TRENDS IN INTERNATIONAL PROTECTION OF SOMALI REFUGEES IN DADAAB REFUGEE COMPLEX, KENYA; (1991-2016)

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C50/OL/24038/2013

A PROJECT SUBMITTED TO THE SCHOOL OF HUMANITIES AND SOCIAL SCIENCES IN PARTIAL FULFILMENT OF REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF ARTS IN INTERNATIONAL RELATIONS & DIPLOMACY AT KENYATTA UNIVERSITY

MAY 2019
DECLARATION

I declare that this project is my original work and has not been presented in any other university/institution for consideration of any certification.

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Supervisors’ declaration

This project has been submitted for appraisal with my approval as University Supervisor.

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Signature: [Signature] Date: 17 05 2019
DEDICATION

I dedicate this study to my parents Mr. Simon Bwondieki Mwancha and Mrs. Dinah Gechemba Mwancha for instilling in me the requisite education, confidence and discipline that has enabled me to fulfil this.
ACKNOWLEDGEMENT

I give thanks to God Almighty for the good health and well-being necessary to complete this study.

My unreserved and sincere gratitude goes to my supervisors, Dr. Susan Mwangi and the late Dr. Lumumba Esese for their valuable suggestions and tireless scholarly guidance throughout the study. Without their patience and commitment, this study would not have been a success.

I also sincerely thank Kenyatta University’s Center for Refugee Studies led by Director, Dr. Josephine Gitome for their administrative support throughout the study. Special thanks go to the Department of History and its academic staff who prepared me well for this study.

I will forever remain thankful to my former boss Mr. Raouf Mazou, the UNHCR Africa Bureau Director for granting some days off from work to complete this study while I worked at his office in UNHCR Kenya. My senior colleague and friend Lucy Kiama was also instrumental in sharing her expert guidance and experience on the subject matter.

Lastly, I acknowledge my wife Mary Nyambura for her encouragement and patience throughout the study. I could not have done it smoothly without her moral support.
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This study explored how the dynamics of international protection for Somali refugees in Dadaab changed between 1991 and 2016. There have been many changes in Kenya’s asylum regime since the late 1980’s when Kenya already had some 12,000 refugees who enjoyed the legal right to reside and work anywhere in Kenya. Things changed in 1991 when refugee camps were established and an encampment policy enforced. Refugees were required to live in camps under the management of the UNHCR. Asylum management was through the Immigration and the Alien Restriction laws. There lacked a refugee specific domestic law. The government remained unresponsive to calls for a domestic law until 2000 when the civil society intensified its advocacy. A change of regime in 2003 provided an atmosphere for enactment of the Refugee Act 2006. With the Act, the responsibility of managing refugees was supposed to fully shift back to the Government of Kenya but it did not. The Government of Kenya lacked capacity. Later, heightened insecurity after 2011 was attributed to the presence of Somali refugees in the country. This negatively influenced the asylum space. In 2014, parliament passed a law that would restrict the number of refugees in Kenya to 150,000 and enforce the refugee encampment policy but the High Court nullified it. The study aimed to examine international protection policies used in Dadaab refugee complex between 1991 and 2000. It interrogated changes in the practice between 2001 and 2015. It also examined how Kenya’s most recent asylum policies influenced the protection environment for Somali refugees. Resilience theory applied for this survey conducted in October 2016. The study used qualitative methods with a descriptive research design to collect data through focus group discussions at household level in three refugee camps and interviews with key informants. Primary data was collected, transcribed and translated from Somali to English with the help of three research assistants. Secondary data was collected from published reports and key informants by the lead researcher. Themes and categories were extracted from the data, which were contextually analysed and recorded as study.
<table>
<thead>
<tr>
<th>Abbreviation</th>
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<tr>
<td>AU</td>
<td>African Union</td>
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<td>AI</td>
<td>Amnesty International</td>
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<td>CARE</td>
<td>Cooperative for Assistance and Relief Everywhere</td>
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<td>CPPT</td>
<td>Community Peace Protection Teams</td>
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<td>CTDs</td>
<td>Convention Travel Document</td>
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<td>DRA</td>
<td>Department of Refugee Affairs</td>
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<td>DRC</td>
<td>Danish Refugee Council</td>
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<td>FGD</td>
<td>Focus Group Discussion</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<td>IDP</td>
<td>Internally Displaced Person</td>
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<td>IRO</td>
<td>The International Refugee Organization</td>
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<td>MSF</td>
<td>Medecins Sans Frontieres</td>
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<tr>
<td>OAU</td>
<td>Organization of the African Union</td>
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<td>OCHA</td>
<td>UN Office for the Coordination of Humanitarian Affairs</td>
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<td>OHCHR</td>
<td>UN Office of the High Commissioner for Human Rights</td>
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<td>RAS</td>
<td>Refugee Affairs Secretariat</td>
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<td>Refugee Consortium of Kenya</td>
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<td>RSD</td>
<td>Refugee Status Determination</td>
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<td>SNM</td>
<td>Somali National Movement</td>
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<td>SSDF</td>
<td>Somali Salvation Democratic Front</td>
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<td>SPSS</td>
<td>Statistical Package for Social Sciences</td>
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<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>WFP</td>
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<td>NACOSTI</td>
<td>National Commission for Science, Technology and Innovation</td>
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OPERATIONAL DEFINITION OF TERMS

Asylum seeker – A person who has moved out of his country to another country as a result of fear for persecution and has made an application in that country for international protection.


Convention refugees – Refugees in possession of identity cards issued by the Government of Kenya, indicating that they are fully recognized as refugees.

Durable Solution – A long term solution for refugees which may include being locally integrated in the country of asylum, going back home voluntarily or obtaining citizenship in a third country.

Local integration – Having refugees legally allowed to reside and find employment within their countries of asylum, with possibilities of applying for citizenship.

Mandate refugees – Refugees whose refugee status has been determined by a process managed by the UNHCR but are yet to be issued with identity cards by the Government of Kenya.

Maslaha – A concept in traditional Islamic law, also known as Sharia which is used by some Somali communities to deter practices that are considered not serving the public good.

Non-refoulement – International obligation requiring member states not to forcefully repatriate refugees or asylum seekers to territories where their fundamental rights will be under threat.

Protection – Providing legal services and basic amenities to refugees that meet international minimum standards.

Protracted Displacement – Protracted displacement is when refugees continue to stay in the asylum country beyond the emergency phase, owing to lack of durable solutions for their situation.

Prima facie refugees – Refugees recognized as a group as opposed to undergoing individual status determination. The determining factor for this kind of determination is due to widely known factors that forced them to seek asylum.

Refugee – A person whose asylum application has been accepted by the country of asylum as having had valid claims for fear of persecution in his/her country and is unable to return to that country because of this fear.

Resettlement – An international protection practice whereby some refugees are settled in a third country for possible permanent residency or citizenship.
**Repatriation** – Having refugees returned from the country of asylum to their countries of origin. It can be voluntary repatriation or forceful repatriation.

**Statelessness** – A situation where a person is unrecognized by any country as a citizen. Some refugees may be stateless but not all are. Similarly, not all stateless people are refugees.
CHAPTER ONE

INTRODUCTION AND CONTEXTUALIZATION OF THE STUDY

1.0 Introduction

This chapter lays the foundation for the problem beginning from the global perspective of refugee protection narrowing down to the African and Kenyan context of refugee affairs. It then highlights the study locale, Dadaab Refugee Camp and identifies knowledge gaps that justify the problem of the study as described in the statement of the problem. The chapter also outlines research objectives, research questions as well as the scope and limitation of the study.

1.1 Background of the Problem

During the era of the League of Nations (1919-1939), a number of bodies were established to perform functions similar to those done today by the United Nations High Commissioner for Refugees (UNHCR). They included the office of the High Commissioner of the League of Nations for Refugees, the Nansen International Office for Refugees and the Intergovernmental Committee on Refugees (Jaeger, 2001).

Refugees were defined in clusters relating to their countries of origin. The very first High Commissioner for Russian Refugees was Dr. Fridtjof Nansen. His mandate was later extended to encompass Armenians, refugees from Turky, Assyro-Chaldean and Assyrian. (Hyndman & Nylund 2010).

The United Nations High Commissioner for Refugees (UNHCR) replaced the International Refugee Organization (IRO) which had been created in 1947 to manage refugee affairs in Europe after the Second World War.
Through article 22 of the UN Charter, the UNHCR Statute was adopted. It began its work in January 1951, which was to facilitate international protection for refugees with the aim of finding long-term solutions to their problems (Hyndman & Nylund, 2010).

The main international legal framework for managing refuges affairs include the 1951 UN Convention (with its 1967 Protocol). The legal framework was inspired by the 1948 Universal Declaration of Human Rights, Article 14. It lists the kinds of international protection and assistance that refugees ought to receive from hosting governments. 60 years on, the Convention is still the main legal point of reference for international protection of refugees. The 1969 Organization of African Union (OAU) Convention that concerns certain aspects of the refugee problem in Africa complements the 1951 Convention by including people fleeing their countries as a result of occupation, foreign domination, external aggression, and activities that may disturb public order (Feller, 2001).

Human displacement and refugee influx continued in the early 21st century to be major issues globally, with current displacement situations in major crises zones including Iraq, Somalia, Ukraine, Central Africa Republic, Nigeria, Democratic Republic of Congo, Syria and South Sudan. UNHCR statistics show that today, there are some 22 million persons who have sought asylum in 160 countries (Feller, 2001).

Even though almost two thirds of countries in the world have become signatories to the Refugee Convention, it is the poorer countries of Africa, the Middle East, Asia, and Eastern Europe that carry the heaviest refugee hosting burden (Millbank, 2000).

Article 2 (6), international conventions or treaties that Kenya is a signatory are automatically part of Kenyan law (Holm, 2013).

The domestic legal framework for management of refugee affairs in Kenya is the Refugees Act, 2006. Through this law, the responsibility of managing refugee affairs was shifted back to the Government of Kenya from the UNHCR, which had been performing the functions temporarily on behalf of the government. This role was given to the Ministry of Immigration and Registration of Persons - Department of Refugee Affairs (DRA) (Lindley, 2011). Since 2012, the civil society and other actors within the refugee sector have been trying to have the Refugee Act, 2006 amended. Several bills have been drafted with the aim of ensuring that provisions within the law are compatible with the Constitution of Kenya, 2010 (Wangui R., Grant K., Gerstner E., 2012).

Somali refugees and asylum-seekers represent 70 per cent of all refugees in Kenya, with South Sudanese refugees following closely at 20 per cent, and Ethiopian refugees who comprise four per cent. Kenya a top host of refugees in Africa after Uganda, Ethiopia and Sudan. Most Somali refugees fleeing conflict in Somalia are settled in Dadaab refugee camp, in Garissa County, Northern Kenya. A number of Somali refugees also live in urban areas within Kenya, mainly in Nairobi (Boyce, 2015).

UNHCR statistics further show that by end of July 2016, there were roughly 590,000 refugees and asylum seekers in Kenya. This comprised of refugees in Dadaab and Kakuma refugee camps as well as refugees in urban areas. The Dadaab refugee camps had a population of 350,000 refugees and asylum seekers. About 95% of the refugees in the camps were from Somalia. The first camp was established in 1991 for Somalis affected by the civil war in Somalia as a result of the overthrowing of Siad Barre. In 2011, some
130,000 Somalis flee their country, mainly as a result of drought related conflicts and sought for asylum in Dadaab camp (Taylor, 2011).

Dadaab itself is a settlement of five camps which include Hagadera, Ifo, Dagahaley, Kambioos and Ifo 2. Ifo, Dagahaley and Hagadera were established in 1991 and they look very different in terms of structure from Ifo 2 and Kambioos which were established in 2011. Most refugees settled in the three old camps arrived in Dadaab in the early 1990s. The old camps have grown to become commercial hubs connecting southern Somalia and north-eastern Kenya. In contrast, residents of the two newer camps are pastoralists, pushed to settle in the camps by conflicts related to the famine of 2011 (Taylor, 2011).

In August 2016, UNHCR findings indicated that majority of Somali refugees who arrived in Dadaab after 2011 to their country returned to Somalia as soon as the drought was over. However, majority of refugees who had arrived in Dadaab in 1990s continued to stay in the camps, although from time to time, they do visit Somalia (UNHCR, 2016).

The international legal frameworks on management of refugees have transformed over the years. Kenya’s legal framework has equally transformed right from the early 1990s when there was no specific law for management of refugee affairs (except the then applied Immigration and the Alien Restriction Acts) to 2006 when a specific Refugee Act was enacted by parliament. Dadaab being a camp where refugees have continued to stay beyond the emergency phase (protracted situation where the same group of refugees have stayed since the camps were first established in 1991), it is possible that international protection of refugees has also evolved to reflect the changing times and circumstances and legal dispensations in Kenya. Somali refugees happen to have been residents in these camps from the first days and some continue to dwell in them even today. There is a gap in the
correlation between the level of international protection provided to Somali refugees in Dadaab and their motivation for protracted stay. The study therefore sought to fill this gap.

1.2 Statement of the Problem

Refugee crises are often expected not to last beyond emergency periods. Typically, emergencies ought to take up to five years to be resolved. In some contexts, however, perennial conflicts in the refugees’ home countries and the unwillingness by the host countries to locally integrate refugees lead to the continued stay of refugees beyond emergencies. This causes protracted refugee situations.

Dadaab refugee camp is an old refugee settlement, with a significant number of Somali refugees who continue to call it home after settling their in 1991. Most refugees in this group have not been willing to return home. Apparently, to them, there is nothing to return to. Despite the asylum fatigue demonstrated by the Government of Kenya, and the dwindling humanitarian assistance, these refugees continue to rely on the international protection availed in the camps. With limited livelihoods opportunities, some have found innovative ways to cope with their difficult situation by getting involved in entrepreneurship and livestock farming.

For a period of 25 years, Dadaab has had a huge turnover of international and local organizations managing refugee affairs. While some still exist, the continuous change of players and shifting of responsibilities from one player to another might have had an impact on the nature of protection and its practice. The legal and policy frameworks of Kenya having been revised a few times, it is inevitable that this has led to some transformation of
the practice of law, access to justice and general engagement with refugees and asylum seekers.

