the registration and issuance of refugee permits limits the refugees

¹ <https://issafrica.org/iss-today/kenyas-current-probe-on-terror-why-operation-usulama-watch-wont-cut-it>.

² <https://www.amnesty.or.th/en/latest/news/688/>.

right to movement limiting the ability to self-reliance and sufficiency. This new policy has led to significant consternation amongst the refugees and international community UNHCR (2017).

The main purpose of Operation Usalama Watch (2014-2015) was to be used to remove refugees and unregistered migrants from the urban areas after the increased attacks in Nairobi. Balakian (2016). The operation targeted areas that are heavily occupied by people of Somali origin for example Eastleigh, Amnesty International (2014) and Dadaab refugee camp as the government has severally linked the camp as a safe haven for Al-Shabaab. Aljazeera (2014). The operation saw arrest and detention of many Somali migrants. In research done by Goitom (2016) on refugee and policy there were over 100,000 refugees that was living in the urban areas and the DRA gave a directive on encampment policy requiring all refugees and asylum seekers to relocate to refugee camps and eventually to be repatriated back to their home countries. The repatriation of the refugees and violation of the right of movement was evident in the 2014 operations as highlighted by the Independent Policing Oversight Authority (IPOA);(2014) discovered that 'on 8 April 2014, Jomo Kenyatta International Airport prison had 92 detainees. Similarly, the cell capacity at Kasarani Police Station is approximately 100, however, on 16 April 2014, the station had 214 detainees. Eventually 332 Somali Migrants were repatriated back to Mogadishu, Somalia IPOA (2014) this was despite the existence of the the Tripartite Agreement signed in 2013 between Kenya, Somalia, and the UNHCR that aims at facilitating the voluntary repatriation of Somali refugees.

Through the Principal secretary, state department of interior and citizen services (Kibicho 2016) Kenya declared that hosting of refugees had come to an end. UNHCR was given an ultimatum of 6months to ensure that the camps were closed. The call of the closure of the camp following the series of attacks, detention and deportation of Somali is one way of securitizing an issue in order to give rise to the need of new policies in this case closing of Dadaab refugee camp Voppen, N.A.G., (2017). The seriousness of closing the camps was also expressed in many ways by the government officials for example Ruto (2016) said that "Just the way America changed after 9/11 so will Kenya change after Garissa attack" this change for instance saw the disbandment of Department of Refugees Affairs (DRA) that oversees the registration of refugees. In March 2014 Kenya's then Interior Minister, Joseph Ole Lenku, ordered all refugees residing outside Dadaab and Kakuma (Kenya's other refugee camp) to immediately return to the camps where they are officially registered. The directive further ordered the immediate shutting of all refugee registration centres in urban areas including Nairobi Lind, Mutahi, Oosterom (2017).

Prior to 2014 the Kenya government had reached a tripartite agreement with UNHCR and Somalia that would allow for voluntary return but as of September 2016, a total of 30,731 Somali refugees from Dadaab went through the voluntary return process; of these, 24,630 returned in 2016 alone as the process accelerated under pressure from Kenyan authorities Lind, Mutahi, Oosterom (2017). Kenya's then Interior Minister Joseph Nkaisserry stated that because of the increase in the security concerns the government has decided to close Dadaab camp and at the same time the government has moved to disband the department of refugee affairs Lind, Mutahi, Oosterom (2017).

The disbandment of DRA led to cut-off of registration of refugees that eventually limited the number of movements passes in and out of the camp. The disbandment of DRA limits the refugees to camps as they are not registered and this creates challenges for refugees in terms of their living conditions, Asfaw, et al. (2014) given that camps do not take up more refugees, migrants are forced to reside in makeshift abodes which will create pressure to the communities around the camp. The communities around Dadaab are pastoralist and therefore they depend on land for their income these pressure from closure of camps pre-empt hostility from the community but also exerts pressure on the environment Kumsa and Jones, (2014).

The lack of integration policies also leaves only room for repatriation Mogire (2009:20) when Kenya UNHCR and Somalia signed a tripartite agreement the pressure to repatriate refugees has increased as the government has cited that the existence of Dadaab camp is a cause of insecurity in the country Lind, Mutahi, Oosterom (2017). The issues of security continues to be heightened through political processes Wæver, and de Wilde (1998) that frame certain groups as threats, leading to policies that prioritizes national security over humanitarian concerns, the approach can also be used to legitimize policies that could lead to social injustice as such policies can exacerbate the vulnerabilities of refugees, leading to systemic issues such as unlawful detention, limited access to essential services, and the stigmatization of asylum seekers (Stumpf, 2006; Arendt, 2013). The continued violation of rights though securitization of refugees by the Kenya government highlights the tension between the humanitarian efforts and protection of refugees Verdirame and Bond (2005) has led to several social injustices and challenges being faced by migrants Hovil (2016), as the focus is on immediate relief long-term legal protection. Understanding the crimes being committed and reasons for this crime will be paramount in determining the legitimization of policies and laws towards securitization of refugees and border controls. Viewing of refugees as National threat by Kenyan government officials Kibicho (2016) would lead to prioritizing border control and national security concerns over the impact it will have on the population.

The announcement of the closure of Dadaab camp so many uncertainty amongst the refugees as the government had given six months for the camp to be closed, giving the refugees a few months before they return to their country Voppen (2017). The call for closure of the Kenya-Somali border since 2010 and disbandment of DRA would lead to voluntary repatriation as once the camp is closed and the lack of alternatives for integration would leave refugees with no option but to return home, but as noted by Mogire (2009) voluntary return is a long lasting durable solutions but it has to be based in free and well informed decision. During a study done by Médecins sans Frontières in 2016, shows that many refugees in Dadaab camp are not willing to go back to Somalia as many have been born in the camp and have no ties with Somalia. The call for the closure of the camp has been associated to national security as Ruto (2016) claimed that for the last two years the refugee camp has played a huge role in the insecurity of the country. The need for security has led legitimization of the government call for closure for the camp.

Rudge (1989) in one of his extensive research talks of how immigration and asylum are slowly moving away from the traditional human and humanitarian policy making. It is instead the decision about immigration is influenced more by the concern of national security. Rudge (1989) highlights what is happening at the current time where countries continue to integrate immigration and security policies. The encampment policy in Kenya is one security measure that Kenya has used to control refugees as a way to manage the security of the country Agwanda (2022). In Kenya Somali forced migrants have faced greater scrutiny by security agencies leading to frequent arbitrary arrests of suspected refugees in urban centres including Kenyan Somalis who fail to show proof of citizenship Balakian (2016). In his research on refugees and global politics Crisp (2003) describe how countries have shifted their policies in regard to immigration in order to deter the influx of refugees mainly due to the public perception about refugees who come from conflict areas. The increasing hostility and perception of refugees has led to the call of closure of Dadaab camp and increased arbitrary detention of refugees, Mogire (2018) This calls for the need for balance between national security and humanitarian obligations, as measures that are being put in place by countries in order to fight insecurity tend to violate the international refugee law and undermine the principles of protection and non-refoulement (Crisp, 2003)

The encampment policy which highlights what Van der Woude (2017) has termed as crimmigration as one way that restricts the movement of the refugees and asylum seekers. Links between crime, security, migration, and integration are more easily established than before. Migrants are increasingly facing stigmatization as they are seen as trouble to the state as they are associated with the feeling of

insecurity and linked to crime and nuisance Van der Woude (2017). Unsurprisingly, the negative social and political attitude toward migrants has also translated into a series of policy and legislative reforms in recent years. In the latest legislative the migration and asylum minister Marjolein Faber said that “she legally declares an asylum as crisis, which will allow her to take measures to combat [it].” Such an emergency law would allow the government to take measures without waiting for the parliament’s approval Cokeleare (2024)³. In crimmigration the migrants are viewed through a security lens and often subjected through restrictive measures Van der Woude (2017), in Kenya the encampment policy is used as a containment measure under strict security protocols. The restrictive measures in the name of combating insecurity and crime have led to the violations of right of movement which evident in crimmigration. The policies targeting migrants raises the concern on the balance between the national security, border control and Humanitarian obligation towards the refugees.

The societal perception towards migrants as a potential to commit crime in future Stumpf (2006) has exemplified securitization of immigration in Kenya without clear substantiation of the crimes that have been committed fuelling xenophobic attitudes and policies against the migrants. The research will try to discuss on national security and the legal frameworks in Kenya has affected refugee right of movement in Dadaab Kenya.

1.1. Research Justification and Relevance to Developments studies

The study on the impact of the national security and legal frameworks influence refugee movement is important for the development studies as refugees hold a significance in the field of development. The policies around refugees are often framed around the refugees being a threat to the national security, yet refugees have also an impact to the human rights, social and economic development of the host country. The movement of refugees allows them to access basic human needs like, education, medical and build their self-sustainability and denying them right of movement deprive them of this social development which are important to their well-being. By examining on how these frameworks affect the refugee movement, the study will shed light on how these frameworks become an obstacle to the refugee contribution to the economic and social development of the country.

The study also is relevant to the development studies as it will shed more light on how policies in place can hinder development of the country, limited mobility often leads to a situations where refugees are confined in one are leading to competition and straining of available resources, the

³ <https://www.politico.eu/article/dutch-government-announces-strictest-asylum-policy-ever/>.

competition of available resources with host community often increases the chances of poverty but also creates conflict reducing the chances of social integration which one aspect that is in the development studies. The findings from the study will shed more light on the need of policy makers to have a balanced approach during the policy implementations towards ensuring security but also upholding human rights which are important to development studies towards reducing inequality and promoting social integration.

1.2. Objective of the study and Research Questions

In this research, I want to understand how national security policies and legal frameworks influence and restrict the movement and freedoms of refugees in Dadaab Kenya. The research furthermore aims to analyse the existing acts on refugees, legal frameworks, the conditions of refugees, the humanitarian actors, opportunities, and challenges that refugees face in Kenya to understand and explain how these frameworks contribute to the violation of the refugee rights.

The research will be used to understand and evaluate the impact of security and legal measures on the freedom and mobility of refugees and to be able to answer the objective, the following questions will be used to answer the above objectives.

How can legal policies affecting mobility and the proposed closure of Dadaab refugee camp be explained?

What legal protection frameworks are in place for refugees in Kenya and to what extent has the rights of refugees been violated through these policies?

What impact does restricted movement have on social and economic status of refugees?

How can Kenya's mobility restrictions against refugees be explained in relation to securitization?

By answering the above questions, I will be able to provide a better understanding on how the national security and the legal policies around the security of the nation can impact on the refugee movement and this will contribute better to the concept of crimmigration which has led to justification of implementation of policies towards enhancing security of the state.

Chapter 2. Contextualizing the research problem

The right movement has been clearly stipulated in the universal declaration of human rights 1948, refugees' access to movement pass provides them with the ability to move and out of the camp in search of medication, education and employment but the policies in place can often in many times become a barrier as it's a state responsibility to ensure the security of the nation. When we talk of national security and refugee protection frameworks we talk of security as a key a necessity both for the citizens of the country but also the immigrants in the country which include refugees etc. However, national security and refugee protection frameworks differ on the prescription of intervention in protection. While national security policies in place prescribes measures that will provide that protection is enhanced overall, the refugee protection policies provide that effective protection only transpires where the refugee status quo is disrupted. Consequently, each of the legal frameworks on refugees is prescribed on different principles that define refugee security within or without the limits of national security interests and prescribed norms. The existing research on the securitization and crimmigration of a situation like immigration examines the dynamics surrounding each of national security and legal frameworks with little regard for the interactions of both legal frameworks in practice.