This study focused on the trends of international protection for these refugees over Dadaab’s 25 years of existence. It highlighted issues concerning freedom of movement, refugee coexistence among themselves and with local communities, access to justice, access to food, education, health and social amenities as well as availed livelihood opportunities. The study examined various refugee protection vehicles including refugee status determination and legal justice procedures during the period when the UN refugee agency still had the overall responsibility for refugee management and how the process evolved before and after the year 2000 when there was renewed momentum to have a refugee specific domestic law. The changes in protection through the period after 2006 when the first refugee law was enacted and how it compares to the period before that was also core for this study.

1.3 Research Objectives

1. To examine international protection policies and their practice in Dadaab refugee complex between 1991 and 1999.

2. To analyse changes in the practice of Somali refugees’ international protection between 2000 and 2016.

3. To demonstrate how heightened insecurity after 2011 influenced the protection environment for Somali refugees.

1.4 Research Questions

1. What were the international protection policies and practices in Dadaab refugee complex between 1991 and 1999?
2. In what ways did the international protection of Somali refugees change between 2000 and 2016?

3. How did the heightened insecurity after 2011 influence the protection environment for Somali refugees?

1.5 Research Premises

1. The international refugee protection in Dadaab between 1991 and 1999 was largely determined by UNCHR policies.

2. The period between 2000 and 2016 ushered-in some policy shift, with the Government of Kenya seeking a more proactive role in refugee management.

3. Heightened insecurity in Kenya after 2011 seemed to have negatively influenced the protection environment for Somali refugees.

1.6 Justification and Significance of the Study

This study was necessary because of the absence of progressive policies in managing refugee affairs in Kenya as well as the apparent weaknesses in the implementation of the available policies. It seeks to provide key data and some background to state officials and other actors in dispensing international refugee protection, which may include formulation of policies in line with standards spelt out in international instruments.

Significantly, it provides some understanding of progression and transformation of international protection of Somali refugees in Dadaab refugee camps. This understanding is expected to add value to institutions managing refugee affairs in Kenya by providing relevant literature for their reference.
This study is also significant for asylum policy makers in Kenya. The transformation of asylum policies and the practice of international protection in a protracted refugee situation like Dadaab will promote the pursuit for new protection frameworks that will possibly help to improve the asylum regime.

This study focused on Somali refugees in Dadaab because they form the largest single group of refugees in Kenya that represents the protracted refugee situation.

In order to better understand the significance of analysing trends of international protection as is the case in this study, it is important to explain that there have been three key periods in the history of the asylum regime and refugee protection in Kenya. The periods include the following: 1991 to 1999, a period when there was no specific national legal framework for management of refugee affairs. It is from 1991 that huge populations of Somali refugees started streaming into Kenya due to civil war in Somalia. Refugees and asylum seekers were managed mainly through the Immigration and the Alien Restriction Acts of parliament.

2000 to 2016 represents a period when the civil society intensified its campaign for reforms in the refugee sector and pushed for the enactment of a domestic refugee specific law - Refugee Act, 2006. It is also the period under which the Refugee Act, 2006 was under practice. The period after 2011 was particularly interesting because there was a shift in protection of refugees occasioned by security concerns not only in Kenya but globally especially due to terrorism.

In 2015, an amendment bill to the Refugee Act, 2006 that had been under review since 2011 was drafted in alignment with Kenya’s new constitution. During the course of this study, the bill had just undergone the first reading in the National Assembly. If this bill is
enacted, it will open another chapter and period under which refugee affairs will be managed under a new law.

1.7 Scope and Limitation of the Study

This study only focused on international protection as outlined in international legal instruments in relation to protection of refugees in Dadaab. The instruments of refugee protection were valuable for a broader understanding of international protection.

Though international protection is availed to both refugees and asylum seekers, this study focused on refugees i.e., individuals who had been determined by the Government of Kenya to be genuinely in need of international protection.

The study was conducted among Somali refugees in three out of five camps in Dadaab refugee complex located in Lagdera and Fafi districts. It focused on Somali refugees who have been in Kenya during the entire period under review. Refugees interviewed were informed that the study was exclusively for academic purposes and their informed consent was sought. This study covered 1991 to 2016, the period that Kenya has continuously hosted Somali refugees in Dadaab camps.

The announcement by the Government of Kenya that Dadaab refugee camps would be closed by November 2016 sparked fears, mistrust and anxiety within Dadaab camps. The study therefore relied on research assistants from within Dadaab camps, well known to the refugee community and who speak their language to help in data collection. This helped to solve the challenge of mistrust of outsiders and language barrier.
CHAPTER TWO

REVIEW OF RELATED LITERATURE

2.1 Introduction

This chapter first describes what refugee protection is and then paints the picture of the refugee protection situation in the study locale. It also provides theoretical understanding of the situation in Dadaab refugee camps.

2.2 International Refugee Protection in Perspective

It is the responsibility of Governments to provide security and safety to citizens and observe their human rights. This safety is not guaranteed when one becomes a refugee. Refugees are often very vulnerable. They sometimes feel threatened by their home governments that are supposed to guarantee their safety (Holborn, 1995).

International protection of refugees and stateless people is the main responsibility of UNHCR. It does this by guaranteeing safety and observance of basic human rights within countries of asylum. The UNHCR also ensures are not forcefully returns to their home countries. While offering safety, the organization also provides basic human and services including physical security, healthcare, water, food, access to justice and education (Holborn, 1995).

The ultimate goal for international protection is to find long lasting solutions which may include refugees getting integrated in the country of asylum, getting resettled abroad or voluntarily going back to home countries (Holborn, 1995).
The UNHCR works closely with International or National Non-Governmental Organizations to provide these basic legal and social services to refugees. Some of the services include provision of food, shelter, healthcare community services and emergency services including reception and registration. The organizations are obligated to provide these services to all refugees, with keen consideration of their level of vulnerabilities. For instance, they must tailor their services to respond to the needs of women, the elderly, children and people living with disability (Holborn, 1995). According to Holborn, helping these refugees rebuild their lives within a short time is the ultimate purpose of these services. He however does not mention anything specific about the refugee situation in Kenya which is what this study sought to establish.

2.3 Refugee Protection in Kenya

Kenya has been one of the leading refugee host countries in Africa since the late 1980s, when there were about 12,000 refugees who had a legal right to reside in any part of the country. This group could easily obtain work permits from the government and it enjoyed access to education like Kenyan citizens.

However in the early 1990s, most countries in Africa particularly those neighbouring Kenya, started facing conflicts that led to unprecedented refugee situations. In Somalia, the overthrowing of Siad Barre led to the fleeing of many citizens of that country into Kenya to seek asylum (Campbell, 2006). It is however noted that while Campbell provides good background information for this study about conflicts in Eastern Africa, he fails to argue how the protection environment in Kenya has changed significantly. He does not attempt to point out what has changed and this gap is what this study sought to fill.
Before 2006 when the Refugee Act, 2006 was enacted, the administration of refugee affairs was mainly through the Alien Restriction Act, 1973 and the Immigration Act, 1967 which have since been repealed. According to Wangui et al, (2012), the UNHCR was invited by the Government of Kenya in 1992 to assume the role of refugee management. Its key responsibilities included refugee status determination, registration and administration of asylum application (Wangui et al, 2012). Wangui and team however do not give details of the resumption of refugee management by the Government of Kenya back from the UNHCR. This study tries to establish how and under what circumstances this happened.

In 1992, the United Nations High Commissioner for Refugees (UNHCR) in Kenya determined refugee status of Somali refugees using commonly known physical features associated with Somalis (prima facie refugee determination). Determination of refugee status has since evolved to individual case determination but this does not apply to all nationalities seeking asylum in Kenya (Hyndman & Nylund, 2010). There are however no details provided on why individual refugee status determination is not applied to all nationalities and which nationalities are determined on individual basis. This is what this study sough to establish.

Before the year 2000, government registration of refugees was not systematic but the formation of the National Registration Bureau in 2000 was a major indication that refugees could be issued with identity cards (Wangui et al, 2012). This study sought to find out if the expected commencement of issuance of identity cards materialized and the implications of Somali refugees having or not having identity cards.

The Refugee Act, 2006 was accented into law by the president of Kenya in December 2006. This was as a result of advocacy and lobbying by the civil society. The government was then expected to fully take over its role of managing refugee affairs from UNHCR. The law
also became a new guide to actors in the refugee sector including the UNHCR and its partners (Wangui et al, 2012). While the Refugee Act might have set the roadmap for the Government of Kenya to assume overall responsibility for refugee matters, the scholars do not provide details explaining if the government did indeed take over its new role as required by the law. This study sought to cover this gap.

According to an Amnesty International Report (2016), in November 2013, the Governments of Kenya and Somalia together with the UNHCR signed a Tripartite Agreement that provided a legal framework for voluntary repatriation of Somali refugees. In 2014, the Government of Kenya enacted a security amendment law that was intended to limit the number of refugees and asylum seekers in the country at any given time to 150,000.

This analysis by Amnesty (2016) was useful to this study because it describes how the amendment of the security amendment law strengthened the encampment policy limiting refugees to either Kakuma refugee camp or Dadaab refugee camp. Even though the law was immediately dismissed by the civil society as a contravention of the 1951 Refugee Convention as well as the 1969 OAU convention and later suspended by the High Court of Kenya, it exposed Kenya as a country with weak policies in refugee management. It also exposed Kenya as a country that is inconsistent and highly incoherent in the practice of its international responsibility of providing protection to refugees. Regardless of the suspension, some refugees living in urban centres were arrested and forcefully taken to the camps.
2.4 Background of Dadaab Refugee Camp

Dadaab refugee camps are located in Garissa County covering about 50 square kilometers within an 18 kilometers radius of Dadaab town and only about 100 kilometers away from Somalia. The nearest major town is Garissa, which is the headquarters of Kenya’s North Eastern Province (but now scrapped by the Constitution of Kenya 2010). Garissa town is the head office for the newly created County of Garissa in which Dadaab is located. The local populations consists of Kenyan Somalis who are nomadic pastoralists (Taylor, 2011).

In May 2015, Dadaab refugee camp was described by a UNHCR Report (2015) as the fourth largest population centre in Kenya after Nairobi, Mombasa and Kisumu, and its five small camps collectively constituted the world’s largest refugee settlement.

Dadaab hosts people who have fled civil war and conflicts in southern Somalia. This includes Somali Bantus, a Somali ethnic minority group. According to Bradbury & Healy, (2010), most of Somali refugees in Dadaab migrated from the Gedo region, Southern Jubba Valley, Bardera, Mogadishu and Kismayo. A UNHCR Report (2016) showed that by end of July 2016, the Dadaab refugee complex had 350,000 refugees and asylum seekers in its five smaller camps, 95% of whom were from Somalia.

2.5 The Protection Environment in Dadaab Refugee Camp

The Government of Kenya has historically seen the presence of Somali refugees in Kenya as a security threat. As a result, Somali refugees have often found themselves exposed to abuse of human rights including denial of basic protection rights and forceful deportation. About 92 Somalis with valid refugee claims were deported from Kenya back to war torn Somalia in March 2009. The Government of Kenya however denied claims of forceful

In 1992, the UNHCR set up prima facie as the procedure for refugee status determination. This procedure was the only one in place then, although the Government of Kenya continued to consider the adoption of legislation which would establish a procedure for the determination of refugee status in Kenya (Hyndman & Nylund, 2010).

Before 2016 when the Government of Kenya suspended the prima facie refugee status determination, it had since 1992 been applied for majority of Somali refugees and South Sudanese refugees who arrived directly from their countries (UNHCR, 2016). According to Hyndman & Nylund (2010), on the basis of Article 1.2 of the 1969 OAU Convention, other African asylum seekers may also be issued with refugee status on prima facie basis.

There is a significant literature gap in the application of prima facie determination of refugee status in Kenya. Prima facie refugee status is generally issued when asylum involves mass movements that would make individual determination difficult. Although the 1951 Convention only has provisions of giving status to individual claims, it does not contradict the use prima facie basis refugee determination. There is limited and inconclusive evidence in available literature as to whether such has been the case for Somali refugees since 1992 but this study sought to find the needful hard evidence.

Although there is some mention of the application of the prima facie refuge policy in Kenya by Hyndman & Nylund (2010), they do not define which category of refugees are considered prima facie.

There is also some gap in the available literature as to why and on what basis some refugees in Kenya are required by the government to reside only in refugee camps yet the Refugee
Convention expects that all refugees should have freedom of movement within their host countries.

According to Musau (2000), a former refugees’ officer with UNHCR in Kenya, refugee protection work in Dadaab refugee camps usually involves addressing refugee grievances. This may include registration activities and assistance in securing long lasting solutions. It may also involve helping the government to ease the movement of refugees by issuing travel documents and observing the administration of justice as well as holding them accountable in observing basic human rights.

Musau (2000) further notes that during the time, protection teams were highly relied upon by refugees for every transgression. Refugees held UNHCR in high regard to the extent of almost considering it a super government. Having their complaints heard by UNHCR protection officers was perceived as a big step towards having it resolved. He further explains how UNHCR protection staff were perceived as almost equivalent to private counsel. On the flipside, to UNHCR protection officers, there was great satisfaction that when one could help a refugee to have a conclusive resolution to a problem. This required listening skills, analytical skills and patience. It was also necessary for one to be accommodative to refugees’ cultural values and be able to deal with frustrations and disappointment from time to time.

According to Musau (2000), there was a bit of a challenge in delivery of services for UNHCR especially in areas that were part of its mandate but could easily be misconstrued as treading on state sovereignty. One of these challenging activities included registration of refugees. There were instances whereby local Kenyan Somalis presented themselves to UNHCR for registration as refugees without getting noticed. The UNHCR had a huge
struggle in differentiating Somali refugees from local Somalis who in most cases belonged to the same clans.

The option of refugee resettlement to third countries was highly attractive to many refugees. Many Somali refugees saw resettlement to third countries as a gateway to very good life abroad and the desperation to get resettled could often have them report non-existing protection problems with a keen eye in getting considered for resettlement to third countries by the UNHCR (Abuya, 2004).

Both Abuya and Musau however do not highlight how these problems presented by Somali refugees’ desire for protection were resolved. There is no available literature with details as to whether the Government of Kenya was aware of its own citizens disguising themselves as refugees in order to benefit from the UNHCR.

In the 1990s, criminal transgressions in Dadaab camps were often resolved using the traditional maslaha criminal justice system that laid emphasis on community burden sharing as opposed to individual criminal culpability. Due to male domination, the Somali culture often exposed women and children to negative practices that would ordinarily be punishable by law. These included Female Genital Mutilation (FGM), early forced marriages, women exclusion from key decision making including being part of the maslaha courts. At times, men could sell food rations apportioned to the family in order purchase a recreational drug called khat or otherwise locally referred to as miraa (Abuya, 2000).

Abuya (2004) finds it a concern that Female Genital Mutilation (FGM) went unreported by many refugees. Anybody who protested the act was seen as being against community wishes.
On their part, Wangui et al., (2012) indicate that in the protection of refugees, stakeholders have had to deal with the challenge of facing the reality that FGM is generally accepted by the Somali community. Those who went against the wishes of the community were given special protection by government authorities and some NGOs, but it was handled discretely so as not to cause discord uproar in the community (Wangui et al., 2012).

Issues of gender mainstreaming have been difficult to resolve in Dadaab camps because of the well rooted fear for persecution. Men who are traditionally seen as breadwinners and protectors in the community often see themselves as disempowered whenever there are efforts to empower women. Some even often claim that women are nowadays getting preferential treatment over men. There have been acts of antagonism and retaliation from aggrieved men who perceive that women are getting preferential treatment (Wangui et al., 2012).

Wangui et al., (2012) further argue that most refugees in Dadaab camps no longer need humanitarian support owing to their abilities to be fully independent. Some have abilities to move across the Kenya Somali boarder for trade, while using their refugee status as a safety net without the consent, or knowledge, of Kenyan authorities or the UNHCR. They however do not explain under what circumstances this has happened and when exactly it started occurring, which is what this study sought to establish.

Musau (2000) on his part observed that a class of refugees existed and had commercial operations that stretched across the border to Somalia. He argues that these refugees had the means to disrupt life in the camps by posing security challenges. He however does not give any details how serious of a security threat this was inside and around refugee settlements. There is no literature with examples of what security challenges were caused by this phenomenon described by Musau.
By the year 2000, prolonged dependency was already causing lethargy to some refugees. The refugees that had been born and schooled in Kenya could simply not go back to Somalia which they considered to be foreign to them and unstable (Abuya, 2004).

In overall, the available literature provided above did not provide sufficient data on the changing trends and the transformation of practices in Dadaab that this study really needed to demonstrate. These are the literally gaps this study endeavored to fill.

2.6 Theoretical Framework

2.6.1 Resilience Theory

This study was guided by resilience theory. Resilience theory has evolved over time where it started as an enquiry into causes of resilience and grown to become a broad, dynamic and exciting field addressing individuals, families, communities, workplaces and policies. Community resilience include social support systems in place to help a community adapt in a hardship environment while resilience based policy focuses on strategies or programmes aimed at helping individuals or communities to stand again. Protective factors and risk factors determine resilience. Risk factors are considered to be elements that threaten resilience. They include discrimination, occupational restrictions and isolation (Zauszniewski, Bekhet & Suresky, 2010).

On the other hand, factors that cause resilience are known to be protective factors. They produce desired outcomes by responding to stress and strain. The seven ways of overcoming adversity to become flexible, resilient and stronger include acceptance, self-efficacy, optimism, hardiness, mastery as well as resourcefulness and coherence (Zausniewski et al., 2010).
Acceptance entails tolerance of what is perceived to be undesirable behaviour and being able to understand the value and importance of that behaviour. Acceptance requires understanding that one cannot change someone’s behaviour, but rather their perception of it. Hardiness requires internal strengths that may include behavioural flexibility, commitment and endurance. By accepting the challenge and trying to resolve problems actively, one becomes resilient (Zausniewski et al., 2010).

Zausniewski et al., (2010) describe mastery as being able to control one’s situation, or believing that one is a master of their outcome. It is a coping mechanism that makes one to be adaptable. Optimism emanates from having interpersonal relationships and positive memories that can make one to have fresh insights.

One develops self-efficacy by believing that they are competent and confident to handle stressful situations. By having a sense of coherence, one is confident anything in the world in manageable. On the other hand, resourcefulness requires one to be prudent, to have positive thoughts and to be willing to seek help from others when necessary (Zausniewski et al., 2010).

This theory provides a conceptual background needful for considering strengths-based approaches in understanding refugee management. Fergus and Zimmerman (2005) identify two types of assets, resources and promotive factors that individuals possess. They include self-esteem and self-efficacy which are considered to be assets in building up confidence. Other factors such as family support and support programs are referred to as resources and these can provide refugees with opportunities to learn and practice skills. This theory therefore applies very strongly to the Somali refugees’ context in Dadaab refugee complex. The protracted situation in Dadaab and the resilience of refugees to a point of having made
a choice to continue staying despite the risk factors can be attributed to the promotive factors that Fergus and Zimmerman describe above.

In their continued stay in Dadaab, Somali refugees have also shown resilience through protective factors that Zausniewski et al., (2010) describe to include optimism, self-efficacy, acceptance, mastery, hardiness and a sense of resourcefulness and coherence. The resilience of Somali refugees in Dadaab has also been manifested perhaps through social support systems and programs that have been put in place to help the community adapt in a hardship and helped individual refugees to re-establish themselves.

2.6.2 Kunz’s Typology Refugee, Rogge Typology African Refugee & Kibreab’s Theories

Other theories reviewed but found weak to explain refugee management are Kunz’s Typology Refugee Theory, Rogge Typology African Refugee Theory and Kibreab’s Theory. Kunz’s Typology Refugee Theory classifies refugees into categories. In order to explain how refugees can be classified, Kunz divides them into three depending on attitudes towards displacement (Kunz, 1981).

Although Kunz’s categorization may best describe Somali refugees and determine their motivation for seeking international protection and their continued stay in the camps, it is just descriptive and focuses on risk factors rather than positive outcomes of refugee management.

Rogge typology African refugee theory is another theory that was considered for this study but was not used owing to its weaknesses. The theory categorizes refugees based on their reasons for seeking flight from their home countries and their reasons for seeking asylum
(Rogge, 1979). This theory was considered weak for this study because it cannot fully argue for refugees in a protracted situation like Somalis in Dadaab.

Another theory which was considered for this study is Kibreab’s theory. It states that a mix of social-economic issues can lead to people fleeing their countries for asylum. But each of these people fleeing is impacted differently (Bialczyk, 2008). This theory is however weak because it also cannot fully argue for refugees in a protracted refugee situation like the Somali in Dadaab.
CHAPTER THREE

RESEARCH DESIGN AND METHODOLOGY

3.1 Introduction

This chapter entails the research approach that was adopted in this study. It has details on the plan and technique that helped shape this study. It describes the study type, data collection procedures, where the study was conducted and the population among which it was conducted. It gives a scope of the study and explains the study management of logistical requirements.

3.2 Research Methodology

This study used qualitative methods to collect data. The qualitative methodology was appropriate because this study was exploratory in nature, which sought to gain an understanding of underlying reasons, opinions, and motivations of prolonged stay of Somali refugees in Dadaab and how they experienced international protection over time. The methodology allowed free interaction between researchers and respondents because the questions asked were open ended. Respondents responded to questions in their own words and this allowed researchers to make interpretations and to probe where necessary.

3.3 Research Design

This study employed descriptive research design. Information was collected by use of interviews. This was the most viable way to conduct this study because it allowed informants to provide information about their experiences of international protection and how it has evolved over the period that they have been residents of the study locale, considering the many changes in Kenya’s asylum regime.
3.4 Research Locale

The study was conducted within Dadaab refugee camps in Garissa County, Northern Kenya. Dadaab camp has five camps including Ifo, Hagadera, Dagahaley, Kambioos and Ifo 2. Hagadera and Kambioos are located in the Fafi district while Ifo, Ifo 2 and Dagahaley are located in the neighbouring Lagdera district. Refer to the map in Appendix IV.

The study focused in Hagadera, Dagahaley and Ifo camps which were first established in the early 90’s when Dadaab received a huge influx of refugees from Somalia. Many refugees in camps established in 1991 (Ifo, Dagahaley, Hagadera) have children and grandchildren born in these camps. In contrast, most refugees in the new camps (Ifo 2 and Kambioos) arrived during the 2011 famine emergency in the Horn of Africa.

3.5 Target Population

According to a UNHCR Report (2016), the total population of refugees in all five camps in Dadaab by 2016 was 350,000. The three old camps which were the focus of this study had a total refugee population of 278, 700 (Hagadera 106,800, Dagahaley 87,700 and Ifo 84,200). Among this population, Somalis comprised a total figure of 267,552 which was 96% of the total population in the three old camps. Only 40% of the population was above the age of 18 years among which 51% were women and 49% were men. The head of the household was the subject of this study. The UNHCR Report (2016) further showed that each household in all the five camps had an average of eight household members. Data was also collected from key informants from experts in refugee matters and agencies operating in the three camps.
3.6 Sampling Techniques and Sample Size

3.6.1 Sampling technique

Data was collected from households because heads of households were the subjects of the study. The study used snowball and purposive sampling to identify study respondents. Purposive sampling was used to select key informants who by virtue of the positions that they held in the camps and level of expertise have knowledge on the subject matter. Snowball sampling was used to select refugees’ household heads in the three camps.

This method was found suitable because refugees who lived in the camp for a long time are more likely to know each other. From this sample, refugee identity card holders were selected to be the respondents because that was proof that they were refugees and were above the age of 18 years.

3.6.2 Sampling Technique and Sample Size

The study utilized a mix of snowballing and purposive sampling as techniques. Purposive sampling was necessary because participants were considered to have key information for the study.

Snowballing sampling was used because of the sensitive nature of the study. It therefore required the knowledge of insiders to determine and locate respondents. Household heads are the decision makers in a family unit and they handle matters affecting their families hence the choice of household heads. The study focused on Somali refugees in the three camps above the age of 18 years who were heads of households. In all three camps, some households were headed by women. Therefore, both genders had a probability of being heads of households with purposive and snowballing sampling.
Based on information from a pilot study and data from a UNHCR Report (2016), there were an average of eight family members in each of the 30,000 households in all the three old camps in Dadaab. For a sample size of 100 heads of households, there were a total of 10 FGDs conducted in all the three camps; 4 FGDs in Hagadera camp, and 3 FGDs each for Dagahaley and Ifo camps. The study also engaged 6 key informants.

3.7 Research Instruments

The study sample comprised of people of similar backgrounds. Three research instruments were used to collect data from these respondents. They comprised of Focus Group Discussions (FGDs), questionnaires and interview schedules.

Research has shown that it’s easier for people to feel confident and comfortable in a group with peers compared to one on one discussion. FGDs setups help to get detailed insights from participants including how they feel about particular topics, and their beliefs and understanding of a problem in question (Uskul, 2004).

The study relied upon one lead researcher (the author of this report) and three researcher assistants who helped to conduct a pilot, fill out the questionnaires in the main study and later translated the findings from Somali to English. The main researcher gave instructions and supervised the work of the research assistants with constant follow-ups in person and on phone calls. This ensured that the right sampling procedures were used and ethical considerations were followed through. Spoilt questionnaires were replaced with new ones and in total, 100 properly filled questionnaires from each of the 100 FGD participants were received by the lead researcher for analysis.

Before the main study, a pilot was conducted in two camps; Ifo 2 and Kambioos, to test the usability of research instruments and how best they would be utilized for this study.
Respondents in these two camps did not take part in the main study. Somali refugees were randomly selected in the two camps by three research assistants to participate in a pilot study. In this pilot, the study tested the relevance of the research instrument including the mode of moderation in FGDs and recording of data, the level of participation for respondents, the usability of language and the amount of time spent to collect data for each research instrument. Besides the pilot, the study also relied upon information from studies previously conducted in Dadaab refugee camps that utilized similar research instruments.

3.8 Data Collection Techniques

Primary and secondary data were relied upon for this study. Primary data was obtained through focus group discussions and key informant interviews through which respondents expressed their own thoughts and responded to questions. There were a total of 10 FGDs conducted in all the three camps; 4 FGDs in Hagadera camp, and 3 FGDs each for Dagahaley and Ifo camps. In each FGD, there were eight to twelve participants from sampled household members. Three research assistants helped with the identification of research respondents and setting up of FGDs. For key informant interviews, the study engaged six experts in Kenya’s asylum regime and the story of Somali refugees in Kenya. They shared knowledge on their familiarity with refugee affairs in Dadaab camps. Primary data was supplemented and corroborated with secondary data from published books, reports, journals, statutes, theses, dissertations, and websites.

3.9 Data Analysis

The study was conducted in the Somali language. Primary data was transcribed, translated into English by three research assistants and themes and categories were extracted from the data by the lead researcher. The research employed contextual analysis of data, which
means that text from the questionnaires was put into the context of historical and situational setting. The secondary data were interpreted by subjecting them to textual analysis and examining their relevance. For both sets of data, meanings were formulated from significant statements, then organized into themes, clusters and categories. Specific themes/categories were highlighted in colour codes to do a preliminary analysis.

3.10 Logistical and Ethical Considerations

Logistical considerations

For any research to be conducted in Dadaab refugee camps, a written permit must be sought from Kenya’s Department of Refugee Affairs which was disbanded in May 2016 and replaced by the Refugee Affairs Secretariat (RAS). Three research assistants who speak the Somali language and who understand how to conduct research were recruited from the study locale to assist with interviews and FGDs.

Ethical considerations

For each individual member of the selected sample, permission was sought before s/he was involved in the study. All respondents signed a permission document indicating that they clearly understood the intentions of the study and that their views were only to be used for academic purposes. Considering the protection necessity for refugees, research assistants indicated to FGD participants that their identities would not be revealed in the findings of the study. This is why in presenting and analysing the findings, only the first names of FGD participants that were used. For presenting findings from key informant interviews, the study did not use the real names of the six key informants. The agencies in which they work were also not revealed to avoid the risk of their identification. In place of their real names, the study gave them pseudonyms to protect their identities.
CHAPTER FOUR

DATA ANALYSIS & PRESENTATION OF FINDINGS

4.1 Introduction

This chapter outlines the findings of this study and covers what characterized two periods (1991-1999, 2000-2016) in terms of policies put in place and their legal and social implications. It also looks at the deterioration of security in Kenya after 2011 and its influence to the living conditions of Somali refugees in Dadaab camps. It gives a detailed analysis of findings from the study while at the same time giving context to the policy practice in all the periods. The key findings are analysed as obtained from respondents’ feedback and data from key informants, FGD discussants and secondary data.