Consequently, there still exists a gap within the legal frameworks around the protection of the rights of refugees, for example how a county can balance the security of the country through policies that align and uphold the rights of protection of refugees and further, on what this means for the capacity of refugees to enjoy the right to freedom of movement provided by broader international human rights frameworks. The right of movement is clearly stipulated on the Universal Declaration of Human Rights 1948 article (13) that everyone has a right of freedom of movement within the border of each state and Kenya is bounded by these terms given that Kenya ratified to the universal declaration of human rights 1948 in the year 1990. But the need for securitization as it has been argued severally by Mogire, (2011) talks of how traditionally the refugees was seen as victims of insecurity but now they are seen as a threat to the security of the citizens. This has led to the rise of policies that violates the terms stipulated on the UDHR 1948 for example the encampment policy in Kenya is provided in Refugee act 2006 article 16 which provides for designated areas/refugee camps as a form of accommodation to the asylum seekers and refugees. Yet, despite the complexities of upholding the rights of refugees and still ensuring the country is safe, the interactions of the rights of refugees and security of the country has been difficult through the political utterances and the media representation

that has made it so hard for the two to coexist as the refugees has been perceived to be a threat to the national security, this has led to rise and justification of policies that violates the rights of refugees.

2.1. Background

The discussion on the refugees is one of the significant concerns in the international and local space. Hakovirta (1993) discusses the refugee problem as a multifaceted global issue that has become increasingly serious since the late 1970s. To promote an understanding of the issue he presents an analytical model that categorizes the problem into seven major clusters of factors, using the model to talk of the basic components which are refugee situations, the conflicts from which they mainly arise, and the efforts to manage and resolve these situations Hakovirta (1993:p1).The issue is both humane, societal and security concern and a development issue. This is because as illustrated by Hakovirta (1993) that rise of refugee is not only a humanitarian issue but also a security issue as the influx of refugees can impact on the security through tension with the local communities for resources etc. Hakovirta (1993) provides an overview why governments should balance on the needs of the refugees but also of the country on how refugees can be an asset or a liability to the country which will help in coming up with policies that do not violate the right of the people.

The global number of refugees has seen an influx, UNHCR (2023) for the first time the number of displaced people has been estimated to 117.3 million of which with over 31.6 million refugees under UNHCR’s mandate and another 6 million Palestinian refugees.

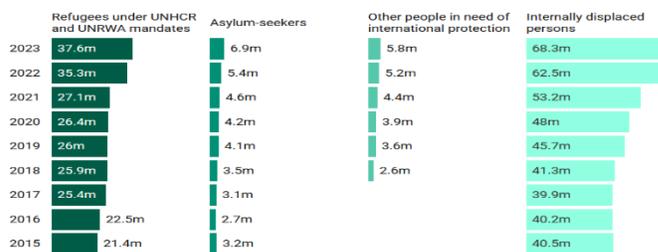


Figure1- Refugee statistics or global trends Source: UNHCR 2023 <https://www.unhcr.org/refugee-statistics/insights/explainers/forcibly-displaced-pocs.html>.

Migration dates back to colonial era 16th and 19th century where 10 to 20 million enslaved Africans were transported to America in exchange of sugar, coffee, textiles and wine Thomas (2024). (Berger 1987; Adepoju 1989) talks of migration as movement of people from one place to another looking for economic opportunities for example, employment, education, and businesses. When talking about migration there are various aspects form voluntary migration to forced migration or involuntary

movement which is brought by political or social instability for example, war, flooding, armed conflicts and also violations of human rights (Bolzman 1996). The forced migration has led to the uprising of refugees in many countries for example in Kenya, the rise of the refugees has led to a rise in conflict between the refugees and the host community due to resources for example the existence of camps in areas like Dadaab and Kakuma continues to create conflict between the host and the refugees given that these areas face harsh climatic conditions, and severe drought and has led to competition for the little resources available Grindheim (2013). The camps or designated areas as provided by the Kenya refugee act 2006 cap (17) are managed by the refugee camp officer with support from UNHCR the refugee agency that protect the refugees. The UNHCR does this through donations of food and cash supplements, which are only aimed at the refugees. The humanitarian support provided to refugees has contributed to conflicts with the host community as reported by Grindheim (2013) as a result of the existence of camps in drought areas mainly because the refugees continue to benefit from the humanitarian support and the host community are left out despite the fact that the camps are in their community. The frustrations have led to conflicts between the refugees and the host community that has seen the increase in insecurity around the community.

The presence of refugees for a long time has created a long-standing conflict between refugees and host community mainly due to competition of resources Grindheim 2013). The location of the camps is in areas that has less development, and the population of the refugees is in the verge of outnumbering the locals crisp (2000: p19) and the refugees enjoy better living than the locals. This has created a situation of resentment from the locals as they can compete with the refugees as the traders in the camp are not taxed and this has exacerbated the hostility from the local's crisp (2000)

This kind of conflicts has worsen the insecurity of the region and has seen the rise of new policies from the government but also harsh measures for examples the closure of borders restricting refugees' movement and also forced repatriation of refugees despite the existence of the principle of non-refoulment which is provided under the International human rights law that states that no one should be returned to a country that they will face torture, cruelty or punishment.

According to the UNHCR convention of 1951 and the 1969 OAU Convention, article 1(2), a refugee is:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection

of that country; or who, not having a nationality and being outside the country of [their] former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

Kenya has provided a home to over 800 hundred thousand refugees and asylum seekers of which over 500 hundred thousand are registered and over 200 hundred thousand are asylum seekers according to UNHCR (2024).

Total Refugees and Asylum-seekers in Kenya

JSON

804,495

Source - UNHCR, Government

Last updated 30 Sep 2024

Refugees and Asylum-seekers in Kenya by sub-location

JSON

Location name	Source	Data date	Population
Garissa	UNHCR, Government	30 Sep 2024	50.0% 402,092
Turkana	UNHCR, Government	30 Sep 2024	36.7% 295,617
Nairobi	UNHCR, Government	30 Sep 2024	13.3% 106,786

Figure 2:- Total refugees and asylum seekers in Kenya Source UNHCR (2024)

According to World Bank 2019, refugees in Kenya are mainly concentrated in three major locations: Most reside in the Dadaab and Kakuma refugee camps (44 percent and 40 percent, respectively), while approximately 16 percent reside in the country’s urban areas (mainly Nairobi). Kakuma which is in North-western region of Kenya was established in 1992 and Dadaab refugee camp which is in the semi-arid town of Garissa County and was established in 1991, it is one of the largest and oldest refugee camps in the world ,it host 233,828 refugees UNHCR (2023) of which the majority are from the Somali origin ,the camp is located in Garissa county located in the North Eastern province of Kenya and is home to Somali ethnic community (Ogaden) .Dadaab was first started to accommodate the Somali refugees fleeing the civil war in Somalia UNHCR (2001-2024), there are now three refugee camps and the Ifo 2 integrated settlement. It has since become home to other different refugees from the neighboring countries like Ethiopia, Sudan etc. Somali refugees represent more than 96% (UNHCR 2024) of the population to ongoing conflict and instability in Somalia.

Kenya's approach to managing the refugee dates to 1966 when Kenya first ratified the UNHCR convention of refugees in 1966 and on 13th November 1981 and 23rd June 1992 Kenya acceded respectively to the 1967 protocol and the 1969 OAU Convention which eventually saw the introduction of the Refugees Act 2006 as a way of localizing the implementation and protection of refugees; these Act defines who is a refugee administrative and institutional mechanism. It provides grounds for recognition and grounds for ‘termination’ of refugee status. It stipulates the rights of

refugees for example right to movement etc. The right of movement allows for the refugees to move freely from one place to another for self-reliance, this is made possible through the issuance of refugee permits which are issued by the department of refugee services (Norwegian refugee council 2019). The Self resilience handbook by UNHCR states that ⁴“Self-reliance is a key component in any strategy aimed at avoiding or addressing protracted refugee situations, enabling agencies and refugees to find durable solutions that are truly sustainable”. Building self-reliant refugees provides relevance to development studies as they contribute to Economic, social and other contributions to the host community and to their dependents back at home, as mot of the conflicts between the refugees and the host community arises due to competition for resources and this has led to increase in insecurity in the community crisp (2020).

According to Crisp (2020) integration of the refugees provides sustainability within the community as the refugees and host communities are able to co-exist peaceful. The encampment policy in Kenya continues to accelerate insecurity within and around the camps as there is clear resentment from the host community, as they view the refugees to be having standard form of living due to the fact that they get humanitarian support and still access the resources from the community Crisp (2020). The encampment policy denies the refugees their freedom of movement, socio-economic rights among other rights, enshrined in the Refugee Convention and under International Law Kerubo (2013) instead the existence and expansion of the refugees has seen introduction of new policies for example Operation Usalama watch 2014-2015 due to increase in security concerns around and outside the camps. In 2013 there was an attack at Westgate shopping mall that saw the deaths of 67 Kenyans and in 2015 there was an attack in Garissa University College that led to the death of 148 people, both carried out by Al-Shabaab as they claimed responsibility of the attacks Miller (2013). One of the reports done by BBC 2019 showcased how the attack in Garissa University was mainly towards students of Christian background, this increase in terrorism led to increased scrutiny and securitization of refugee populations. In response to these attacks the Kenyan government intensified its securitization measures as the case of continued expansion of refugees in Dadaab has led to increase in insecurity due to the fact the lack of movement has led to refugees looking for alternatives to generate income like dealing with arms Mogire,(2009:18). In 2017 the President of Kenya Uhuru Kenyatta in a meeting with IGAD stated that it is not acceptable to us that a space (Dadaab camp) that is supposed to provide safety and assistance, is transformed to facilitate agents of terror and destruction. This

⁴ (*Handbook for Self-Reliance (2005)*, available at UNHCR website <https://www.unhcr.org/media/handbook-self-reliance-complete-publication>.)

statements by head of the state have led to increase in the concerns and suspicion on portraying refugees, particularly those from Somalia, as potential security threats. Narratives continues to be propelled through political discourse and media coverage, leading to policies that restrict refugees' freedoms.

In 2014 Kenya deported 359 Somalis as they term it a way to deal with the recent grenade attacks by unidentified people Human rights watch (HRW) 2014. Despite the existence of the Tripartite Agreement between Kenya, Somalia, and the UNHCR, signed in 2013 which was to ease the voluntary repatriation of Somali refugees, many refugees keep being deported back to Somalia despite ongoing instability and lack of adequate safety assurances. The Al Shabaab attacks has led to Kenya beefing up their borders and put in place policies to manage the cases of insecurity, these policies have since become a tool of securitizing the refugees mainly the Somali migrants. The violence between the refugees and host community is a discussion that different authors have talked about for example Hovil (2016) talks of why it is important for the government to look beyond the lens of securitization, instead government should think of strategies that promote social-cohesion, access to resources and community collaboration, this will help promote a more harmonious co-existence between the refugees and the host community eventually contributing to the national security. Hovil (2016) highlights how the clash between the host community and refugees has led to increase security measures that has led to policies that portray refugees as security threat which has justified restrictive measures like their right of movement that undermine survival and dignity.