4.2 Siad Barre and the Conflicts in Somalia

According to Samatar (1998), there were three major armed conflicts in Somalia between 1977 and 1991. The Ogaden war with Ethiopia occurred between 1977 and 1978 when Somali forces and Somali rebel fighters sought to liberate the Somali region of the Ogaden. This war was disastrous because Somalia lost and suffered 25,000 causalities. This created internal hatred among various ethnic divisions which also led to formation of liberation movements aimed at overthrowing the regime of Siad Barre who was considered the obstacle in the liberation (Samatar, 1998).

Samatar (1998) observes that the first of these movements was the Somali Salvation Democratic Front (SSDF), established in 1978 by Abdullahi Yusuf. This mainly Majerten clan movement engaged the regime in periodic skirmishes in the northeast of the country and was met with harsh repression.
Another civil war in Somalia occurred in 1988 involving the Somali national military and a liberation movement called Somali National Movement (SNM). The bone of contention was to have control over northwest Somalia (Samatar, 1998). According to Bongartz (1991), about 50,000 civilians were killed in this war, mostly from the Isaaq clan whose members constituted the Somali National Movement. The war also caused thousands of Somalis from the city of Hargeysa to flee for asylum in Ethiopia with more getting displaced within Somalia. As a result, members of the Isaaq clan began demanding for secession. In 1991, an autonomous state of Somaliland was declared.

In 1989 and 1990, another conflict ensued between government forces and several clan-based liberation movements. Some of these movements included the Somali Salvation Democratic Movement of the Majerten clan, the Somali Patriotic Movement of the Ogaden clan and the United Somali Congress of the Hawiye clan (Samatar, 1998).

Besides the civil wars, other factors fueled the conflicts. These included oppression and exploitation by politicians in the Siad Barre regime. They also included divide and rule tactics pitting clans against each other. This was also the height of the cold war between United States and the USSR when states in the Horn of Africa including Somalia, were getting military funding and economic aid from western states. The funding led to internal wrangles that ultimately led to the overthrowing of the Siad Barre regime which rendered Somalia into anarchy with unresolved clan conflicts (Bongartz (1991).

The anarchy led to the rise of militia groups that sought to have control of major cities and towns within Somalia. The situation got out control leading to the outpouring of refugees into Kenya and Ethiopia (Samatar, 1998).
4.3 International Protection of Somali Refugees in Dadaab; 1991-1999

Background based on secondary data

By March 1991 when the first camp was established, Kenya was hosting about 30,000 Somali refugees. In 1991, the Government of Kenya set up eight refugee camps at the coastal border between Kenya and Somalia, in Dadaab and in Kakuma (Lindley & Hammond, 2014).

Prior to 1992, there was an open asylum policy in Kenya where the government conducted individual status determination to people seeking asylum. The sheer number of new arrivals in 1991 caused the government to abandon its open asylum policy. Management of refugee affairs was the responsibility of UNHCR on behalf of the Government of Kenya (Lindley & Hammond, 2014).

The Government’s strategy in 1992 was to contain refugees in the camps located in remote areas of the country, while offering them temporary protection. Lindley and Hammond (2014) note that the government was not keen on relocating the camps further inland due to security concerns. Even though six of the camps along the Kenya Somali coastal border were later closed in 1994, Dadaab and Kakuma camps did not get closed.

Prior to the mass influx of the early 1990s, the Government of Kenya’s Eligibility Committee, conducted individual Refugee Status Determination (RSD) interviews, applying the definitions of the 1951 Convention as contained in the Kenya Immigration Act, which defined a refugees as individuals with well-founded reasons for seeking asylum in neighboring countries. During this period, the UNHCR continued to undertake the role of a donor and an observer during eligibility interviews (Abuya, 2004).
However, with the mass influx of Somalis, the caseload that UNHCR had to handle increased and expanded from urban areas to huge operations in refugee camps. It took over the registration and management of refugees and began issuing mandate letters that entitled refugees to assistance in the camps and protection from *refoulement* (Abuya, 2004). This category of refugees was not permitted to work in Kenya and was technically confined to Dadaab and Kakuma refugee camps. Kenya ratified the 1969 OAU Convention in 1992 and this was applied alongside the UNHCR mandate definition (Refugee Convention, 1959). For Somali refugees, refugee status determination began in 1992 and was done on prima facie basis (Taylor, 2011).

Despite the absence of specific legislations on the management of the refugee situation in Kenya, the human rights provisions in Chapter V of the then Constitution of Kenya, allowed some recognition of the rights of refugees residing in Kenya. It dealt with the protection of basic rights and freedoms of all individuals (Constitution of Kenya, 1963).

Section 70 stated that every person in Kenya was entitled to the fundamental rights and freedoms of the individual; whatever his race, place of origin or residence or other local connection, political opinions, color, creed or sex. This was subject to the respect for the rights and freedoms of others and for the public interest to the right to life, liberty, security and protection of the law (Constitution of Kenya, 1963).

By interpretation and implication, according to Abuya (2004), the fundamental rights and freedoms were to be accorded to 'persons', rather than 'citizens', hence their application to refugees, unless there was a good reason not to do so.

The Immigration Act, 1967 was passed ideally to govern orderly immigration into Kenya. Section 4 of the Act prohibited non-citizens from entering Kenya unless they were in
possession of valid entry permits. Violation of this requirement rendered the person’s presence in Kenya unlawful (Immigration Act, 1967).

According to Abuya (2004), in the Immigration Act, there was specified a list of various classes of entry permits to be issued to people who wished to enter Kenya. Of relevance to refugees was the Class M permit, which incorporated the refugee definition as provided under the 1951 Refugee Convention.

Abuya (2004) however notes that the Immigration Act, 1967 was, silent on the 1969 OAU definition of a refugee and this was probably because it was not meant to regulate refugee situations per se. Also, the Immigration Act, 1967 was adopted before the enactment of the OAU Convention two years later.

In majority of the cases, Abuya (2004) finds that the provisions of the Immigration Act, 1967 were applied alongside those of the Aliens Restriction Act, 1973. In contrast to the Immigration Act, the Aliens Restrictions Act did not make any direct mention of the term “refugee” but in Abuya (2004)’s interpretation, the use of the term ‘alien’ could mean any person who was not a citizen of Kenya.

Under the Aliens Restriction Act, 1973, the Minister in charge of Migration could impose from time to time, restrictions on aliens, including designated locations of residence. To Abuya (2004), this was arguably the basis for the refugee encampment policy in 1992. He further argues that the need to have a refugee specific legislation led to the very first Refugee Bill in 1994 championed by the civil society. Efforts to have the Refugee Bill, 1994 enacted into law were however frustrated by the government which resulted into its lapsing.
The findings below were obtained by analysing the dynamics of international protection of Somali refugees under various protection components. The components include Refugee Status Determination, freedom of movement, physical security, the right to work, the right to basic services, access to justice, and durable solutions.

4.3.1 Findings on Refugee Status Determination

From the onset of refugee arrival in Kenya, the country lacked well-established institutions and structures of determining refugee status. However, two years after the influx in 1991 the department of Home Affairs created the National Secretariat for Refugees (NSR) in 1993, which was mandated with overseeing the relief activities of displaced people (Likosky, 2002).

There existed a quandary in the structural and institutional framework in Kenya in relation to refugees. More so, the Ministry of Home Affairs and the Immigration Department were often depicted as being in constant conflict over the issue long before the influx of 1991. For instance, while under the mandate of the 1967 Immigration Act and 1973 Aliens Restriction Act, the immigration department held that they were legally bound to handle refugees in Kenya (Likosky, 2002).

Writing about refugee encampment, Turton (2005) affirms that prior to 1993, the Government of Kenya had refugee determination processes administered under the Immigration Act 1967. The few asylum seekers registered were issued with refugee identity cards by the Government of Kenya and were referred to as Convention refugees.

However since the government’s discontinuation of state refugee status determination in 1992, this responsibility was shifted to the UNHCR who registered refugees and gave them

Konzolo (2014) on his part argues that due to the fact that refugee status determination was administered under the Immigration Act, cases were heard and determined by immigration officers under the Eligibility Committee appointed by the Minister of State in charge of immigration affairs in Kenya.

A discussion with Kiragu, a refugee protection specialist who began working in Dadaab in the early 1990s revealed that due to the lack of a particular law concerning refugees, the Aliens Act, 1973 was mainly used to control refugees in Kenya, although the Immigration Act, 1967 was also used in some instances (Kiragu, KII, 05/11/2016). He however pointed out a major weakness with the Aliens Act:

Whereas the Immigration Act, 1967 classified an alien as any individual who was not a Kenyan national, it failed to clearly distinguish aliens from refugees.

The law was principally enacted to regulate the movement of aliens within the state but at the time of its enactment, the refugee problem was not envisaged or clearly thought about. The law in its application denied refugees their rights and privileges as provided for in the international conventions including the right to proper refugee status recognition and registration (Kiragu, KII, 05/11/2016).

Kiragu found the Immigration Act to be weak because it was silent on steps one required to obtain refugee status. The OAU convention was not incorporate in its definition of a refugee. He therefore noted that for this reason, many asylum seekers would technically be found to be residing illegally in Kenya (Kiragu, KII, 05/11/2016).
Many Somali refugees in Dadaab during in the 1990s, owing to their reasons for flight and the distinctive appearance were issued with refugee status on *prima facie* basis which in essence meant the recognition by Kenya, of mass influx situation of refugee status on the basis of the readily apparent, objective circumstances in Somalia that had given rise to their exodus to Dadaab (Konzolo, 2014).

Upon entering Kenya at the Kenya Somalia border in Liboi, they were relocated to one of the three camps in Dadaab - Ifo, Dagahaley or Hagadera where they were declared as refugees by the UNHCR upon registration (Taylor, 2011).

Kiragu however noted that despite the use of prima facie status recognition, it was a practice that asylum seekers suspected to have been involved in military crimes or crimes against humanity would not be issued with refugee status on prima facie basis. He also noted that asylum seekers from some parts of Somalia, including Somaliland and Puntland had to undergo individual refugee status determination because they did not fall into the category of those to be recognised on prima facie basis (Kiragu, KII, 05/11/2016).

Kiragu also indicated that within a certain period of arrival in Kenya, asylum seekers were not required to make an application. They also did not get denied their right of refugee status determination simply because they travelled through another country before arriving in Kenya. He explained that asylum was only denied if an asylum seeker had found protection in another country but chose to move on to Kenya. He however found that for those that had to undergo individual status determination, the process was cumbersome and too prolonged (Kiragu, KII, 05/11/2016).

Yusuf (*identity protected with revelation of only one name*) a 57 years old participant in an FGD at Hagadera camp mentioned that his refugee status was determined by the UNHCR
in 1994. Upon arrival in the camp in 1991, he only obtained his refugee status in 1994 because he was not from South Central Somalia (Yusuf-Hag, FGD, 07/11/2016). He explained how his experience towards obtaining refugee status was tiring. While there were leaflets placed at UNHCR’s Hagadera camp field offices explaining the refugee status determination process to refugees, they were not consistently distributed. Also, the information posted on the UNHCR notice boards was often not sufficient and one had to book an appointment with UNHCR protection officers for details. It was difficult to understand and follow through the entire status determination process. He together with fellow asylum applicants were not provided with independent legal advice prior to undertaking the status determination interviews but were rather only counseled by UNHCR staff during the interviews with the help of interpreters (Yusuf-Hag, FGD, 07/11/2016).

Fatuma on the other hand was barely 19 when she fled Garowe in Somalia and undertook prima facie refugee status determination together with her husband in Kenya’s Ifo camp in 1997. While Fatuma and her husband were immediately recognized by UNHCR as prima facie refugees upon application, she mentioned that some fellow women, especially those with small children were made to wait several hours and sometimes several days to be issued with mandate certificates. She was concerned that female applicants were interviewed by male UNHCR officials and interpreters when female officials should have done the job. She also remembered that in her camp, women applicants were attended in the same room as men and therefore, there was no sense of privacy (Fatuma-Hag, FGD, 07/11/2016).

On his part, Yusuf recalled of a situation where his friends’ refugee statuses were rejected by the UNHCR. Their food rations were taken away and they were required to go back to Somalia in convoys that would be facilitated by the UNHCR or make appeals. They
however could not make appeals or return to Somalia but choose to continue staying in Dadaab (Yusuf-Hag, FGD, 07/11/2016).

These revelations indicate that refugee status determination in Dadaab in the 1990s was not a smooth process, owing to lack of clarity on administration of interviews and the cumbersome nature of the processes. Findings on refugee status determination in Dadaab in 2000s are analyzed in page 70.

4.3.2 Physical Security in the Camps

Physical security is essential for international protection of refugees. It may include securing the residences of refugees and providing them with safety. A Human Rights Watch (1993, p. 41) noted that physical security was a major problem in the early 1990’s. It documented incidences of rape, physical attack and robbery in the three camps of Dadaab complex.

These crimes were allegedly perpetrated not only by refugees themselves but also by local Kenyan Somali people who would easily disguise themselves as refugees to receive aid (Human Rights Watch, 1993).

It could have been possible for there to be large scale returns to Somalia, had there been good security environments in Dadaab camps in the early 1990’s. Poor security hampered the administrative capacity of UNHCR and its partners to facilitate any meaningful mass voluntary repatriation of Somali refugees (Hammond, 2010, p. 33).

The lack of a specific law of managing refugee affairs during this period exposed refugees to situations where their fundamental rights were not fully respected. Important functions that ought to have been carried out by the state including reception of asylum seekers,
registration, refugee status determination and camp management were instead carried out by the UNHCR (Crisp, 1999).