The strict policies that have been put in place by the Kenya government and security agencies has led to random arrest, forced repatriation that have led to refugees not being able to move freely, towards seeking employment or integration to host community, this has led to lack of opportunities for self-reliance and has also increased in their vulnerabilities despite the existence of the 1951 refugee convention. The 1951 Refugee convention provide the guidelines on how to protect refugees but there is no existence of the enforcement mechanism and as a result the states has taken to their mandate to implement these laws how they want. The work of Crush and Chikanda (2020) gives insights on how policies can be aligned to protect refugee rights for example recognizing the role migrants have or contribute to the society highlighting the need for policies to be beyond just containment and control but instead policies that protect refugees' rights and dignity, in the recent time Kenya introduced the Shirika Plan (2023) that its key objective is to promote the socioeconomic inclusion of refugees in Kenya by transforming camps into integrated settlements for both refugees

and asylum seekers ⁵ The Kenya Refugee Act 2006 is another policy that highlights on the management of refugees but also the mandate and the rights of refugee. The existence of Kenya refugee Act 2006 provides for protection of the rights of refugees from Article 14 of the act provides for issuance of identity pass but at the same time article 16 of refugee act 2006 calls for containment of refugees in a camp/encampment of refugees. The containment of refugees in the camps as a way of managing and easy identification of refugees has led to refugees seeking alternatives to sustain themselves from supply of firearms and become an easy target to radicalization by the al-Shabaab militia Mogire, (2009:18)

Under the Refugee act of Kenya 2006 a refugee has been highlighted as:

owing to a well-founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

Under article 11(1) Any person who has entered Kenya, whether lawfully or otherwise and wishes to remain within Kenya as a refugee in terms of this Act shall make his intentions known by appearing in person before the Commissioner immediately upon his entry or, in any case, within thirty days after his entry into Kenya. Article 14 also states that the refugee will be issued with a refugee identity card or pass with the right to remain and function in accordance with the act. The refugee will exercise all rights as stipulated in the international conventions which Kenya is party to article 16(1a).

The passes and the refugee identity pass as per article 33(3) will act as an identity of their legal presence in Kenya and therefore they can carry duties and perform task as a legal resident in Kenya, in case of instances where the refugee will wish to travel out of Kenya the commissioner will issue a travel document. The existence of the Refugee act and the conventions that Kenya has ratified for example The Universal Declaration of Human Rights, (UDHR) 1948-1998, Art 13.1 states that: *“Everyone has the right to freedom of movement and residence within the borders of each state and Article 13.2 states that everyone has the right to leave any country, including his own, and to return to his country”*. Kenya is bound and obligated to develop policies and frameworks that do not violate refugee rights. The process of issuing movement passes to the refugees is full of bureaucracy as there are no clear structures on how things are done as per the research done by Norwegian refugee council (NRC) 2022. Movement passes are issued by the Department Refugee Services (DRS) formerly known as Refugees Affairs Secretariat (RAS) to bestow upon refugees and asylum seekers the freedom to

⁵ <https://refugee.go.ke/kenya-shirika-plan-overview-and-action-plan>.

move outside the designated areas for several reasons including medical emergencies, education purposes, food or any other reason as authorised by the DRS. However, information regarding the processes of access in movement passes is not only scanty but the process of issuance of these documents is considered informal NRC (2022).

Chapter 3: Conceptual Basis of Analysis

To analyse the impact of national security and legal frameworks on refugees right of movement, the study will be anchored on three approaches, rights based approach which emphasizes on the rights of the refugees as provided by the Universal Declaration of Human rights 1948-1998 Article 13.1 states that everyone has the right of movement within the country of residence and 13.2 “everyone has the right to leave any country, including his own, and to return to his country”. Securitization approach which provides insights on how countries use the concept of security of the nation to develop policies that are aimed at containing a situation for instance the refugees as security threat which leads to restrictive policies. Thirdly the crimmigration approach which is a new concept affecting immigration as this provide insights on intersection of criminal law and immigration on how legal frameworks are being used to criminalize refugee movement. The right of movement requires a clear analysis of the different concepts that affects the refugee’s movement in Kenya. These three concepts; Right based, securitization and crimmigration approaches to explain how the rights of refugees are affected, specifically regarding the right to movement.

3.1. Rights-Based Approach

A rights-based approach examines the legal frameworks and human rights implications of policies affecting refugees and immigrants. Verdirame and Bond (2005), in “Rights in Exile “discuss the tension between humanitarian imperatives and the protection of refugees' rights. While there is need for humanitarian efforts and aid towards providing relief to the refugees, the legal protection of refugees is paramount.

The inception of Right-based approach dates to post-cold war period of 1990s in the call for social justice and it gained a momentum during the Copenhagen summit on social development of 1995 and part of its emphasis was on promotion of social integration at an international and national level Cornwall and Nyamu-Musembi (2004).Verdirame (1999) highlights the importance of accountability from humanitarian agencies and state “The problem is the situations where humanitarian organizations are themselves directly responsible for causing an abridgement of the rights of an individual”, even if the violations occur in a camp they must be addressed. Verdirame (1999) also highlights the importance of have proper legal policies and frameworks in place towards upholding the right of refugees, noting that Kenya is party both to the main refugee-specific international instruments the 1951 Convention relating to the Status of Refugees and the 1969 OAU Convention on the Specific Aspects of Refugee Problems in Africa.

In her research in Syrian refugees on how they get assistance Momin (2017) notes that a rights-based approach is grounded in intrinsic and instrumental rationale, where intrinsic rationale is about moral and legal obligations, assisting refugees is “right “under moral and legal principles. Morally countries have duty in assisting the vulnerable as provided in the 1951 refugee convention by not returning refugees to their countries that they are fleeing from and without discrimination. The instrumental rational talks about the benefits of refugees, Momin (2017) argues that there are reputational gains for host countries from economic gains through labor, security gains as countries will adopt new security protocols that could minimize insecurity in their countries.

Rights-based approaches are anchored to human rights principles, for example as per Universal Declaration of Human Rights 1948, which stipulates that; example Article (1) All human beings are born free and equal in dignity and rights, Article (2) Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article (13) Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country.

Drawing on the views of these different researchers and the principles of the international law, the right based approach used in this research is aimed at creating mechanisms that can be used to act by those whose rights have been violated, it urges on building strong local, national and international movements that advocate for policies and frameworks that do not violate the rights of the people. Through accountability, proper legal frameworks and providing policies that allow for integration by looking at refugees as a gain to the host countries.

3.1.1. Rights of Refugees

The rights of refugees as stipulated in the international frameworks provides the basis of understanding the importance of refugee protection. The most affected refugees are those in the countries that are less developed. According to Utas (2017) most of the countries hosting refugees have tried to uphold the rights of the refugees as per the 1951 convention of refugees but due to limited resources, poor infrastructures, poor governance and undefined systems and structures has made it so hard to protect the refugees. These constraints manifest in many ways when it comes to contravening the rights of the refugees for example access to proper healthcare, restriction of movement, hostility from the host communities and the quality of education for children.

Most of the host countries hosting refugees have signed the convention and treaties towards upholding the rights of refugees. These rights are also governed by the International human Rights

law for example the UNHCR (1948), which aims at protecting human rights and freedoms across the world it is also emphasized through the human rights principles that states that human rights should be upheld regardless of race, age, colour and religion. The existence of this legal frameworks ensures that refugees are protected and that their right to movement is given. Refugees should not be treated in a discriminatory manner given that most refugees flee their countries for fear of persecution or due to war and therefore they should be protected and provided with all the necessities towards promoting their rights. Verdirame and Bond (2005) point out on the different available acts that countries can use to ensure that refugees are protected. For example, in Kenya Immigration Act (1972), the Aliens Restrictions Act (1973) are some of the legal instruments that can be used in legislation on refugees.

3.1.2. Accountability

The RBA emphasizes on the need of accountability from all actors, Ferguson (1999:23) talks of rights as ‘vehicle for increasing the accountability of government organizations to their citizens and consequently increasing the likelihood that policy measures will be implemented in practice’. The need for accountability is to hold the duty bearers accountable to ensure that the rights of refugees are not violated. Most states have ratified the international conventions but have delegated the duty of ensuring and administration of this responsibilities to other institutions distancing itself from the mandate of being at the fore front Grabska (2006).

The Draft Guidelines for a Human Rights Approach to Poverty Reduction Strategies 2002 stresses on the need of accountability as follows:

Perhaps the most important source of added value in the human rights approach is the emphasis it places on the accountability of policy-makers and other actors whose actions have an impact on the rights of people. Rights imply duties, and duties demand accountability. It is therefore an intrinsic feature of the human rights approach that institutions and legal administrative arrangements for ensuring accountability are built into any poverty reduction strategy. (UN OHCHR 2002:23)

All duty bearers in ensuring they discharge their obligation they should ensure that the form of mechanisms put in place should be transparent, effective and there is accountability in the procedures. The state has the principal duty bearer with respect to Human rights of the people living within their jurisdiction, but under international law the international community has the responsibility to help realize the Universal human rights through monitoring and accountability procedures. (UN OHCHR 2002:229-230)

Understanding the power dynamics by the actors involved in the development process is a way of understanding the rights and the obligation of those engaged in the development process Eyben (2003). The rights-based approach can be key in participation in matters of rights of people and provide a linkage between accountability and people (Eyben and Ramanathan 2002). In this context the use of accountability helps to understand if refugee authorities are answerable to refugees and mechanisms in place for refugee to seek answers for the violations of their human rights as stated earlier Verdirame (1999) the humanitarian agencies and state should be accountable even where violations happen in the camps.

3.1.3. Legal frameworks

Polzer (2007) examines how refugees have adapted to frequent changes in the legal frameworks, she argues that the legal frameworks should not just be about top-down approach but rather be able to be understood by the refugees also because both the formal law and informal practices affect the lives of refugees. The policy in place often leads to the disconnects of the intention of the policy and the needs of the refugees, introduction of amnesties in 1995, but frequent deportation continues to happen despite the existence of amnesty policy, this highlights the lack of clear guidelines that has hindered the implementation of the policy and has led to violation of human rights that is emphasized by the RBA.

The existing 1951 Refugee Convention, the Universal Declaration of Human Rights (UDHR) highlights mainly on the rights of displaced but particularly those displaced due to conflict or displacement but does not put emphasis on those displaced due to environmental factors Zetter (2008). The need for inclusive legal frameworks is important when it comes to upholding the rights of refugees as some of the refugees are displaced due to environmental factors etc. These frameworks should be inclusive from international to national level.

Landau and Amit (2014) in "Wither Policy? explore how legal frameworks fail to protect refugees' rights adequately as there is challenges in the implementation of the policies. This has led to restrictive measures that has undermined the rights of refugees to move from one place to another, as border surveillance Pallitto and Heyman (2008), practices affects the right of movement of migrants as migrants fleeing their countries are subjected to arbitrary detentions which violates the Article (9) of Universal Declaration of Human Rights that stipulates "No one shall be subjected to arbitrary arrest, detention or exile".