Crisp (1999) further argues that refugee affairs were handled by more than one government ministry, something that was a direct consequence of not having a refugee specific law in Kenya. The main office for refugee affairs was the National Refugee Secretariat which had three workers and with very little capacity to provide any policy guidance on management of refugees in Kenya. The Secretariat therefore mainly relied upon support from the UNHCR and other offices within the Government of Kenya (Crisp, 1999).

The other government departments that had influence on management of refugees in Kenya included the Police Department, the National Registration Bureau, the Department of Immigration, the Intelligence Service, the Attorney General’s Office, and the Kenya National Human Rights Commission (Mogire, 2004).

A discussion with Keitany, a former aid worker in Dadaab camps revealed that despite refugee affairs cutting across various government departments and within international agencies based in Dadaab, the Government of Kenya was responsible for providing refugee camps. She mentioned that in Dadaab, there was one police station in the town where relief agencies were housed and one police post in each of the three camps (Keitany, KII, 10/11/2016).

Keitany further recalled how refugees participated in ensuring their own security through a security committee that organized monthly security meetings, refugee guards for the markets and regular refugee patrols (Keitany, KII, 10/11/2016).

In spite of these arrangements, Dawuud, a 45 years participant of the FGD in Dagahaly camp who himself was actively involved in community security matters in the camps
throughout the 1990’s talked about sporadic incidents of banditry and rape that continued
in the camps for years (Dawuud-Dag, FGD, 08/11/2016).

There were also hostilities between members of the host community and refugees as
well as between refugees themselves. Refugees in my neighborhoods received threats
from fellow refugees based on clan differences, ethnicity, political opinions and
family conflicts (Dawuud-Dag, FGD, 08/11/2016).

On her part, Keitany also recalled how the desire for resettlement to third countries
complicated the security picture in the camps. Here are her sentiments. She described how
some refugees often sought to portray themselves to be at risk in order to qualify for
resettlement to western countries. Some Somali refugees even took extreme measures such
as inciting other refugees and burning down their own houses in order to appear vulnerable.

Abdullahi, an FDG participant from Hagadera camp who was a teenager in 1990s agreed
that the security situation in the camps would sometimes get complicated but blamed it on
lack of income generating opportunities for self-reliance and the absence of foreseeable

Shukri, an FGD participant from Ifo camp who was getting into adulthood in the mid-1990s
talked of what she called despicable practices in the camps that threatened the physical
security of many girls. Forced marriages were a common practice and they took place in a
variety of different contexts. This included situations in which a woman could be forced to
marry a deceased man upon which she would get impregnated by one of his relatives as a
way to preserve his lineage (Shukri-Ifo, FGD, 09/11/2016).

She also talked of the pressure upon young girls to undergo female genital mutilation:
Our mothers were also pressured to ensure the practice was not abandoned. Most often, any woman or man who attempted to resist or report the practice to UNHCR or police would be physically bitten or get ostracized by the community. The verbal harassment was more rampant in schools (Shukri-Ifo, FGD, 09/11/2016).

Shukri mentioned of cases of relatives who could have girls undergo the “cut” without the knowledge of their parents. She argued that it was difficult to get rid of the practice because one doing so would risk going against the cultural beliefs of the community which included the practice of female genital mutilation for purposes of purity and eligibility for marriage (Shukri-Ifo, FGD, 09/11/2016).

Incidents of extortion and harassment by the police were also cited as a common occurrence during the 1990s period. They were more rampant during Kenya’s national elections in 1992 and 1997 than the other years. Many FDG participants claimed to have had their security threatened in one way or another. For instance, Abdullahi talked of extortion and rampant police harassment situations in his Hagadera camp in the 1990s. To him, the presence of the police in the camps did not improve security. If anything, it made things worse especially because it often caused retaliation and mistrust against refugees who were seen or appeared to work closely with the police (Abdullahi-Hag, FGD, 07/11/2016).

4.3.3 Freedom of Movement out of Camps

Due to the encampment policy in Kenya in 1991, all refugees with prima facie refugee status were required to settle in refugee camps. This limited their freedom of movement within Daadab and its environs despite the fundamental right of refugees to move freely.
being enshrined under the Geneva Convention which Kenya had already ratified during the 1990s (Hyndman & Nylund, 2010).

Refugees residing in the camps needed to obtain a movement authorization, which was prepared by the UNHCR and authorized by the Government of Kenya’s District Officer, Dadaab division, in order to move out of camps. The District Officer would receive requests from refugees which it would approve or deny. The approved requests were then forwarded to UNHCR which was required to prepare movement authorization for the District Officer to append a signature (Turton, 2005).

It was a requirement that those refugees who had been issued refugee status by the government or commonly referred to as convention refugees routinely be issued with Convention Travel Documents (CTDs). On the other hand, issuance of travel documents to those refugees who obtained their refugee status determination from the UNHCR; or the so-called Mandate refugees was discretionary. This category was required to give justification for their requests. From the Kenya Department of Migration, the UNHCR often facilitated the processing of travel documents for those refugees in the resettlement pipeline and who were due to travel to third countries for resettlement (Likosky, 2002).

At any given time, the UNHCR needed to endorse new applications for travel documents while renewals were usually automatically granted. These CTDs were provided free of charge, were valid for two years and had no geographical restrictions. Issuance of CTDs to the Mandate Refugees category where many refugees in Dadaab belonged was a little less flexible and it took longer processing than for Convention Refugees (Likosky, 2002).

A discussion with Kamau, an expert in the UNHCR’s operations since 1991, revealed that movement passes could be issued for reasons related to education, medical treatment or...
other reasons that would be determined as compelling enough. He noted that during his stay in Dadaab between 1994 and 2005, it was not a guarantee that one would obtain a movement pass. As a result, many refugees left the camps without seeking authorization, or even overstretched their authorized stay, counting on the possibility bribing the police to get their way back to the camps (Kamau, KII, 11/11/2016).

He further indicated that travelling with movement authorizations, which included a digital picture, was limited to only about 15 days for individuals travelling to attend to personal matters and one month for individuals travelling for medical treatment. Students would be issued with renewable travel authorizations of up to one year (Kamau, KII, 11/11/2016).

Hodhan, an FDG participant from Ifo camp however complained that passes, especially those requested on personal grounds were unreasonably restrictive in terms of duration. She noted that during holidays, movement passes for personal reasons were generally denied, indirectly encouraging refugees to travel without authorization (Hodhan-Ifo, FGD, 09/11/2016).

Kamau also noted that sometimes and in some cases, if the movement pass issued at the point of departure from Dadaab had expired, a refugee was required to approach government offices to seek renewal. He argued that the restrictions brought about the encampment policy often denied refugees good chances of becoming self-reliant (Kamau, KII, 11/11/2016).

It was noted by Fatuma, an FGD participant from Hagadera camp that despite some refugees having movement passes, they would still face harassment from the police. She reported that refugees’ movement passes to Garissa town from Dadaab camps were made to be valid for only three days (Fatuma-Hag, FGD, 07/11/2016).
According to Kamau however, officials made this short duration of passes to counter fraud (Kamau, KII, 11/11/2016) but Fatuma felt that this was not appropriate. She argued that it would have been sufficient to consider issuing refugees with longer authorizations in order to discourage fraud among refugees (Fatuma-Hag, FGD, 07/11/2016).

For Ibrahim, an FDG participant in Dagahaley camp, possession of travel documents did not necessarily prevent Somali refugees from being arrested. He revealed that those who were arrested like he did several times in the 90s often resolved the matter without the UNHCRs assistance. They had their way of negotiating with the police which sometimes involved giving bribes (Ibrahim-Dag, FGD, 08/11/2016).

Ibrahim sometimes found the intervention of UNHCR to be handy. Whenever the UNHCR was informed of a detained refugee, it intervened to certify the status of the individual in detention and where possible, negotiated for release to avoid any possible deportation to Somalia (Ibrahim-Dag, FGD, 08/11/2016).

Kamau revealed that travel documents were also issued on protection grounds to Somali refugees who could not live in Dadaab due to protection risks. This category was always relocated to either Kakuma refugee camp or to urban areas where they could feel more secure (Kamau, KII, 11/11/2016).

4.3.4 The Right to Work

Refugees’ right to work is one of the fundamental rights highly dependent on the right to move freely. Dadaab camps being located in remote semi-arid areas, there were few employment opportunities during the 1990s (Bradbury & Healy, 2010).
Even though the old Kenyan Constitution had a provision on labor practices in Kenya, it did not clearly stipulate the rights of migrants or refugees in accessing employment. The government policy, drawn from the Immigration Act, 1967 prohibited mandate refugees from obtaining work permits (Turton, 2005).

The UNHCR and the few Non-Governmental Organizations (NGO’s) that operated in Dadaab in the 1990s were bound by the government policy which required that employment opportunities be prioritised for Kenyan citizens. The agencies engaging refugees in gainful employment risked being heavily taxed by the government or being pushed out of Dadaab. For this reason, a small number of refugees in Dadaab were engaged by NGOs to do semi-skilled jobs for which they would be compensated with an incentive pay not above the then statutory minimum amount for paying tax in Kenya which was 3,000 Kenya shillings (Carciotto & d’Orsi, 2017).

Refugees were however allowed to be engaged in entrepreneurship and self-reliance activities within their camps, some of which the UNHCR and other agencies helped them to establish (Musau, 2000).

This was indeed the case because in a discussion with Kamau, he mentioned that some refugees who lived in Dadaab in the 90s had set up small-scale shops and kiosks in the camps where they sold items like sugar, salt, bar-soaps, water jerry-cans, blankets, mattresses, kitchen utensils and beauty products. He noted that the market consisted of fellow refugees, Kenyan hosts and NGO workers (Kamau, KII, 11/11/2016). Shamim, an FDG participant in Hagadera camp was attending secondary school in the 90s. She therefore did not have means or zeal to establish a business and she mainly relied on food rations provided by the UNHCR and partners. Shamim’s mother however had established
a business early in 1992 from which she supplemented food and non-food items for her family (Shamim-Hag, FGD, 07/11/2016).

My mother would often obtain merchandise from agents based in Garissa town, though she sometimes paid bribes to travel to Nairobi to collect commodities not available in Garissa (Shamim-Hag, FGD, 07/11/2016).

Kamau revealed that the business environment in Dadaab was generally permissive during the period but refugees still faced challenges including police harassment, extortion, burglary, arson and theft. Refugees were not required to pay tax to the Government of Kenya but local county officials still asked shop owners in the camps to pay some form of tax (Kamau, KII, 11/11/2016).

Khalif, an FDG participant in Dagahaley camp also mentioned that though refugees in Dadaab made efforts to sustain themselves, their rights to work were hugely violated either directly or indirectly. As a youth in the 90s, he was not happy of the fact that he could not obtain a work permit or earn money like Kenyan citizens. He found the movement passes issued by the UNHCR for travelling out of camps limiting because it was only issued for a specific purpose and period (Khalif-Dag, FGD, 08/11/2016).

Complaining about difficulty in access to employment, Khalif shared his frustration by saying that he had a chance to get involved in small scale businesses like some of his neighbours but he had no access to any finances. He therefore spent most of his time at the WFP food distribution points in Dagahaley camp handling luggage and acting as a middle man for any food recipients who wanted to sell off their food rations to local traders (Khalif-Dag, FGD, 08/11/2016).
On small scale farming, Kamau indicated that though Dadaab was generally a semi-arid area, the UNHCR, CARE International and Lutheran World Federation (LWF) facilitated some refugees to do some farming including poultry and livestock farming for which the UNHCR provided water (Kamau, KII, 11/11/2016).

He noted that some challenges really affected these self-reliance initiatives and caused some serious protection problems. Though each refugee household was allowed to have a small number of livestock, some refugees did not observe the regulations. Those well off financially could own huge flocks of goats and camels (Kamau, KII, 11/11/2016).

He observed that some of them even curved off some sections of the camps for agricultural activities where they cultivated tomatoes, bananas and watermelons. This often led to some conflicts between refugee communities because of competition for water resources. There were also conflicts between the refugee herders and Kenyan host community herders who often fought for livestock’s grazing space (Kamau, KII, 11/11/2016).

Khalif on his part revealed that the conflicts persisted beyond grazing land and water resources. Some local traders in the camps had a tendency of fetching firewood and timber from forests outside the refugee territories. The firewood and timber was sold in local markets. As a result, the local Kenyan community would be up in arms complaining of depletion of their natural resources by refugees (Khalif-Dag, FGD, 08/11/2016).

4.3.5 The right to access basic services

The physical and material needs of refugees are the core of humanitarian assistance in refugee camps. These may include provision of food, medicine, clothes, shelter,
psychological and social support, education, seeds and even tools (Carciotto & d’Orsi, 2017).

Musau (2000) notes that during the time, protection teams were highly relied upon by refugees for every transgression. Refugees held UNHCR in high regard to the extent of almost considering it a super government. Having their complaints heard by UNHCR protection officers was perceived as a big step towards having it resolved. He further explains how UNHCR protection staff were perceived as almost equivalent to private counsel. On the flipside, to UNHCR protection officers, there was great satisfaction that when one could help a refugee to have a conclusive resolution to a problem. This required listening skills, analytical skills and patience. It was also necessary for one to be accommodative to refugees’ cultural values and be able to deal with frustrations and disappointment from time to time.

According to Musau (2000), there was a bit of a challenge in delivery of services for UNHCR especially in areas that were part of its mandate but could easily be misconstrued as treading on state sovereignty. One of these challenging activities included registration of refugees. There were instances whereby local Kenyan Somalis presented themselves to UNHCR for registration as refugees without getting noticed. The UNHCR had a huge struggle in differentiating Somali refugees from local Somalis who in most cases belonged to the same clans.

Abdurrahman, a middle aged FGD participant in Dagahaley camp reported that the basic assistance provided to refugees in Dadaab camps was slightly higher during the emergency period: from 1991 to the end of 1993. He talked of sufficient food supply, medical attention, scholarship opportunities and community services as some of the provisions he thought
were more available in the early 1990s than later on (Abdurrahman-Dag, FGD, 08/11/2016).

A discussion with Kamau also revealed that education was provided by the UNHCR up to secondary school level. The UNHCR provided higher education scholarships to a small percentage of top secondary school performers every year (Kamau, KII, 11/11/2016).