Refugee Act of 2006 'provides for grounds of recognition of persons as refugees (section 3), grounds for termination of refugee status (section 5) and for due process in settling disputes arising out the

application of the Act including cases of expulsion of a refugee from the country'. It outlines the legal status, rights and obligation of refugees by regulating the immigration process on how asylum process should be held and the encampment of refugees and how refugees can be integrated into the society Kenya Law Enforcement and Judicial system provides on how the police and immigration officers handles and implement the policies in regard to encampment, registration of refugees. As provided by the refugees Act 2006 migrants are given after up to 30 days to declare their asylum and therefore, the existence of judicial systems should provide a means on solving cases of violations of their rights and forced deportation. Implementation of this policy frameworks influences the perception of the community as negative policies by the state and security actors will eventually affect the integration of the refugees into the community.

3.2. Securitization Approach

The securitization approach provides a critical way of understanding how the movement of refugees is seen as a security threat by national and policy actors. This approach provides an emphasize on how issues related to refugees and migrants are viewed as a security threat that has led to countries securitizing migration through restrictive. This approach is attributed to the Copenhagen School of Security Studies; it provides an understanding on how migration has been framed as a threat. According to Buzan, Wæver, and de Wilde (1998); securitization is the process in which the state and security actors term issues as factual threats to national security in order to legitimize the need of extraordinary measures in dealing with the issue. Securitization approach shows how language, rhetoric practices can be used to justify why certain measures have been put in place as stated by Balzacq, et.al. (2016);

articulated assemblage of practices whereby heuristic artefacts (metaphors, policy tools, image repertoires, analogies, stereotypes, emotions, etc.) are contextually mobilised by a securitizing actor, who works to prompt an audience to build a coherent network of implications (feelings, sensations, thoughts, and intuitions) about the critical vulnerability of a referent object, that concurs with the securitizing actor's reasons for choices and actions, by investing the referent subject with such an aura of unprecedented threatening complexion that a customised policy must be immediately undertaken to block it.

Gray and Franck (2019) talk of securitization approach as a shift in the realm of migration from political to security discussion, mainly termed as speech acts where people from the same political class or elites come to a shared understanding of perceiving something as a threat and pulling resources to immediately address it. The authors talk how refugees are perceived in the media narratives as

racialized, masculinized but the same time vulnerable to show that they area a threat but at the same time need protection. The media can play an integral part in how refugees are perceived, through the analysis of British articles by Gray and Franck (2019) shows how media can evoke both sympathy and fear of refugees without considering the effects of the same.

Huysmans (2014) goes beyond Copenhagen school of thought where securitization is a speech act where political actors declare something as security threat, instead he argues that securitization is more on the institutions, policies and discourses that have been set and are being practised that shape how societies perceive and react to different threats. That security is institutionalized through bureaucratic practises, laws and policies that have normalized emergency as everyday governance measure, for example in migration the securitization of migrants has led to justification of policies that violates the rights of refugees like right of movement through border controls, increased surveillance but also detentions of migrants.

This approach provides a classical view on how issues are transformed into security threats, for example the securitization of immigration policy, this is exercised through the three core concepts of securitization: speech acts, existential threats and audience acceptance. The relationship between migration and security according to Agwanda (2022) is subjective as it depends on who is defining and how is defining security. The security of one group can be the insecurity of the other group, and measures sometimes undertaken to create security can lead to the insecurity of the others.

While refugees bring about significant flow of resources through businesses, labour etc they also impose security threats and environmental threats through their close proximity to their country of origin (Kibreab,2003). This security threats send countries to call this national threat under security in order to legitimize their need to close borders and also hold refugees in camps restricting their movements (Gitonga 2018). Refugees are often in need of protection as they are fleeing from countries that are facing conflict or facing persecution as per the United Nations (2018). They are seen as victims of insecurity (Edwards,2009). The labelling of the refugees has been made evident when it comes to policy construction that has legitimize the call for closure of camps (Zetter,1991).

The labelling of refugees has led to a social construction that has been assumed by the refugees and also that has led to change of policies to fit to label (Gupte and Mehta,2007). The securitized representation of refugees undermines their rights (Mogire,2009). He states that the refugee security and the state security are not mutually exclusive and therefore both can be achieved without the need to forgo neither.

3.2.1. Speech Acts

This is attributed to Austin (1962) and Searle (1969) that some statements being made does not merely speaks the reality but can be used to shape and construct it. Waever (1989) talks of how security is not only on the aspect of state and military concern but also the society, security actors should not only focus on the political aspect but also social context when defining a security issue instead use their institutional powers to move issues beyond the lens of politics, to ensure that every decision made is thoroughly understood so as not to put the society in a space of security instability. Mogire (2009) in his research shared how securitization of immigration can lead to countries neglecting the rights of refugees and instead the security policy meant to protect the states, and its society is used to mobilize institutions towards defining practises like migration as problematic. These practises lack empirical substantiation that would necessitate harsh policies against refugees Strokirch (2016).

3.2.2. Existential Threats

By connecting national security with refugees, host countries often end up portraying the refugees as security threat rather than vulnerable populations. This is due to the country of origin of the refugees where most of them are from high conflict areas and linked to terrorism Hovil (2016). She argues that refugees besides being seen as outsiders that will erode the culture of the host community they are often seen as public burden, competing with local communities for limited resources often straining local resources and has resulted to hostility from the host communities leading to increase in insecurity (Hovil 2016).

Bigo (2002) introduces the concept of governmentality where governments use their anxiety about immigration to justify the need for increased security measures, by influencing the perceptions and behaviours of the populations towards accepting the need for security measures. He argues that governments often regard migration as a security threat without evidence based instead it's a political strategy to justify the need for border controls and increased surveillance of migrants. The increased surveillance has led to the criminalization of migrants as they are perceived as suspects by the population.

3.2.3. Audience perception/Acceptance

Balzacq (2005:171) argues that speech act alone is too narrow to understand security practices. The need of Audience acceptance is a key concept in securitization, the call of public participation by the government in reporting suspicious issues is one way the government encourages the affirmation of the threat.

A securitizing move, where an issue is framed as actual security threat can only lead to securitization if there is acceptance from the audience Waever, Buzan and Wilde (1998). The authors shared that

changing security frameworks will in general affect the standards norms and therefore securitization depends on both the authorizers but also the willingness of the audience. “If no signs of such acceptance exist, we can talk only of a securitizing move, not of an object actually being securitized” Buzan, Waever and Wilde (1998:25)

3.2.4. Encampment Policy and its relation to security

According to Mogire (2009) discuss how the securitized representation of forced migrants as threats undermines refugee rights. He finds that there is merit to the official security rhetoric, but that what is of equal significance is that the threats, real or imagined, have sparked antirefugee policies contrary to international and domestic laws on refugee rights. Mogire (2009) criticizes the focus on only national security but a more balance of the rights of refugees and national security which can only be possible by if refugees are conceptualized as victims of insecurity, and their plight is defined as a humanitarian issue in which partnership of the international community with host communities is key. Camps from a standpoint could have its beneficial aspect like, accountability, service delivery etc but at the same time the encampment creates a lot of over dependency on aid and the lack of self-reliance has created situations where some refugees have had to take part in terrorist activities like supply of arms in order to build their reliance (Mogire,2009:18). The encampment policy as argued by Mogire (2009) has become an increasing security threat to both host countries and the refugees ‘countries of origin, the camps have become breeding grounds for the militia (Oluoch 2017). However, Addaney (2015:73) argues that despite there is no convincing evidence that the camps have led to the terrorist attacks its however evident that the encampment policy has led to restriction of movement of the refugees which has affected their economic sustainability.

The encampment policy by the Kenya government as a measure of security has led to country missing out on great opportunities that comes with migrants, instead the violation of the rights of refugee has been on the increase as the right of movement is limited and therefor the refugees are subjected to external pressures for their sustainability. The camps undermine the potential of the refugees, and this exposes the refugees to crimes and terrorist activities to build their sustainability (Mogire, 2009: Agwanda,2022: Ngendakurio,2022).

By securitizing migration, the securitization can justify for legal policies that limit refugees’ rights for example right to movement which in practise is ideal for the social and economic sustainability and also contributes to the development of the nation.

3.3. Crimmigration Approach

This concept highlights how migration policies increasingly incorporate punitive measures, leading to the criminalization of migrants, particularly those who are undocumented or perceived as risks due to their ethnicity or socio-economic status. Understanding merging of crime control and immigration control leads to immigrants being perceived as potential criminals.

According to Van der Woude(2017) the crimmigration is far from new as the links between crime, security and migration has become more established since the 1900 asylum crisis in Europe. The authors talk of its relevance given that the framework is useful in analysing how immigration policies have increasingly adopted punitive measures that has led to criminalizing migrants and refugees. The merging of crime and migration has significant effect on those seeking refuge as Van der Woude(2017) highlights that crimmigration allows for a more elaborate way to examine how policies and practices at various level can lead to exclusion and marginalization of migrants. The securitization of migration has led to criminilization of migrants and has led to a shift on how policies are formulated as the focus is not anymore on the underlying issues of migration Van der Woude (2017).

“Deportation became the consequence of almost 4 any criminal conviction of a noncitizen, including legal permanent residents. Immigrants who had previously been subject only to civil immigration proceedings, including tourists and business travellers who had overstayed their visas and students working beyond allotted hours or in unauthorized employment, were newly subject to criminal sanctions in addition to removal. The changes in the law fed a powerful vision of the immigrant as a scofflaw and a criminal that began to dominate the competing image of the benign, hard-working embodiment of the American dream “Stumpf (2006). Crimmigration has led to changes in legislation that has led to violation of the rights of migrants, Stumpf (2006) provides an understanding that the connection between criminal law and Immigration law has led to potential violation of human rights of migrants as the constitutional rights of the non-citizens are more limited than those of criminal defendants as historically the connection of immigration and foreign policy allows for less judicial oversight that could lead to migrants facing harsh policies for example the use military interventions to control migration has increasingly gained momentum which has led to increase use of deportations and detention for the violations committed by migrants.

Linking the crime and immigration policies is difficult as the law applicable to both is distinct, Stumpf (2006:399) notes that the immigration and criminal law approach the acquisition and loss of membership from different directions. The criminal law assumes that the defendant has full membership of the society and it's the job of the government to prove otherwise while immigration

law assumes that the defendants are non-citizens and when it comes to deportation the government has less burden to prove otherwise. To enjoy the constitutional protection, “depend on large part upon the individual's connection or potential for connection with the national community” Stumpf (2006:400).

Hernández, et al. (2018) in deconstructing immigration provides how crimmigration came into existence tracing back to 1980's where war and drugs heightened the migration controls, the tougher laws on crime led to punitive measures against immigrants from increased detentions and deportations of migrants. He argues that minor offences that were handled under immigration law have now shifted and treated as criminal offences which has created social hierarchies which has made it difficult for migrants to integrate to the society.

Crime, security, migration, and integration are more easily established than before. Migrants, especially irregular migrants, have become increasingly stigmatized; and their arrival in, and their presence within are increasingly being seen as troublesome by the state, they are linked to insecurity, crime and nuisance Van der Woude, et al (2017).