He further noted that all refugees were provided with food rations twice a month. The food rations included maize flour, wheat flour, green grams, beans, dates, salt and sometimes sugar. Pregnant women were provided with extra packages with more nutritional capacity (Kamau, KII, 11/11/2016).

According to a UNHCR Report (2013, p.61), in the 1990’s, the amount of water globally recommended for an individual was 20 litres per person per day. Kamau however argued that even though each refugee was provided with 20 litres of water per day, the provision of water was a challenge in the early 1990s especially because refugees needed to make long queues at the then available water stands. He pointed out that the water situation was made to improve in late 1990s when the UNHCR drilled more boreholes in the three camps (Kamau, KII, 11/11/2016).

Besides food and water, all refugees were provided with shelter materials including tents upon arriving in Dadaab during influx emergencies. After the emergencies, they would be provided with plastic sheets, timber and iron sheets for construction of shelters (Kamau, KII, 11/11/2016).

Mohamed, a middle aged FDG participant in Ifo camp arrived in Dadaab in 1992. He was happy that besides having been provided with food, water and shelter, the UNHCR and CARE also provided his neighbourhood with materials to construct pit latrines. Pit latrines
were mainly communal during the emergency period but he said the situation improved after 1993 when more latrines were sunk such that there would be one latrine shared among three households (Mohamed-Ifo, FGD, 09/11/2016).

Kamau further revealed that refugees were provided with non-food items essential for basic survival. These included water jerry cans, blankets, sleeping mats, mosquito nets and tree seedlings. Also, in each of the three camps – Hagadera, Dagahaley and Ifo, the UNHCR had in place Health Centres managed by different NGOs and which offered free medical care including minor surgeries to refugees registered by the UNHCR (Kamau, KII, 11/11/2016).

In the period after 1995, there was already a general feeling among donors that the refugee emergency had already come to an end. As a result, funding went down significantly (Kamau, KII, 11/11/2016).

Abdurrahman also noted a reduction in the amount of assistance provided to his community during this period. He argued that the situation got tougher in subsequent years. He also noted that despite the reduction, there was assistance at least for basic survival. Many of his compatriots had to learn to cope with the situation and had found other means of providing for their families anyway (Abdurrahman-Dag, FGD, 08/11/2016).

On his part, Mohamed argued that basic assistance to his community in the 1990s was inconsistent to the extent that some refugees gave up and spontaneously returned to Somalia (Mohamed-Ifo, FGD, 09/11/2016).

4.3.6 Access to Justice
In the 1990s, criminal transgressions in Dadaab camps were often resolved using the traditional *maslaha* criminal justice system that laid emphasis on community burden sharing as opposed to individual criminal culpability. Due to male domination, the Somali culture often exposed women and children to negative practices that would ordinarily be punishable by law. These included Female Genital Mutilation (FGM), early forced marriages, women exclusion from key decision making including being part of the *maslaha* courts. At times, men could sell food rations apportioned to the family in order purchase a recreational drug called khat or otherwise locally referred to as *miraa* (Abuya, 2000).

Abuya (2004) finds it a concern that Female Genital Mutilation (FGM) went unreported by many refugees. Anybody who protested the act was seen as being against community wishes.

On their part, Wangui et al., (2012) indicate that in the protection of refugees, stakeholders have had to deal with the challenge of facing the reality that FGM is generally accepted by the Somali community. Those who went against the wishes of the community were given special protection by government authorities and some NGOs, but it was handled discretely so as not to cause discord uproar in the community (Wangui et al., 2012).

Issues of gender mainstreaming have been difficult to resolve in Dadaab camps because of the well rooted fear for persecution. Men who are traditionally seen as breadwinners and protectors in the community often see themselves as disempowered whenever there are efforts to empower women. Some even often claim that women are nowadays getting preferential treatment over men. There have been acts of antagonism and retaliation from aggrieved men who perceive that women are getting preferential treatment (Wangui et al., 2012).
Wangui et al., (2012) further argue that most refugees in Dadaab camps no longer need humanitarian support owing to their abilities to be fully independent. Some have abilities to move across the Kenya Somali border for trade, while using their refugee status as a safety net without the consent, or knowledge, of Kenyan authorities or the UNHCR. They however do not explain under what circumstances this has happened and when exactly it started occurring, which is what this study sought to establish.

Musau (2000) on his part observed that a class of refugees existed and had commercial operations that stretched across the border to Somalia. He argues that these refugees had the means to disrupt life in the camps by posing security challenges. He however does not give any details how serious of a security threat this was inside and around refugee settlements. There is no literature with examples of what security challenges were caused by this phenomenon described by Musau.

A discussion with Beldina, a refugees’ worker in Dadaab camps in the late 90s revealed that refugee leadership and religious leaders were the main administrators of justice in the camps. She argued that resolution of conflicts was an internal mechanism and conflicts were mainly resolved through dialogue. She also mentioned Maslaha as an ad hoc community mechanism that was mainly used to dispense justice (Beldina, KII, 12/11/2016).

In the Maslaha mechanism, Beldina noted that it was the perpetrator’s community or family that was punished rather than the perpetrator himself/herself. Disputes were resolved in the community outside the formal institutions of law. In her observation, Maslaha was generally accepted in the Somali culture and it involved elders of the aggrieved party meeting with elders from the perpetrators side. The two sides would dialogue and agree on punitive measures to be taken against the perpetrators (Beldina, KII, 12/11/2016).
According to Zulekha, an FGD participant from Dagahaley camp, while growing up, she saw some conflicts getting resolved by her community elders using Maslaha. The conflicts included cases of divorce, theft, sexual and gender based violence, property disputes and minor crimes. She herself did not like the use of Maslaha but it was preferred by the community anyway (Zulekha-Dag, FGD, 08/11/2016).

Kamau on his part revealed that mobile courts of law, which included the magistrates and the Kadhi’s courts, were only established in Dadaab in April 1998 to give access to justice to refugees from within Dadaab camps (Kamau, KII, 11/11/2016). Zulekha however argued that the UNHCR, which was responsible for camp management also played a significant role in the administration of justice whereby protection officers could meet aggrieved parties and tried to resolve the conflicts out of court (Zulekha-Dag, FGD, 08/11/2016).

On her part, Beldina revealed that the police played a significant role through their state given authority in either resolving conflicts locally in refugee camps or facilitating formal processes of obtaining justice through prosecution in a Garissa based court of law or mobile courts. She also mentioned that serious crimes like murder were solely handled by the police. After undergoing a formal justice at a court of law in Garissa town, perpetrators were jailed at Garissa GK prison (Beldina, KII, 12/11/2016).

Rahma, an elderly FGD participant in Ifo camp confessed to have been jailed for a period of three months in 1997 for a crime that she did not disclose. To him, sometimes bribes did not work. He pleaded with a police officer to release him in June 1997 but he found him determined to take him to Garissa law courts. When he eventually stood before the magistrate, he too could not sympathise with him. He was therefore jailed for three months as a way of setting an example to other refugees (Rahma-Ifo, FGD, 09/11/2016).
Idris and Gurhan, both FGD participants in Hagadera and Ifo camps respectively reported how they were sometimes caught up in protection problems. Some of their friends were even caught up in more serious protection problems including death threats, to an extent that they had to be transferred from one camp to another within Dadaab complex just to avoid victimization. Gurhan oh his part revealed that for those who could not stay in Dadaab, the UNHCR relocated them to Kakuma refugee camp in Turkana County and those that were found to be vulnerable were considered for resettlement to western countries (Gurhan-Ifo, FGD, 09/11/2016).

The issue of access to justice in Dadaab camps in the 1990s would seem to have been tied with the availability or unavailability of state structures that led to the exposure of refugees to situations that caused their injustice. Notably, the fact that courts of law were based in Garissa town, a town 100 Kilometres away from Dadaab was in itself an impediment to justice. Mobile courts were established in Dadaab in 1998 but it could not have been expected that they would resolve historical injustices which by then might have become deeply rooted.

4.3.7 Access to Durable Solutions

The 1990s period was declared as a decade of voluntary repatriation by the UNHCR. The organization began to initiate “return-of-refugees-home” rather than just supporting them as had been the case till then (Long, 2013).

In Kenya, the influxes of the 1990s coincided with politically motivated and ethnic based conflicts in 1992 and 1997 within Kenya that resulted in the displacement of many
Kenyans. Kenya’s deteriorating economic situation at the time further did not make things easy for business people doing businesses (Kagwanja, 2002).

According to Burns (2010), it was difficult for Kenyans to extend a hand of help because they themselves were facing difficulties.

Although Somali refugees were seen as a burden, their presence in Dadaab was of great benefit to locals’ economic fortunes. The heavy presence of UN agencies NGOs improved the social services and the infrastructure of the area (Kagwanja, 2002).

Considering the difficulties Kenya was facing, together with the general Kenyans’ attitude towards Somali refugees as dangerous and undesirable, local integration as a durable solution for refugees was not a subject the Government of Kenya would want to consider. The options Somali refugees would then have were resettlement to third countries or voluntary repatriation (Stanley, 2015).

**Resettlement to Third Countries**

Resettlement is primarily employed as a protection tool. It is a common practice in refugee management that those who qualify to be in the selection protection criteria are interviewed by the UNHCR for possible resettlement to third countries (Taylor, 2011).

The criterion for resettlement includes refugees with severe fear for persecution, those that are under constant threats or those with medical conditions that could not be handled in Kenya and are not willing to voluntarily return home. Once the interview process is concluded, the names of those who qualify are submitted by the UNHCR to donor countries that include USA, Canada and Australia as well as countries in the European Union. If an
individual is selected for resettlement, he proceeds for resettlement together with his immediate family (Taylor, 2011).

A UNHCR Report (2001) indicates that the average number of refugees submitted for resettlement to third countries in the 1990s was 6000 annually. However, resettlement quotas were set by receiving countries and only about one third of the names submitted by UNHCR got resettled annually to those third countries.

Shukri, the FGD participant from Ifo camp claimed to have been in the resettlement pipeline at one point in the 1990s. She eventually missed the chance but she kept the hope of getting to be considered someday (Shukri-Ifo, FGD, 09/11/2016). An overwhelming number of FGD respondents however indicated that they had completely given up on resettlement and it did not apply to them as a durable solution.

The UNHCR people seem to be very selective on these resettlement issues. How is it possible that my neighbour who had the same vulnerability challenge like me was allowed to proceed for resettlement yet I was not? Off course I still hope to get resettled but I think the international community needs to investigate how resettlement interviews are carried (Shukri-Ifo, FGD, 09/11/2016).

Kamau on his part reported that resettlement of refugees to third countries was the most liked durable solution that refugees would hope to get in many years. His observation was that the anticipation of resettlement by refugees had always been the cause for the protracted stay of some Somali refugees in Dadaab (Kamau, KII, 11/11/2016).

The resettlement interviews and processes took a really long time; sometimes several years to get completed. However, most refugees who had made applications could not be deterred hoping for a breakthrough despite the longevity of the process. In Kamau’s opinion, a lot
of those who continued to wait for resettlement to western countries eventually opted to voluntarily return to Somalia (Kamau, KII, 11/11/2016).

**Voluntary Repatriation**

Voluntary repatriation as one of the other durable solutions is viewed as the best durable solution among stakeholders because it involves restoration of citizenship in one’s country of origin. In the 1991, civil war refugees from Somalia were warmly received in Kenya. The government received them on humanitarian grounds but also as a way of observing its obligation to international law. It also used the refugee issue to continue receiving donor support from the international community, some of whom were no longer giving aid to Kenya (Hammond, 2010).

The 1992 first ever multi-party elections were conducted in Kenya and attracted international observers. The outcome of the elections would determine the commitment of the international community to funding Kenya (Hammond, 2010). During the campaign period, President Daniel Moi indicated that he would allow Somali refugees into Kenya provided that they would only reside across the border areas between Kenya and Somalia. The UN refugee agency spent USD 40 million to establish the camps. However, in a period of less than one week after winning the 1992 elections, President Moi announced that refugees would have to be sent back to Somalia immediately (Burns, 2010).

Upon a request by the then UN Secretary-General, a cross boarder operation was established inside Somalia by the UNHCR, to control cross-border movement of refugees between Kenya and Somalia. This included a plan to invest in unconditional community rehabilitation infrastructure in Southern Somalia so as refugees who would return from Dadaab and other refugee settlements in the region would be well settled. UNHCR also set
up a Special Emergency Fund for the Horn of Africa (SEFHA) to seek for some USD 5.5 million from its donors for repatriation and another USD 13 million for community rehabilitation (Hammond, 2010, p. 24).

Several non-governmental organizations were commissioned by the UNHCR as partners to rehabilitate local towns and villages within Somalia as a way of enticing Somali refugees in Dadaab to return home (Hammond, 2010, p.26). By the end of June 1993 about 30,000 Somali refugees had voluntarily been repatriated from Dadaab for Somalia. Only about half of them did so with the help of UNHCR. The close to 300,000 Somali refugees who did not return home from the Dadaab complex remained potential returnees until peacekeeping operations in Somalia failed in their mission of bringing back peace in the country (Long, 2014).

Haji and Isahakiah, FGD participants in Ifo camp, Mohammud in Dagahaley camp and Fardosa in Hagadera camp mentioned that at one point during the 90s, they or their families contemplated to voluntarily return to Somalia though eventually they did not. Isahakiah in particular revealed that at some point in mid 1990s, he took spontaneous journeys to Somalia together with others who had hoped to restore their lives in Somalia. They however did not stay for long before returning to Dadaab due to renewed threats and fear for persecution (Isahakiah-Ifo, FGD, 09/11/2016).

Other FGD participants including Idris and Abdikareem from Ifo camp in their late 50s revealed that at one point during the 1990s, they either individually or along with their family members made spontaneous journeys to Somalia with intentions to permanently relocate to Somalia.
Crossing the border between Kenya and Somalia was not a problem because all one needed to do was to pay a bribe if he/she happened to be stopped by police officers either within Kenya or in Somalia” (Idris-Ifo, FGD, 09/11/2016).

Kamau stated that beginning 1995 onwards, the UNHCR had a program in place supporting Somali refugees who sought to voluntarily return to Somalia:

The support program provided potential returnees with transport and some money for reintegration purposes. Once a refugee was supported to voluntarily return, he/she was permanently removed from the refugee register (Kamau, KII, 11/11/2016).