Chapter 4. Research Methodology

4.1. Introduction

After reviewing several literature sources relevant to this research, different variables were identified that helped understand the security and legal frameworks used in management of refugees in Kenya. Consequently, in aligning with the research conceptual framework, the research questions were revised to enhance further operationalization.

4.2. Sources of literature

Academic Literature- Review of books, articles and journals in regard to the human rights, securitization theory and Refugee in Kenya from google scholar by searching for Dadaab refugee camp, Kakuma camp for comparison purposes, refugee rights, legal frameworks, securitization of migration, crimmigration, refugees, encampment policy, impacts of refugees and host community.

Policy documents- Analyse policy papers, reports, legal documents and published statements by Kenya Government, International bodies (UNHCR) and its officials

Media Reports- reports done by the media stations regarding refugees in Kenya and news articles.

Non-Governmental Organizations and Human Right bodies report- Check on the websites on the published reports on issues related to treatment of refugees in Kenya.

4.3. Case study

This research focused on the literature around Dadaab refugee camp which is located in Garissa County in the Northeastern part of Kenya. It lies in the semi-arid areas and desert vegetation, except for some torrential unreliable rains that fall in March/April, October and also December, the area is hot and dry throughout the year. According to UNHCR (2001-2024) “The Dadaab refugee complex was established in 1991, when refugees fleeing the civil war in Somalia started to cross the border into Kenya. A second large influx occurred in 2011, when some 130,000 refugees arrived, fleeing drought and famine in southern Somalia. There are now three refugee camps and the Ifo 2 integrated settlement. Where the Somali refugees represent more than 96% of the population”.

4.4. Research Design

The study employed a qualitative data collection design through a case study strategy. This design allowed for the thorough gathering of data from different literature as the focus was mainly on articles, reports and policies around Dadaab camp. Furthermore, while the research was location-specific and practically devoid of specific needs, a single holistic case technique was employed because it allows

for extremely detailed and substantial descriptions of a phenomenon Van Thiel (2014). A case study as defined by Eisenhardt (1989: p. 534) is “a research strategy which focuses on understanding the dynamics present within a single setting”. Yin (1994: p19) on the other hand defined it as “an empirical enquiry that investigates a contemporary phenomenon within a real-life context, especially when the boundaries between phenomenon and context are clearly defined and in situations in which there will be many variables than a data point, thereby the result relies on multiple sources of evidence for triangulation purposes”

Equipped with the above knowledge, a case study objective may be specifically tailored to investigate novel processes and attempt to provide answers to “why” or “how” questions by elucidating current phenomena in a modern setting (Baxter and Jack (2008).

The simplicity of the design allows for the researcher to achieve interpretable comparisons ruling out plausible rival hypotheses (Webb et al. 1999). The data gathered will be used to examine how the security and legal frameworks affects the refugee right of movement.

4.5. Ethical considerations

4.5.1. Confidentiality

While I am relying on secondary data, I am aware their instances that the author has mentioned the names of the interviewees he or she interviewed and the fact that I am relying on their information already collected, I take care to ensure any identifiable information is anonymized so as to protect the privacy of those in the research. I also ensure that for any materials that involved people or groups I check that the author had used the informed consent according to the ethical standards.

4.5.2. Data use/accuracy

During the research I ensured that the data represented on my paper was not distorted or misinterpreted, this is by ensuring that the conclusion I make are not misleading or based on person judgements without giving clear attributions to the author or the source of the information. Proper referencing was used to avoid any form of plagiarism by citing properly all the data set or sources used on the research.

4.6. Limitations

Overreliance on secondary data, the research relied mainly on using already existing articles, journals etc and this over reliance of secondary data limits on the original quality of data, scope and methodology that is evident in primary data collection. This could lead to gaps as the research might

not capture the actual current complexities in the issues of refugees as some of the data used are dated back.

The case study is in Dadaab Kenya which could be a representation of what happens on national context, but it is not a representation of what happens to refugees in other countries making it only the research reliable to the Kenyan context.

Chapter 5: Analysis of the Results

5.1. Legal and Policy Frameworks in Kenya

This chapter introduces the different legal frameworks that are existing in Kenya, these frameworks provide an analysis on how the refugees are governed and protected. It provides an overview of the connection between national security concerns and the human rights protection through the different legal frameworks in place. By examining these different legal frameworks, we can identify the gaps and inconsistencies between frameworks that creates an enabling environment towards violation of the rights of refugees. The chapter analyses the different legal frameworks and how it support or disagrees with the approaches in the research.

The approach of refugees is heavily influenced by several factors and aspects as highlighted by different scholars, the complex issue is the interplay of national legislation, international obligations, and security concerns when it comes to management of refugees. Loescher & Milner (2005) argues that the existing legal frameworks provide for immediate protection of refugees but does not provide durable solutions like integration, despite many countries signing international treaties on national level most countries hosting refugee do not have the proper legal structures that protect refugees right effectively, for example access to employment and education that can help in building sustainable refugees. Many countries offer restrictive legislative policies like encampment policies that have restricted the freedom of movement hence denying the refugees the economic independence Loescher & Milner (2005).

Polzer (2007) defines legal frameworks as not just formal laws but a mix of policies that shapes the lives of refugees. She argues that despite the fact that the legal frameworks give structure it often fails to address the actual needs of the refugees especially where political interest is served rather than humanitarian commitments, despite countries signing the international treaties most countries fall short of these international standards.

Delving into Kenya's key legal and policy instruments will provide an understanding on how these frameworks shape the movement rights of refugees, particularly in the Dadaab refugee camp.

5.1.1. National Legislation Governing Refugees in Kenya

The Refugees Act (2006) and Its Amendments

On 13th November 1981 and 23rd June 1992 Kenya acceded respectively to the 1967 protocol and the 1969 OAU Convention. This eventually saw the introduction of the Refugees Act 2006 as a way of localising the implementation and protection of refugees. The Act defines a refugee and the

administrative and institutional mechanism. It provides grounds for recognition and grounds for ‘termination’ of refugee status. It recognises two categories of refugee’s statutory and *prima facie* refugee. Article 3(2) *A person shall be a prima facie refugee for purposes of this Act if such person owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.*

Under article 6(1) it establishes the department of refugee affairs which is a public office (2) shall be responsible for all administrative matters concerning refugees in Kenya, and shall, in that capacity co-ordinate activities and programmes relating to refugees.

The act also stipulates the rights of refugees from the right to movement, work etc under article 14(a) states that every refugee and asylum seeker be issued with a refugee identity card or pass and be permitted to remain in Kenya as provided by the act under article 16(a) that states that refugees shall be entitled to the rights and be subject to the obligations as contained in the international conventions to which Kenya is party. The act in general acts as the primary national legislation that governs the treatment of refugees in Kenya.

As stated earlier the refugee act 2006 under article 16(2b) provides for the refugee camps as temporary accommodation/transit centres for people who applied for recognition as refugees Kenya refugee act 2006 (16) (2a). The management of the camps is managed by the refugee camp officer from the DRA. The Act of 2006 gave rise to the Department of Refugee affairs as there was increase in insecurity and need for securitization (Kagwanja and Juma, 2008; Milner, 2009). The establishing of the Department of Refugee Affairs (DRA) partly was to reclaim the sovereignty from the UNHCR which has been undertaking the registration and management of refugees Brankamp and Glück (2022). The 2006 act under article 7(2) stipulates the role of DRA.

- (a) be responsible for all administrative matters concerning asylum seekers and refugees in Kenya.
- (b) co-ordinate activities and programmes relating to asylum seekers and refugees; and
- (c) handle all operational aspects of protection and assistance of refugee

In 2021 the refugee act 2006 was amended and refugee act 2021 was assented into law. The new law affords refugee a raft of rights that were not on the refugee act 2006 for example the rights of movement, work and property; Article 28(5) stipulates that “subject to the laws applicable and taking into special consideration the special circumstances of refugees, a refugee recognized under this Act shall have the right to engage individually or in a group, in gainful employment or enterprise or to practice a profession or trade where he holds qualifications recognized by competent authorities in

Kenya”. The act in article 28(7) also provides issuance of cards that have the same status as those of foreign national registration certificates. The refugees from East Africa community like Congo, Burundi, Rwanda etc may opt to voluntarily give up their refugee status and enjoy any of the benefits due to him or her under the Treaty for the Establishment of the East African Community, the Protocol for the Establishment of the East African Community Common Market, and any other relevant written law under article 28(8).

The aspect of integration as discussed by different authors is key to building self-reliant refugees, the 2021 refugee act provides for integration of the refugees with host community. Article 37 (1) states that the Commissioner shall, as far as is practicable, ensure that there is shared use of public institutions, facilities and spaces between the refugees and the host communities. The act article 37(2) provides for sensitization of the host community on the presence of the refugees on matters relating with co-existing with one another.

The acts on the Kenya refugee Act (2006) and the amendment act of 2021 exhibits a long alignment with the concept of securitization as the refugees have to be confined in a camp for ease of monitoring, the encampment policy or what has been termed in the act as the designated areas, provides an understanding on how securitization of an issue can led to subjective policies that often leads to violation of the rights. The confinement of refugees reflects on a securitized view of refugees as they are seen as a threat that needs to be contained in a controlled zone. It is good for the security of the country in situations where the insecurity has been linked to a particular group as it provides easy way of managing the threat, but in the situation of refugees it has only exacerbates the social tension as the refugees continue to be seen as outsiders (crisp 2000), limiting the refugee contribution to the social and economic development of the country. The new refugee amendment act of 2021 which allow for engagement in business under article 28(5) but the act still supports the confinement of refugees in a camp for instance under article 8 (k) the role of the commissioner of the refugees is to “manage refugee designated areas and other related facilities”.

The Security Laws (Amendment) Act (2014)

The increase in the number of threats and terrorism in the country saw the amendment of the Security Laws (Amendment) Act of 2014, in response to the threats. The enactment of the security act saw an amendment of section 12 of the refugee act 2006. This introduced new subsections, under subsection 46 (3) of the amended security act 2014 its states “every person who has applied for recognition of his status as a refugee and every member of his family shall remain in the designated refugee camp until

the processing of their status is concluded”. Subsection 47 (c) of the security act 2014 provides that “not leave the designated refugee camp without the permission of the Refugee Camp Officer”.

Under section 48 (16A) (1) States that the permitted number of refugees and asylum seekers should not exceed one hundred and fifty thousand and the (16A) (2) National Assembly may vary the number of the refugees and asylum seekers and in the case that it does allow the variation the duration shall not exceed a maximum of six months. According to UNHCR 2014 the introduction of the new legislations that emphasizes on encampment policy and few number of refugees due to the increase in al-Shabaab was more of a misrepresentation which Horst (2018) talks of misrepresentation of refugees because the cause of tension between national concerns and international human rights law. Subsection 47(c) of the security act contravenes the human rights principal article (13) that stipulates the rights of movement. The government of Kenya rationales to this is for the country to have a better security. The act defines who a terrorist is when it comes to matters of the security of the state, article 61(9A) 9A states that a terrorist is a person who advocates, promotes, advises or facilitates with intent to commit a terrorist act, any act preparatory to a terrorist act, commits an offence and is liable, on conviction to imprisonment for a term not exceeding twenty years.