According to Beldina, many refugees did not prefer the voluntary return support program because they could never have wanted to be removed from the refugees register permanently. They would rather have gone to Somalia spontaneously without relinquishing their refugee status so that if things did not work out in Somalia, they could still quietly return to Dadaab and would not have to check with the UNHCR for refugee status (Beldina, KII, 12/11/2016). Kamau however noted that a significant number of Somali refugees still voluntarily returned to Somalia with the help of the UNHCR (Kamau, KII, 11/11/2016).
4.4 The Era of 2000 - 2016

Background Information on Reforms

At the close of the 20th century, the Kenya Immigration Act, 1967 was still the main legal reference for handling refugee matters in Kenya. It had however been largely deemed unsuitable especially because it lacked guidelines on how to handle situations of massive refugee influx (Abuya, 2004).

The Immigration Act required one to make an individual application to the Minister in charge of Migration and an Immigration Officer before being allowed entry into Kenya. The grant of refugee status under the Immigration Act was further extended to the wife or child over the age of thirteen years of such a refugee. Abuya (2004, p. 17) observes that such a description was indeed gender insensitive as it assumed that it was only men who could flee persecution, thus rendering the situation of women who flee from similar circumstances difficult to adjudicate. In his opinion, the Act fell short of appreciating the prevailing realities.

The Act also failed to appreciate the situation of polygamous marriages that was typical in the Somali culture. By interpretation, an asylum seeker was required to choose one of the wives and child for purposes of recognition leaving out the other family members. No guidelines were provided for the status of thirteen years old children (Abuya, 2004, p. 22).

In addition, Abuya (2004) reveals that the Act did not contain any provision on the rights and obligations of refugees or the state towards refugees, hence its inadequacy in dealing with refugee specific issues.

At the end of 1999 however, it was clear that the regime of President Moi which had been in power for more than twenty years was coming to an end. Earlier in 1994, efforts by the
civil society to make reforms in the refugee sector through the Refugee Bill, 1994 had been quashed by the Moi regime (Atero, 2010).

It would also be the case that towards the end of the 20th century, the Government of Kenya had begun loosening up on its hard-line positions about refugee legislation. The civil society became more aggressive on advocating for review of the Refugee Bill 1994. The fact that there wasn’t a specific law for management of refugee affairs, refugees often found themselves exposed to situations that made vulnerable (Muigua, 2006).

Muigua (2006) argues that at the close of the century, many refugees were facing difficult living conditions and their human rights were often breached. Asylum seekers would be denied entry into Kenya, while those who had found their way into Kenya were falling victim to arbitrary arrests. He further argues that important areas of refugee governance which were the state’s responsibility had been carried out by the UNHCR for too long.

Atero (2010) equally observes that the state had abandoned its primary mandate for too long. This often resulted in a conflict of interest, where the UNHCR was forced to wear two hats, one being that of undertaking the role of a supervisor and advocate for refugee rights, and the other being responsible for activities that would ideally fall within a state’s mandate.

It was, therefore, hoped that the adoption of specific refugee legislation would act as a catalyst to reforms in the refugee sector. As a response to this problem, a National Eligibility Committee, chaired by the then Deputy Secretary of the Ministry of Home Affairs, with membership drawn from the Ministry of Home Affairs, Ministry of Foreign Affairs, the Office of the President, Immigration and Police Departments, the Attorney General’s Chambers, and a representative from the UNHCR was formed in 1999. The
The purpose of the committee was to establish how to streamline refugee management in Kenya (Atero, 2010).

In early 2000, the clamour for adoption of a refugee specific legislation took centre stage. The Government of Kenya begun to hold wider consultations with civil society actors including the UNHCR, the Refugee Consortium of Kenya (RCK) and other NGOs on a refugee bill that had been drafted in 1994. Through these consultations, the bill was reviewed and renamed as the Refugee Bill 2000. Between 2000 and 2002, the bill was reviewed at least 3 times but was not published in the Kenya Gazette (Muigua, 2006).

A regime change occurred in Kenya in January 2003 when President Daniel Moi retired after 24 years in power. The new regime led by President Mwai Kibaki gave momentum to the reforms bandwagon which included reformists in the refugee sector (Atero, 2010).

In 2003, the Government of Kenya, the UN, the Refugee Consortium of Kenya and other NGOs together reviewed the Refugee Bill 2000 and made recommendations to parliament. The bill was finally published in the Kenya Gazette as the Refugee Bill 2003 (Muigua, 2006).

Muigua (2006) however notes that although the bill was introduced to parliament in 2003, it lapsed and expired at the end of that year because parliament went on recess before its first reading. In 2006 however, the bill was re-published in the Kenya Gazette and was named the Refugee Bill 2006. It was then introduced to Parliament for the second time, during which it was unanimously voted into law and sent to President Mwai Kibaki who signed it into law on 29th December 2006 (Atero, 2010).

Just as was the case for the period of 1991 to 2000, the study focused on dynamics of international protection under various protection components. The components are
highlighted below and they include Refugee Status Determination, freedom of movement, physical security, the right to work, the right to basic services, access to justice, and access to durable solutions.

4.4.1 Findings on Refugee Status Determination

The political changes and possibility of comprehensive policy changes in this period hugely affected the asylum environment in Kenya. The international protection environment for Somali refugees in Dadaab significantly improved, with government authorities who were often used to exploiting refugees taking a back sit to observe the direction the new regime will take. However, Refugee Status Determination (RSD) did not change much at the beginning of this period. Before and even after the enactment of the Refugees Act 2006, RSD remained the function of the UNHCR with peripheral involvement from the Government of Kenya (Hyndman & Nylund, 2010).

In the Refugees Act 2006, most of the powers in the refugee sector were vested in the Minister for Immigration and Registration of Persons. Section 3 of the Act provides that the Minister can publish a gazette notice to declare any class of persons to be prima facie refugees, and may at any given time amend or revoke such a declaration (Refugee Act, 2006).

Under section 8 of the Act, there was established a Refugee Affairs Committee (RAC), responsible for advising the Commissioner for Refugees. The main function of the Committee is to assist the Commissioner in matters concerning the recognition of persons as refugees, which includes receiving application for asylum and advising on recognition and denial of refugee status and asylum. The Committee is required to have wide
membership drawn from various line ministries, departments and interested stakeholders, including civil society (Refugee Act, 2006).

The Act also established the Refugee Appeals Board (RAB) to consider and decide appeals for asylum seekers whose application for refugee status is rejected. The procedure for appeal allows rejected asylum seekers a sufficient time of 30 days to lodge their appeals against the Commissioner’s decision. Further grievances are required to be taken before the High Court for consideration (Refugee Act, 2006).

Section 7 of the Act established the office of the Commissioner of Refugees, an office in the public service whose would be the Secretary to the Refugee Affairs Committee (Refugee Act, 2006).

In line with the 1951 Convention, the Refugee Act 2006 lays down the conditions for disqualification from grant of refugee status. The exclusion and cessation clauses borrow heavily from the international standards to include such persons as those involved in crimes against peace, war crimes, serious non-political crimes outside Kenya or in Kenya after admission as a refugee, persons with dual citizenship can seek refuge in their second country, or people from places where there is a fundamental change of the circumstances that forced them to flee in the first place, hence ability to re-avail self of the protection of the country of origin (Refugee Act, 2006).

A close look into the practice of RSD found that upon enactment of the Act and establishment of the Department of Refugee Affairs (DRA), the UNHCR did not immediately relinquish to DRA all refugee management functions. RSD was one of the functions not immediately relinquished owing to its technicality and the need for careful and gradual transition (Hyndman & Nylund, 2010, p. 50).
A discussion with Kiragu revealed that after 2006, the decision making process of determining whether someone was entitled to asylum had two steps as provided in the Refugee Act 2006 unlike in previous years. In his observations, he noted that the first determination was whether the person met the refugee definition and the second step was to check if there were any reasons that would make him/her nevertheless, not receive international protection (Kiragu, KII, 05/11/2016).

Kiragu further stated that for the refugee status determination process to be complete, it had to follow a process of seven steps which commenced in 2007. The first step was registration and identification of asylum-seekers. In this step, personal documentation was a key tool in asylum seekers protection (Kiragu, KII, 05/11/2016).

The second step in the process was legal advice and representation. Kiragu noted that the notion of refugee status is not always clearly understood by asylum seekers themselves and most Somali asylum seekers in Dadaab did not know the legal procedures in Kenya. Providing advice on the process was therefore key in ensuring national procedures were fair and efficient (Kiragu, KII, 05/11/2016).

The third step in the process was the opportunity to contact the UNHCR. In this step, Kiragu pointed out that asylum seekers are given opportunities to contact the UNHCR as well as legal advisors or representatives of their choice. Where appropriate, assistance was welcome human rights agencies (Kiragu, KII, 05/11/2016).

The fourth step was personal interview with a qualified official. In his observation, Kiragu argued that it was more advantageous if an asylum seeker could present his or her own case in person to a qualified official. The official was required to be impartial and thorough in
analyzing facts and circumstances before making a determination on a case (Kiragu, KII, 05/11/2016).

The fifth step entailed the decision to grant or not to grant an asylum seeker with refugee status. Kiragu noted that at this stage, a central authority was required to make a decision on the asylum claim by reviewing the asylum seeker’s file, interview notes and any recommendation made in the process (Kiragu, KII, 05/11/2016).

The sixth step in the process was appeal. According to Kiragu, reasonable appealing time was given to asylum seekers whose claims were rejected. It was procedural for them to be thoroughly informed of the procedure to follow in order to make an appeal to an impartial body different from the one that denied the first claims (Kiragu, KII, 05/11/2016).

The seventh and final step that Kiragu explained was the issuance of Refugee Status Determination (RSD) certificate. An RSD certificate was proof that one was a refugee and he or she was no longer an asylum seeker but a legally recognized refugee. The RSD certificate also referred to as a mandate certificate would now be used to apply for a refugee identity card at the Kenya National Registration Bureau as facilitated by the Department of Refugee Affairs (DRA). In Dadaab however, Kiragu argued that an RSD certificate continued to be used in place of an identity card as was the case in the 90s because the Kenya National Registration Bureau did not actively seek to identify refugees (Kiragu, KII, 05/11/2016).

According to Kiragu, upon arrival in Dadaab camps, all Somali asylum seekers were required to be registered and get interviewed by the UNHCR to give reasons for their decisions to seek asylum. Once it was confirmed that the asylum seekers were from Southern Central Somalia, they were declared eligible for prima facie recognition which
was quick and straightforward as opposed to the prolonged process of those that had to undergo individual refugee status determination (Kiragu, KII, 11/11/2016).

Kamau on his part mentioned that in 2013, the Department of Refugee Affairs (DRA) had been seeking to fully take over RSD functions from the UNHCR as mandated in the Refugee Act 2006. Already, DRA had fully taken up functions in refugee camp management, refugee registration, facilitation of refugee documentation including issuance of birth and death certificates and issuance of refugee movement certificates from Dadaab camps to urban areas (Kamau, KII, 11/11/2016).

He however pointed out that the full take-over of RSD functions did not materialize and this was frustrating to UNHCR which was eager to smoothly hand over the process and focus on monitoring activities. At the beginning 2014, DRA established a transitional RSD team that was required to work together with UNHCR officials with the aim of having them learn the modus-operandi in preparation for full take-over of RSD functions (Kamau, KII, 11/11/2016).

In conclusion and considering all the findings above, the Refugee Status Determination (RSD) process was significantly made efficient by the enactment of the Refugees Act 2006. However, the political will to have it fully implemented was not sufficient. The Government of Kenya was either unwilling to take back its role from UNHCR or it lacked capacity in taking over a function that was considered very technical, time consuming and one that needed a lot of resources that the government did not have.

A handover process of RSD functions which should have taken year to materialize was postponed numerous times, the effect of which caused a lack of sense of direction in the
Department of Refugee Affairs (DRA). During the course of this study, DRA was still working towards full take-over of RSD functions from the UNHCR.

4.4.2 Physical Security in the Camps

Prior to the enactment of the Refugee Act 2006, the provisions of the Immigration Act 1969 continued to be applied alongside those of the Aliens Restriction Act of 1973. In contrast to the Immigration Act, the Aliens Restrictions Act did not make any direct mention of the term ‘refugee’, but one could interpret the use of the term ‘alien’ to mean any ‘non-citizen’ of Kenya (Atero, 2010).

Atero (2010) further argues that under the Act, the Minister could impose from time to time restrictions on aliens, including designated locations of residence. He notes that even though this might have been the motivation for the encampment policy, no official order was ever formally made by the government and the section remained an area of contention, with human rights organizations arguing that this section hindered the refugees’ freedom of movement.

Under the Aliens Restriction Act 1973, all aliens were required to report to a Registration Officer within 90 days of their arrival into Kenya. There were however no guidelines on the procedure for the grant of refugee status, thus making it, like the Immigration Act 1967, inadequate to serve as a reference for refugee management and protection in Kenya (Atero, 2010).

Because of the insufficiency of the two old legal references, some civil society organizations considered the Constitution of Kenya, 1963 as a supreme legal basis and
often demanded that the Government of Kenya be more respectful to the constitution in handling refugee matters (Abuya, 2004). Abuya reveals that the human rights provisions in Chapter V of the old Constitution of Kenya (1963) dealt with the protection of the fundamental rights and freedoms of all individuals and, by implication, this extended to asylum seekers and refugees.

Section 70 stated that;

Every person in Kenya is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin or residence or other local connection, political opinions, color, creed or sex, subject to the respect for the rights and freedoms of others and for the public interest to the right to life, liberty, security and protection of the law amongst others (Constitution of Kenya, 1963).

However as argued by Maigua (2006), at the close of the century, many refugees were facing difficult living conditions and their human rights were often breached. Potential refugees were often not allowed into Kenya, while those who had found their way into Kenya were falling victim to arbitrary arrests.

Dadaab camps continued to be characterized by incidents of insecurity that included murder, banditry and sexual gender based violence. Women and children continued to remain vulnerable to abuse and exploitation (Muigua 2006).