The encampment policy is still evident on the act as the refugees are not expected to leave the designated areas 47(c) without the permission from the refugee camp officer, this is also in line with the securitization approach where Buzan, Wæver, and de Wilde (1998) have talked of how the state terms issues as factual that necessitate the need of restrictive policies, the implementation of the encampment policy is a clear violation of the refugee right of movement, this has been clearly stipulated under the UNDHR 1948 under article (13) on the freedom of movement. Kenya has ratified to the international conventions towards upholding the rights of refugees, but the encampment policy provides an understanding on the national frameworks that are in place and are contradicting the international frameworks. This acts has also justified the use of detention as a way to manage migration offences, the operation usalama watch 2014-2015 is a clear indication of how refugees are targeted when there is insecurity in he country, the rounding up of refugees and detention without evidence and the link to insecurity exemplifies what crimmigration highlights on migration being linked to crime, HRW (2013) in their report talked on the justification given by the Kenya police on the unlawful detention of refugees; that they were all terrorist.

The Prevention of Terrorism Act (2012)

The prevention of terrorism act stipulates the power of those in authority but also the structure of how to exercise the power when it comes to dealing with terrorism. Article defines a terrorist group

as “an entity that has as one of its activities and purposes, the committing of, or the facilitation of the commission of a terrorist act; or (b) a specified entity”. Any person who carries out a terrorist act is liable to on conviction, to imprisonment for a term not exceeding thirty years Article 4(1).

The act also defines the powers of the police and their role when it comes to detention of suspects, article 31 a police officer may arrest a person where he has reasonable grounds to believe that such person has committed or is committing an offence under this Act, this is guided in accordance to article 32 which states that A person arrested under section 24 (referred to as the suspect) shall not be held for more than twenty-four hours of arrest.

When it comes to the refugees the act provides for grounds for denying refugee status due to the interest of the state; 48(1) The Commissioner for Refugee Affairs may, having regard to the interests of national security, public safety and the International Convention on Refugees, refuse the application of any person applying for status as a refugee, if the Commissioner has reasonable grounds to believe that the applicant has committed or is involved in the commission of a terrorist act. The constitution of Kenya under article 49 (1) states that an arrested person has the right (a) to be informed promptly, in a language that the person understands, of (i) the reason for the arrest but from much research the police violate this by exercising their legislative powers to detain refugees citing terrorism (HRW 2013).

5.2. National Security vs Refugees rights

The state has the responsibility of ensuring that the country is secure from any internal or external threats, this is done through policies and also decisions towards safeguarding the borders and the people in the country. Balancing security and ensuring that the rights of refugees are protected can be difficult as crisp (2000) talks of refugees being outsiders. This chapter helps to analyse how legal frameworks can affect the refugee right of movement as the country tries to eliminate insecurity, this can be achieved through implementation of policies or structures that are used to address the security threats, for example the policies on securitization, crimmigration and restrictive legal frameworks have tremendous effect not only on the rights of refugees but also on their survival.

How legal and security frameworks affects Refugee Movement.

The existence of the Islamist group (Al-Shabaab) has made it so difficult for the Kenyan government to distinguish them from the Somali refugees. This gap has complicated the security approach as Kenya fights terrorism (Dominic 2015). Kenya’s national security has profoundly shaped the way laws and policies are made as often at the expense of the refugees. The need for security policies is evident as indicated by (Meservey 2015) in his research shared that one of the perpetrators in the 2013

Westgate attack may have lived in Kakuma camp for a while and justifies the reason there is need for the encampment policy but also the closure of the borders. But these policies provide a broader control and restrictions that violates the international standard of refugee rights Campbell (2018).

Designated areas/Refugee Camps

The refugee act 2006 reflects Kenya's commitment to international refugee law, aligning with the 1951 Refugee Convention by recognizing refugees' right to protection. However, According to (Tarrosy, Szabo and Hyden 2011) Kenya isolates refugees in a refugee camp which prohibits the refugees from leaving the camp, the plan for Kenya was to effectively control them but this violates several principles of the international refugee law for example the Article 13 of the Universal declaration of Human rights 1948 states that Everyone has the right to freedom of movement and residence within the borders of each State.

In 2015 the deputy president William Ruto asked the UNHCR to close the Dadaab camp and given a period of three months, continuing the long-standing blaming of domestic insecurity on refugees Kitur (2016:21). The encampment of refugees makes it hard for them to move out of the camp in search of work an issue that Danish refugee council 2022 attributes to why some of the refugees in Dadaab have been exposed to crime "some refugees have found themselves in crime because they face many years of hard life, poverty and marginalization on access to jobs and education, making them vulnerable for recruitment by armed groups and organizations like the Islamic State and Al-Shabaab who perceive this crisis as an opportunity, thus posing real threats to the Kenya security".

Mogire (2019:16) talks on how Kenya has hosted an overwhelming number of refugees since 1970s, and local integration could be suitable but has been overwhelmed by the political and societal backlash who against the idea due to competition and therefore remain confined in the camps Omata (2019:139). In his research on Encampment of Refugees in Kenya and the Failure of Economic Integration, Ngendakurio (2022) in his findings noted that the growing assumption that the refugees from Somalia are potential terrorist has led to legitimization of the government using the camps to be able to control and monitor them. "The government is more concerned with the control of a few refugees than the entire population and this puts a contradiction between human rights and national sovereignty, if you have a citizenship then your rights are affirmed but contrary to refugees who even with a refugee pass are not able to enjoy the same rights as the population Slobe (2011:15)".The 'Rights of Man' is tied to the nationality (Arendt 2004), refugees flee their countries for protection in other countries and therefore no longer have government to back their rights and have to fall back on their minimum rights (Slobe 2011). The encampment policy in Kenya creates a

discussion on the refugee law and human rights law specifically in their right to movement that remains to be unclear as the refugees are neither assimilated, integrated or resettled immediately.

The right to move in out of the camp is constrained within the administrative and legislative policies, for one to be able to move one has to be issued a movement pass by DRA and as Slobe(2011:17) states only those refugees who have risen to power get to access the pass, this has made some of the refugees resulting in coming up with alternatives for economic sustainability for example taking part in crime. The restrictions of movement and the biasness in accessing the passes/permits has led to several arbitrary detentions of refugees Slobe(2011).

Arbitrary detention

The prevention of terrorism act 2012 gives the police the power to arrest anyone they suspect to have committed or is committing a crime (article 31). Human rights watch 2013 provided an account of police brutality “that between mid-November 2012 and late January 2013, police in Eastleigh who raped, and seriously assaulted refugees and asylum seekers intentionally inflicted severe physical and mental pain or suffering while calling their victims terrorists and to extort money from them. The arbitrary discussion is a violation of the refugees stipulated in the universal declaration of human rights 1948 article 9 and instead for their freedom the police extorted money in exchange of their freedom, as indicated under one Human right watch 2013 interviews, “there were dozens of Somalis and Ethiopians in the police station, and they were all calling their relatives to come and pay so the police would release them”.

The act provides on protection of suspects but also empowers the police who have used the act disproportionately against refugees as one interviewee in Human rights watch 2013 report states

They held me there for two days. There were about 20 other people in my cell which was only about 3 x 3 m. There was one toilet which was filthy and the whole place stank. They only gave us ugali [maize meal] at lunch and we had to drink from the tap next to the filthy toilet.

Kenya through the International law under international covenant on civil and political rights 1966 article 12 states that: “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”. The Operation Usalama Watch 2014-2015 was in response to the several attacks the country had faced due to the militia group (Amnesty International 2014:4). Amnesty in their report argues that the Somali community in Kenya has become government scapegoat to their counter terrorism plans. This was because the rounding up and arresting was done around Eastleigh areas and Dadaab areas which is mostly occupied by Somali refugees as they were the primary suspects according to (Balakian 2016).

According to the Human rights watch (2014) the government termed the refugees as “You are all terrorist” despite the provision on the Prevention of terrorism act 2012 that defines who is a terrorist as subsection (i) involves the use of violence against a person; (ii) endangers the life of a person, other than the person committing the action; the labelling of refugees as terrorist led to several arrest and torture of the refugees for days and women were sexual harassed and were not allowed proper judicial process as most of them were asked by the police to pay the bribe in order to get out of the cells HRW(2013:37). The constitution of Kenya 2010 Article 28 (a-d) provides that; Every person has the right to freedom and security of the person, which includes the right not to be (a) deprived of freedom arbitrarily or without just cause; (b) detained without trial, except during a state of emergency, in which case the detention is subject to Article 58; (c) subjected to any form of violence from either public or private sources; (d) subjected to torture in any manner, whether physical or psychological.

The amendment of the Refugee act 2006, saw the remaking of DRA to refugee affairs secretariat (RAS) that was being headed by ex-army personnel Brankamp and Glück (2022). The intention of RAS as discussed by Brankamp and Glück (2022) was to de-humanitarianize the camp which meant refugee management was moving from calculated risk and liberal economized governance to more heavy-handed state control. This was a way of the counterterror state taking over the camp which initially is occupied by aid workers and rights advocates (Brankamp and Glück 2022).

Principle of non-Refoulement

The principle of non-refoulement is a fundamental tenet of international refugee law, aimed at protecting individuals from being returned to territories where they may face persecution or serious harm. However, legal frameworks and state practices in countries like Kenya often undermine this principle, leading to significant violations of refugees' right to movement. As highlighted by Stoyanova (2008) in his research on United Kingdom; while states have the sovereign right to control their borders, this right is constrained by their obligation to provide access to asylum procedures for those seeking protection. In Kenya Article 18 of the Kenya Refugee Act 2006 states

Every refugee and asylum seeker has the right of “non-refoulement,” that is, the right is not refused entry' into Kenya when their lives are in danger and not to be forcefully sent back to a place where their lives are in danger.

In 2007 Kenya closed its Kenya-Somali borders and according to Amnesty international (2007) “there were between 5,000 and 7,000 asylum-seekers waiting on the Kenya/Somali border in dire need of humanitarian assistance at the time of the border closure. As of 2024 the government of Kenya reckon that the security needed to open the border is not yet in place. The closure of the borders has led to

asylum seekers frequently encounter barriers to entry, such as restrictive immigration policies and practices that deny them the opportunity to apply for asylum. Stoyanova (2008) emphasizes that when states deny access to territory, they effectively deny refugees the chance to seek safety and protection, exacerbating their vulnerability and undermining their fundamental rights. Thus, the failure to uphold the principle of non-refoulement in Kenya illustrates how legal frameworks can lead to the violation of refugees' right to movement, leaving them at risk of persecution and harm.

According to Freeman (2019) “Kenya’s overwhelming response to Al-Shabaab terrorist attacks and threats has been to securitize and ‘label all Somalis as terrorist. The discussion around the terrorism has been politicised in order to justify some violations of the rights of refugees, HRW (2013) established that several refugees of Somali origin were arrested by the police and were accused of terrorism. As of 2013 only one person of non-Somali origin had been convicted for one of the attacks HRW (2013). “Myth and reality have collided, with Dadaab and Somali asylum seekers and refugees being seen to epitomise the Al-Shabaab threat, despite scant evidence for Somali refugees becoming Al-Shabaab militants “Freeman (2019). This has justified the forced repatriation and has led to the government denying registration of new Somali asylum seekers that has led to the violation of the right to move from Somalia to Kenya (Freeman 2019:107).

The events that have led to the call for the closure of the camps by the government of Kenya echoes the words of Voppen (2017) research that talks about for a threat to meet the securitizing move a policy has to be implemented. The need to close the camp is a policy by the government in their stem to deal with insecurity. In my view closing of the camp considering normative measure is an extreme way of handling an issue and can only be dealt with the judiciary in which in 2017 the High court of Kenya ruled that closure of the camp which will lead to forceful repatriation was in violation of the constitution of Kenya 2010 article 2(5) that states that the general rules of international law shall form part of the law of Kenya.

The closure of the camps leads to infringement to the right of movement as refugees being returned to their home countries are subjected to more threats to their lives as most come from conflict areas and most end up being confined in camps for Internally displaced people as they are not free to move due to the fear of executions etc (Amnesty international 2007).

Local integration towards self-reliance

“Local integration is a process which leads to a durable solution for refugees. It is a process with three interrelated dimensions. First, it is a legal process, whereby refugees are granted a progressively wider range of rights and entitlements by the host state crisp (2004)”. Integration can also be considered as

economic process, as the refugees can have potential to improve their livelihoods to attain certain level of self-reliance and reduce over dependency on aid Crisp (2004). “When you confine a bird in a cage, you make its wings useless as it was meant to fly” Norwegian refugee council (2018:8). The UNHCR self-reliance handbook (2005) defines self-reliance as;

the social and economic ability of an individual, a household or a community to meet essential needs (including protection, food, water, shelter, personal safety, health and education) in a sustainable manner and with dignity. Self-reliance, as a programme approach, refers to developing and strengthening livelihoods of persons of concern, and reducing their vulnerability and long-term reliance on humanitarian/external assistance.

The confinement in the camps makes it hard for the refugees to use their skills for economic development as the city and the town areas are meant for the citizens Ngendakurio (2022:534). The strict policy on encampment by Kenya is evident by the location of the camps that are in the remote areas (Aukot 2003:74). The location of camps keeps the refugees from the urban populations, also lack of transportation because of the distance from the towns to the camps makes it hard for the refugees to participate in the society or any economy outside the camp due to the impossibility to move out of the camp Bond (1989). The climatic conditions makes it also hard for any economic sustainability for example Dadaab which is next to Somali which is the home to many refugees in Dadaab, the selection of this geographical areas was partly due to the proximity of the country of origin, but also for the lack of agricultural value which will discourage the refugees to want to explore economic activities Wright and Plasterer (2010:45).

The liberty to move is crucial for the self-reliance of refugees as with ability to move outside the camps the refugees can acquire higher educations, employment etc but with the restrictions its difficult to see how refugees can be of positive impact to the development as all the skills and knowledge are confined within the camps which also is so populated that the utilization of the skills is impossible Wright and Plasterer (2010:43). As stated earlier the presence of movement passes is accessible mainly by those who have risen in power within the camp but again as the regulations provide in the refugee act 2006 passes will be used by DRA when they establish a probable ground for the pass for example in their website it could be due to medical reasons, education, business etc.

The bureaucracy in issuing passes shows the lack of clear guidelines and legal policies on the process of acquiring movement passes as the process of issuing seems to be unpredictable, opaque, and unclear to a refugees NRC (2022). For one to get a pass a vetting process has to be done under the discretion of the refugee affairs secretariat and normally the process is takes long and the host community takes

advantage of this making the refugees to pay for brokerage fees that is very expensive and there is no guarantee of quality goods NRC (2022). Mwaluko (2022) explains that the process of issuing passes in Dadaab has been securitized with intentions to restrict movement, as the process has to be decided by a security committee chaired by the local district officer which is not provided by the law. This process undermines the ability of the refugees to move out of the camp as the process is often faced by delays, this has led to refugees adopting strategies to bypass the process that has led to many arbitrary detentions and also that has seen the rise of urban refugees (Mwaluko 2022:28).

Chapter 6: Impacts of restricted movement on social and economic development of Refugees

The right based approach highlights on the importance of the policies that upholds the rights of refugees, the right of movement as discussed provides an avenue for the refugees to be able to access education, health and build self-sustainability through employment. The framing of the refugees as a security threat becomes a barrier towards the self-development as the policies being put in place hinders the right of movement, the perception on refugees as outsiders has made them an easy target to state actors when it comes to justification of the policies being implemented. Labeling of refugees as terrorist exemplifies the approach of crimmigration, where arbitrary arrest has been made on people of Somali origin because they are seen to have links with al-Shabaab without actual evidence. The arbitrary arrests and detention on refugees because they are from a specific region is a for stereotyping that Zetter (2007) has attributed to the increase in isolation of refugees but also has made it difficult for the social interactions between the host community and the refugees. The labeling of refugees has seen the rise of criminalization of movement as there is continued arrest of refugees outside the camp as movement can only be possible if one has a movement pass. This chapter will provide an understanding on how restriction of movement can impact on the refugees.

6.1. Economic Impacts

Employment and Livelihoods

Article (39) of the constitution of Kenya 2010 allows for freedom of movement for everyone. The encampment policy has created constraints on the movement as only those with passes can move outside the camp, the passes are issued for limited reasons, and this has curtailed the inability of the refugees to move outside to look for work or employment (World bank 2018:16). The Kenya Immigration and citizenship act 2011 under the 7th schedule says that class M of the work permit is for “A person who has been granted refugee status in Kenya in accordance with the refugee law of Kenya and any spouse of such a refugee who intends to take up employment or engage in a specific occupation, trade, business or profession”.

The encampment of the refugees makes it hard for them to access the commercial and labour market beyond the camp Betts, et al. (2017). Once outside the camp the refugees still face many economic obstacles from labour market discrimination to harassment by police for example in research done by Betts, et al. (2017) revealed that Somali refugees doing business in Kenya outside the camp normally

experience harassment citing that refugees are only allowed to run business in the camp unless they bribe the police. Stumpf (2006) discussed on how merging the immigration and criminal has exacerbated refugee's vulnerability to arrest as they are seen as criminals for instance being labelled as "terrorist" HRW (2013). perceiving the refugees as criminals has hindered the ability for the refugees to access all the basic necessities as they can't leave the camp.

Due to the need of beefing up the security and to allow for management of the refugees, "the Minister may, by notice in the Gazette, in consultation with the host community, designate places as refugee camps, the location of this designated areas lies solely with minister in charge migration in consultation with host community and UNHCR under article 16 (2) of refugee act (2006). Dadaab and Kakuma camps are located in the semi-arid areas which is difficult for the refugees to do agricultural activities, the selection of the camps was to make it hard for the refugees to be sustainable but also has exposed refugees to over-reliance on humanitarian assistants Aukot (2003). This overreliance on aid and the protracted situation of refugees, it has led to refugees looking for alternatives like arms dealing but also some have opted for "voluntary repatriation" due to the pressure of being confined in a camp Mogire (2009).

6.2. Social Impacts

Zetter (2007) explores how labelling of refugees can lead to more restrictive and exclusionary practises. The labels that refugees have been given has led to legal implications like restriction of their movements but also the perception from the public that has made the integration of the refugees difficult due to existing stigmatization. The confinement of refugees hinders social integration, creating a clear separation between refugees and the host community which has led to mistrust but also the view of refugees as 'outsiders' that are there to create competition for resources. Zetter (2007) notes, allowing refugees to integrate socially can dismantle stereotypes and counter the perception of refugees as "others".

Amnesty International (2017) notes that the restriction of movement measures not only violate refugees' basic rights but also contribute to their marginalization, poverty, and dependence on humanitarian aid, creating a cycle of vulnerability that exacerbates security concerns rather than alleviating them. The restriction of movement of refugees outside the camp has seen an increase in refugees facing worse economic and social conditions as the restriction limit their ability to engage in meaningful economic activities Addaney (2015:72).

Addaney (2015:73) suggests that refugees of Somali background are suspected to be the potential supporters of the terrorist groups which has affected the social cohesion with the society and therefore

justifying the need for encampment, Mogire (2009:18) also notes that the encampment strategy has not made the security issues any better instead it has worsen the situation as now the refugees have been exposed into engaging in crimes like smuggling of arms.

Chapter 7: Conclusion

The purpose of this research was to examine the relationship between security and legal frameworks on the refugee right of movement. From the research it's clear there is tension between national security and refugee rights, the government has prioritized the security of the country over the rights of the vulnerable like refugees. Refugees are seen as terrorists, and this has led to government implementing policies that are not balanced and have seen an increase in the violation of the rights of refugees.

The government has enforced the encampment policy to contain and control the refugees, but this has led to an increase in over dependency on aid but also protracted refugee situations as there are no clear structures towards integration of the refugees.

The encampment policy has led to severe impacts on human rights, as it constrains refugees' access to education, employment, and healthcare outside the camp. The fact that refugees are not free to move out of the camp towards building self-reliance has led to a cycle of over reliance on aid which sometimes calamities like COVID leaves them in vulnerable situations, this is what Verdirame (2005) states that the focus of humanitarian agencies is to deliver aid, as their inability to move freely contributes to economic dependency, social stagnation, and mental health issues, trapping refugees in a cycle of poverty and aid reliance.

Access to movement passes is a challenge and it's the only way for the refugees to move outside the camp, now the process of accessing the passes is difficult due to the level of bureaucracy within those in charge as the decision solely lies with the committee in charge of refugees. Having safe, regulated movement while balancing security creates an avenue for economical sustainability both to the refugees but also the host community. The case of Dadaab highlights how Kenya's legal and security frameworks on refugee movement is designed towards containment and control, often this at the expense of the refugee rights and their well-being. While the security of the country is of concern, overly restrictive policies on movement often lead to humanitarian and social challenges that could exacerbate the violation of the rights of refugees, a balance approach prioritizing both the security and the legal frameworks on refugees will create a more sustainable existence, but also promote social cohesion among the refugees and the host community.

References

- Addaney, M., 2015. Enhancing the protective space for refugees in Kenya and Uganda. *Africa Policy Journal*, 11, pp.71-75.
- Agamben, G., 2008. *State of exception*. University of Chicago press.
- Agwanda, B., 2022. Securitization and forced migration in Kenya: a policy transition from integration to encampment. *Population and Development Review*, 48(3), pp.723-743.
- Aling'o, P. (2014). Kenya's current probe on terror: why Operation Usalama Watch won't cut *Asylum Under Threat: Assessing the Protection of Somali Refugees in Dadaab Refugee Camps and Along the Migration Corridor*. Refugee Consortium of Kenya, 2012.
- Aukot, Ekuru. 2003. "It is Better to be a Refugee than a Turkana in Kakuma?: Revisiting the Relationship between Hosts and Refugees in Kenya." *Refuge: Canada's Journal on Refugees* 21(3):73–83.
- Balakian, S., 2016. "Money Is Your Government": Refugees, Mobility, and Unstable Documents in Kenya's Operation Usalama Watch. *African Studies Review*, 59(2), pp.87-111.
- Balzacq, T., Léonard, S. and Ruzicka, J., 2016. 'Securitization' revisited: Theory and cases. *International relations*, 30(4), pp.494-531.
- Barmaki, R., 2012. Criminalization of Refugees in the Age of Insecurity and Mass Migration: Zygmunt Bauman on Ethnicity, Asylum and the new 'Criminal'. *International Journal of Criminology and Sociological Theory*, 5(1), pp.251-266.
- Bauman, Z., 2016. *Strangers at our door*. John Wiley & Son
- Baxter, P. and Jack, S., 2008. Qualitative case study methodology: Study design and implementation for novice researchers. *The qualitative report*, 13(4), pp.544-559.
- Betts, A., Omata, N. and Bloom, L., 2017. Thrive or survive? Explaining variation in economic outcomes for refugees. *Journal on Migration and Human Security*, 5(4), pp.716-743.
- Bigo, D., 2002. Security and immigration: Toward a critique of the governmentality of unease. *Alternatives*, 27(1_suppl), pp.63-92.
- Brankamp, H. and Glück, Z., 2022. Camps and counterterrorism: Security and the remaking of refuge in Kenya. *Environment and Planning D: Society and Space*, 40(3), pp.528-548.
- Buzan, B., Wæver, O., & de Wilde, J. (1998). *Security: A New Framework for Analysis*. Lynne Rienner Publishers
- CHIKANDA, A., CRUSH, J. and TAWODZERA, G., 2020. MIGRATION AND FOOD SECURITY IN CITIES OF THE GLOBAL SOUTH. *Migration Studies Commons*.
- Cokeleare, H. (2024). Netherlands will ask the European Commission for an opt-out on EU asylum and migration policies. <https://www.politico.eu/article/dutch-government-announces-strictest-asylum-policy-ever/>.
- Cornwall, A. and Nyamu-Musembi, C., 2004. Putting the 'rights-based approach' to development into perspective. *Third world quarterly*, 25(8), pp.1415-1437.
- Crisp, J., 2003. Refugees and the Global Politics of Asylum. *Political Quarterly*, 74.

- Edwards, A., 2009. Human security and the rights of refugees: transcending territorial and disciplinary borders. In *International Refugee Law* (pp. 477-521). Routledge.
- Ferguson, J., 1999. *Expectations of modernity: myths and meanings of urban life on the Zambian Copperbelt* (Vol. 57). Univ of California Press
- Freeman, L., 2019. They're all terrorists: the securitisation of asylum in Kenya. *Extremisms in Africa*, 2, pp.92-123.
- Gitonga, D.N., 2018. *Securitization of Somali refugees: case study of Kenya* (Master's thesis, Norwegian University of Life Sciences, Ås).
- Gray, H. and Franck, A.K., 2019. Refugees as/at risk: The gendered and racialized underpinnings of securitization in British media narratives. *Security Dialogue*, 50(3), pp.275-291.
- Grindheim, K.A., 2013. *Exploring the impacts of refugee camps on host communities: A case study of Kakuma host community in Kenya* (Master's thesis, Universitetet i Agder; University of Agder).
- Guild, E., 2010. *Criminalisation of migration in Europe: Human rights implications*. Commissioner for Human Rights, Council of Europe.
- Hakovirta, H., 1993. The global refugee problem: A model and its application. *International Political Science Review*, 14(1), pp.35-57
- Hannah Arendt. (2004). *THE ORIGINS OF TOTALITARIANISM*, (Schocken Books)
- Hathaway, J.C., 2021. *The rights of refugees under international law*. Cambridge University Press
- Hernández, D., Eason, J.M., Goldsmith, P.R., Abel, R.D. and McNeely, A., 2018. With mass deportation comes mass punishment: Punitive capacity, health, and standards in US immigrant detention. In *Routledge Handbook on Immigration and Crime* (pp. 260-269). Routledge.
- Horst, C., 2018. Forced migration: Morality and politics. *Ethnic and racial studies*, 41(3), pp.440-447.
- Hovil, L., 2016. *Refugees, conflict and the search for belonging*. Basingstoke: Palgrave Macmillan.
- Huysmans, J., 2000. The European Union and the securitization of migration. *JCMS: Journal of common market studies*, 38(5), pp.751-777.
- Huysmans, J., 2014. *Security unbound: Enacting democratic limits*. Routledge.
- It. ISS Africa. Retrieved from <https://issafrica.org/iss-today>
- Kerubo, N.A., 2013. Refugees' Rights Vs. Responsibilities: An Analysis of Kenya's Refugee Encampment Policy.
- Kibreab, G., 2003. Citizenship rights and repatriation of refugees. *International Migration Review*, 37(1), pp.24-73.
- Kitur, S.C., 2016. *Refugees a threat to national security: case study Kenya* (Doctoral dissertation, Strathmore University).
- Kumssa, A., Williams, J.H., Jones, J.F. and Des Marais, E.A., 2014. Conflict and migration: The case of Somali refugees in Northeastern Kenya. *Global Social Welfare*, 1, pp.145-156.
- Lind, J., Mutahi, P. and Oosterom, M., 2017. 'Killing a mosquito with a hammer': Al-Shabaab violence and state security responses in Kenya. *Peacebuilding*, 5(2), pp.118-135.
- Loescher, G. and Milner, J., 2005. The long road home: Protracted refugee situations in Africa. *Survival*, 47(2), pp.153-174.

Loschmann, C., Bilgili, Ö. and Siegel, M., 2019. Considering the benefits of hosting refugees: evidence of refugee camps influencing local labour market activity and economic welfare in Rwanda. *IZA Journal of Development and Migration*, 9(1), p.5.

Mogire, E., 2009. Refugee realities: Refugee rights versus state security in Kenya and Tanzania. *Transformation*, 26(1), pp.15-29.

Momin, S., 2017. A human rights-based approach to refugees: A look at the Syrian refugee crisis and the responses from Germany and the United States. *Duke FL & Soc. Change*, 9, p.55.

Mumo, Nzau., 2021 *Diplomacy Kenya government expert on closure of Kenya of Dadaab and Kakuma Refugee camps* available on <https://youtu.be/70agIWIUPk?t=213>.

Mwaluko, J.M., 2022. *Policy framework for refugee management in Kenya: an assessment of challenges, gaps, and options* (Doctoral dissertation, Strathmore University).

Mwangi, O.G., 2019. The “Somalinisation” of terrorism and counterterrorism in Kenya: the case of refolement. *Critical Studies on Terrorism*, 12(2), pp.298-316.

Mwangi, O.G., 2020. Securitisation, non-refoulement and the rule of law in Kenya: the case of Somali refugees. In *Peremptory International Legal Norms and the Democratic Rule of Law* (pp. 51-67). Routledge.

Ngendakurio, J. B. (2022). Encampment of Refugees in Kenya and the Failure of Economic Integration. *Perspectives on Global Development and Technology* 20, 5-6, 529-550, Available From: Brill <https://doi.org/10.1163/15691497-12341610>

Odede, T., 2020. *Challenges to security enforcement in East Africa: case study of the impact of refugees' influx in Uganda (2010-2017)* (Doctoral dissertation, University of Nairobi)

Oluoch, Fred. 2017. “East Africa: May Conference on Somalia to Ease Kenya’s Refugee Burden.” AllAfrica. The East African, April 8. (<https://allafrica.com/stories/201704100508.html>).

Oluoch, K., 2017. Reconciling security concerns and refugee protection.

Otieno, E. O., Mwikali, F., & Paul, N. . (2022). Refugees and National Security in Kenya: A Case Study of Eastleigh, Kamukunji Constituency, Nairobi County. *International Journal of Public Policy and Administration*, 5(1), 87–111. <https://doi.org/10.47941/ijppa.1140>

Pallitto, R. M., & Heyman, J. M. (2008). *Theorizing Cross-Border Mobility: Surveillance, Security and Identity*. *Surveillance & Society*, 5(3), 315-333.

Parkin, J., 2013. *Nº 61 The Criminalisation of Migration in Europe. A State-of-the-Art of the Academic Literature and Research*. CEPS Centre for European Policy Studies.

Patrick Hayden, From Exclusion to Containment: Arendt, Sovereign Power, and Statelessness, 3 SOCIETIES WITHOUT BORDERS 251 (2008).

Polzer, T., 2007. Adapting to changing legal frameworks: Mozambican refugees in South Africa. *International Journal of Refugee Law*, 19(1), pp.22-50.

Ravenswood, K., 2011. Eisenhardt's impact on theory in case study research. *Journal of Business Research*, 64(7), pp.680-686.

Richardson, J., 2023 Reflections on Kenya and Dadaab Refugee camp, Justice for Immigrants available on <https://justiceforimmigrants.org/refugee/reflections-on-kenya-and-the-dadaab-refugee-camp/>.

Rudge, P. (1989). *Refugee Policies and National Security: A Shift in International Perspective*. In *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick* (p. 212).

Slobe, A.M., 2011. Freedom of movement of refugees: Those forced to move find themselves without their human right to move.

Stoyanova, V., 2008. The principle of non-refoulement and the right of asylum-seekers to enter state territory. *Interdisc. J. Hum. Rts. L.*, 3, p.1.

Strokirch, V. M. (2016). *Refugees, Criminality, and Terrorism: Narratives and Realities in Kenya*. *African Security Review*, 25(3), 32-45.

Stumpf, J. (2006). *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*. *American University Law Review*, 56(2), 367-419.

Tarrósy, I., Szabó, L. and Hydén, G. eds., 2011. *The African state in a changing global context: breakdowns and transformations* (Vol. 42). LIT Verlag Münster.

Van der Van der Woude, M., Barker, V. and Van Der Leun, J., 2017. Crimmigration in Europe. *European Journal of Criminology*, 14(1), pp.3-6.

Van der Van der Woude, M.A., van der Leun, J.P. and Nijland, J.A.A., 2014. Crimmigration in the Netherlands. *Law & Social Inquiry*, 39(3), pp.560-579.

Van Thiel, S., 2014. *Research methods in public administration and public management: An introduction*. Routledge.

Verdirame, G., & Harrell-Bond, B. E. (2005). *Rights in Exile: Janus-faced Humanitarianism*. Berghahn Books.

Verdirame, G., 1999. Human rights and refugees: The case of Kenya1. *Journal of Refugee Studies*, 12(1), pp.54-77.

Voppen, N.A.G., 2017. *The securitization of Somali refugees in Kenya: The plan to close Dadaab refugee camp* (master's thesis).

Wæver, O., 1993. *Securitization and desecuritization* (Vol. 5). Copenhagen: Centre for Peace and Conflict Research.

Webb, E.J., Campbell, D.T., Schwartz, R.D. and Sechrest, L., 1999. *Unobtrusive measures* (Vol. 2). Sage Publications.

Wright, L.A. and Plasterer, R., 2010. Beyond basic education: Exploring opportunities for higher learning in Kenyan refugee camps. *Refugee*, 27, p.42.

Yin, R.K., 1994. Discovering the future of the case study. *Method in evaluation research*. *Evaluation practice*, 15(3), pp.283-290.

Zetter, R., 2007. More labels, fewer refugees: Remaking the refugee label in an era of globalization. *Journal of refugee studies*, 20(2), pp.172-192.

Zetter, R., 2008. Legal and normative frameworks. *Forced Migration Review*, 31, pp.62-63.