Muigua (2006) argues that one problem that continued to face women in the early 2000s was the perennial risk of sexual assault targeted to women collecting firewood in the vicinities of refugee camps. Harmful traditional practices also continued to affect the
protection of women and girls including Female Genital Mutilation (FGM) and forced marriages, which were practiced amongst Somali refugees.

On his part, Hammond (2010, p. 35) argues that the security situation did not improve in the early 2000s but he notes that years were better than the period after 2007 when acts of terrorism became rampant in Northern Kenya.

In the Refugee Act 2006, the law requires the Minister in charge of Immigration to ensure that the environment inside and around refugee camps is well maintained to avoid environmental degradation. This particular clause is meant to ensure that camp settings and refugee lifestyles, which could include such activities as the use of firewood for fuel, do not result in environmental degradation in the areas around refugee camps (Refugee Act, 2006).

Under section 21 of the Act, the ministries of internal security and immigration were required to consult and make a decision on expulsion of refugees who were to be found to have breached national security and public order (Refugee Act, 2006).

According to Kiragu though, this provision remains discretionary and, in most cases, does not require proof or due process. He argued that some genuine asylum seekers and refugees may suffer deportation based on the conviction of a government officer (Kiragu, KII, 05/11/2016).

Under section 8 of the Act, a Refugee Affairs Committee (RAC), was tasked with the role of giving advice to the Commissioner for Refugees is established. The main function of the Committee is to assist the Commissioner in matters concerning the recognition of persons as refugees, which includes receiving application for asylum and advising on recognition and denial of refugee status and asylum (Refugee Act, 2006).
Kiragu applauded this particular section because the Committee as established by the Act has a wide membership drawn from various line ministries, departments and interested stakeholders, including civil society (Kiragu, KII, 05/11/2016).

He further argued that in allowing such an elaborate representation, the Act guarantees that refugee rights shall not be violated through the possible exercise of excessive or abuse of power by one individual, but through the involvement of the various groups. The requisite checks and balances shall be instituted to ensure fair and impartial decision making in the interest of both refugees and the government (Kiragu, KII, 05/11/2016).

The Commissioner is, under the Act, Section 8(4) obliged to ensure specific measures are taken into account for the safety of women and children including family-tracing measures for unaccompanied minors, in designated areas (Refugee Act, 2016).

In this case, Kiragu argued that the inclusion of women in the Act was a positive element considering that the number of women is slightly more than men in the refugee population. In his opinion, the idea here was to create an effective platform for highlighting the unique vulnerabilities faced by the women and children, and ensure that these issues are mainstreamed into the broader programming (Kiragu, KII, 05/11/2016).

Considering the provisions of the Refugee Act 2006 above, its enactment was expected to be a catalyst for better refugee management and thus, improved security situation in the camps. However in the period after January 2007, when the Act became law, there were already problems manifesting themselves which the law alone could not solve. In a discussion with Kamau, in 2007 the government experienced serious opposition from the refugee host community in Dadaab where it had proposed to expand the hosting capacity of refugee camps (Kamau, KII, 11/11/2016).
The host communities were fearful that further expansion of the camp would result in heightened insecurity around refugee hosting areas. They also feared competition for the available scarce resources with refugees (Kamau, KII, 11/11/2016).

Kamau further revealed that incidents related to terrorism were reported in the Northern Kenya region more often after 2007. Incidences of banditry, robbery and arson also remained common in Dadaab camps. Gender violence was the worst threat to the physical security of women in the camps though the UNHCR tirelessly tried to make efforts to sensitize the community on the effects of female genital mutilation, rape and forced marriages. The lack of reporting such cases to the police made it more challenging to guarantee physical security for refugees (Kamau, KII, 11/11/2016).

In another key informant interview, Keitany revealed that Dadaab camps were declared a high insecurity zone in 2011. This was a period in which incidences of kidnappings for ransom were often reported among refugees. Aid workers were not spared either. He recalled an incident in Dadaab camps in October 2011 when Spanish aid workers working for *Doctors without Borders* were abducted allegedly by the Al Shabaab (Keitany, KII, 10/11/2016).

New security procedures in the camps could not allow aid workers to easily travel from their residents into the camps without police escort. The police themselves became targets of attacks including being targeted with improvised explosive devices (Keitany, KII, 10/11/2016).

In clear confirmation of these sentiments, Kamau observed that from around 2011, the number of police officers from both the Administration Police and the Kenya Police were doubled in Dadaab camps from an average of 300 to 600 in the entire refugee complex. He
explained how the UNHCR had to increase funding for police upkeep and mobility including purchase of police vehicles as well as construction of accommodation and office blocks. The support also included the UNHCR facilitating the police in capacity building and training sessions on international refugee protection (Kamau, KII, 11/11/2016).

Kamau further indicated that across the five camps in Dadaab in 2012, approximately 900 Community Peace Protection Teams (CPPT) were established to be first respondents and to report security incidences to the police at community level. These were volunteers of both genders representing each camp sub-sections. They were trained in basic security measures to enhance peaceful coexistence in the camps and with the host community. They also were tasked to monitor and report security incidents and issue early warnings to their communities on matters which could be a threat to personal or collective safety (Kamau, KII, 11/11/2016).

Concerning peace in the Kenyan neighborhoods, Keitany argued that it was often the case for the UNHCR to establish development projects within the Kenyan host community as a way of promoting peaceful coexistence between refugees and the host communities. The UNHCR and its partners had made it a routine to invest in development projects worth millions of Kenyan shillings in Dadaab, Wajir South and Fafi districts which hosted the camps. He indicated that these projects were more demanded around 2011 after the influx of refugees. They included construction and repair of schools, health facilities, provision of electricity, water pans, boreholes and sanitation facilities (Keitany, KII, 10/11/2016).

In Kamau’s estimation, UNHCR’s assistance to the refugee host community in Dadaab was benefiting a population of 60,000 Kenyan nationals in Dadaab town and its environs, about 137,000 in neighboring Fafi district and about 130,000 in Wajir South region which boarders Dagahaley camp (Kamau, KII, 11/11/2016).
It was however the opinion of Haji, an FGD participant in Dagahaley camp that the new influx of refugees from Somalia in 2011 led to the deterioration of the security situation in Dadaab camps. In December 2012, directly referencing the context of insecurity posed by the alleged terrorist threats and attacks, Haji decried the fact that the Government of Kenya became tougher on Somali refugees in Dadaab (Haji-Dag, FGD, 08/11/2016). Haji was concerned of the welfare of his children who studied and lived in Kenya’s capital city in 2013. In his opinion, Somali refugees had allegedly been made scapegoats for terror activities that were reported in the city. He was also scared about the Dadaab closure rhetoric that was being propagated by some top government officials (Haji-Dag, FGD, 08/11/2016).

On her part, Fadhimo, an FGD participant in Ifo camp attributed the deterioration of security in her camp to overpopulation. It was her opinion that the increased number of youth was getting impatient with the lack of livelihood opportunities in the camps. By 2013, the youth were also getting perturbed by constant reports from Nairobi that Dadaab camps would be closed (Fadhimo-Ifo, FGD, 09/11/2016).

From the above findings, the physical security situation in Dadaab between 2000 and 2016 could be termed as complicated. The change of regime, enactment of a refugee specific law and the promulgation of the New Constitution (2010) would have been expected to improve refugee management and guarantee better physical security for refugees but unfortunately, this did seem to have happened.

**4.4.3 Freedom of Movement out of Camps**
As described in Section 4.3.2 above, prior to the enactment of the Refugee Act 2006, the provisions of the Immigration Act 1969 continued to be applied alongside those of the Aliens Restriction Act of 1973.

Under the Aliens Restriction Act 1973, the Minister could impose from time to time restrictions on aliens, including designated locations of residence. While this was the reason for having an encampment policy in place, no official order was ever formally made by the Government of Kenya and the section remained an area of contention, with human rights organizations arguing that this section hindered the refugees’ freedom of movement (Atero, 2010).

A close look at the Refugee Act 2006 reveals that under section 3, the Minister can publish a gazette notice to declare any class of persons to be *prima facie* refugees, and may at any time amend or revoke such declaration. The same Minister may designate certain places within Kenya as transit centers for asylum seekers, or a refugee camp for settlement of refugees.

Kiragu revealed that he was surprised with this provision because in his opinion, it restricts the refugees’ freedom of movement since violation of this order is punishable under the Act. Only under very specific defined circumstances can a refugee move from the camps legally to seek, assistance in Kenya’s urban centers. It must, however, be proved that the services sought, for instance, higher education or specialized treatment, cannot be obtained at camp level for one to be issued with a travel document. He also revealed that to be issued with this travel document, Somali refugees needed to have either an alien identity card or a mandate certificate. They also needed to make such applications several days in advance just like it was the case in the 1990s (Kiragu, KII, 05/11/2016).
Kamau on his part indicated in his observation that there was no significant change in refugees’ freedom of movement except that in 2013 when the Department of Refugee Affairs (DRA) took over management of Dadaab camps from the UNHCR, it also took upon itself, the function of issuing travel documents to refugees. He argued that DRA’s operations were funded by the UNHCR and their take-over of key functions did not seem to bring any changes in terms of efficiency (Kamau, KII, 11/11/2016).

Haji, the FGD participant from Dagahaley revealed that as far as freedom of movement is concerned, it was business as usual for him:

While I obtained travel documents from the UNHCR throughout the 1990s until 2012, I began obtaining the same document from the DRA beginning 2013 but I found the function undeserving to DRA, and the document issuance process slower than before (Haji-Dag, FGD, 08/11/2016).

4.4.4 The Right to Work

Most Somali refugees in Dadaab are mandate refugees with prima facie status. According to Carciotto & d’Orsi (2017), in early 2000s, policies of the Government of Kenya prohibited mandate refugees, more so those with prima facie status from obtaining work permits. Only convention refugees could apply for work permits, a process which was made complicated to their disadvantage.

They however argue that in 2003, the UNHCR assisted two mandate refugees in Nairobi to be issued with work permits by the Government of Kenya. This did not mark the beginning of any policy shift because it was only done on exceptional basis. For prima facie refugees
in Dadaab however, acquiring of work permits, let alone attempts to migrate to urban areas for employment could not even be imagined (Carciotto & d’Orsi, 2017).

According to Wangui et al., (2012), a few Somali refugees in Dadaab camps were engaged by NGOs for semi-skilled jobs and were paid incentives not beyond the minimum taxable income in Kenya just like it was the case in the 1990s. Those engaged would receive an average incentive pay of KSH 10,000 per month. Carciotto & d’Orsi (2017) indicate that the incentive pay opportunities were very few in Dadaab camps. For instance, CARE, the largest INGO had only about 400 incentive workers in the entire refugee complex in 2003. With very few incentive pay opportunities, Somali refugees in Dadaab could involve themselves in money legal making ventures. Some of them set up restaurants, kiosks and shops even though their environment was not yet ripe for such businesses to thrive (Carciotto & d’Orsi, 2015).

Konzolo (2014) notes that, although Somali refugees were allowed to find subsistence within their informal economy, their operations and movements were made limited by government authorities who sometimes even abused them. The unavailability of documents and the fear of police harassment or detention invariably resulted in Somali refugees in Dadaab to settle for just doing business among themselves or with a small section of the local population.

On their part, Wangui et al., (2012) indicate that due to the protracted stay of Somali refugees in Dadaab camps, some found ways of involving themselves in small-scale businesses that helped them stay away from overreliance on aid. In addition, with remittances from their friends and relatives resettled abroad, they were able to establish markets and business premises in the camps. Those with friends abroad would receive money through the Somali Hawala money transfer platform.
In 2001, each of the then three camps in Dadaab had an established market where refugee traders traded in commodities that included furniture, livestock, construction materials, food items and electronics (Wangui et al., 2012). According to Kiragu, the Refugee Act 2006 may not have been expected to bring total change to the entire refugee management system but it was expected to be at least the point of departure from the old way of managing refugee affairs (Kiragu, KII, 05/11/2016).

Throughout the period between 1991 and 2006, the provisions of the Immigration Act (1967) were applied alongside those of the Aliens Restriction Act of 1973.

Section 16 of the Act provides for the refugees’ right to work. It affirms that every refugee and member of his/her family in Kenya shall, in respect of wage-earning employment, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya (Refugee Act, 2006). This means that they have to obtain work permits.

This is strengthened in section 5 of the Employment Act, 2007 (revised in 2012), which states that discrimination in employment should be eliminated and that equality of opportunity for a person who is a migrant worker or a member of the family of the migrant worker, lawfully within Kenya should be promoted and guaranteed. In addition, Section 5.2 stipulates that an employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice (Employment Act, 2012).

These two legal provisions are further strengthened by the Supreme law of the land, the 2010 Constitution, which regulates labor relations and provides that every person has the right to fair labor practices (Constitution of Kenya, 2010).

Also, section 10 of the Children Act 2001, although being an old legal reference, complements the provisions of the two laws above and applies very specifically to refugees’
child protection. The section reads that children are protected from exploitative labor and from economic exploitation and any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development (Children Act, 2001).

In this study, it can be argued that the absence of the word refugee in these specific provisions makes them weak in reference to refugees’ right to seek employment. The phrase ‘legal migrant’, although used in good faith in both Acts does not necessarily address the situation of refugees. The practical reality either excludes refugees from the application of these provisions or lack of clarity in the meaning of the phrase technically excludes refugees.

According to Kiragu, although the right of both mandate and convention refugees to employment was affirmed by Kenyan courts in 2013, many refugees - pre and post the Refugee Act 2006 continued struggling in obtaining work permits. The provisions of the applicable laws above were not put into practice. In the first place, if Somali refugees could not be let out of Dadaab camps into urban areas for purposes of seeking employment, then application of the provisions was obviously a tall order (Kiragu, KII, 05/11/2016).

In Dadaab camps, livelihood activities sponsored by NGOs remained to be the main driver for the local informal economy. Kamau pointed out that beginning 2004, after sensing the big business opportunities that had arisen in the camps, some Kenyan Somalis from the Dadaab refugee hosting community allocated themselves shops and business premises in the camps. By the time Dadaab was receiving a huge influx of refugees from Somalia in 2011, Dadaab was already a booming economy that was believed to generate millions of shillings to refugees and Kenyans living close to Dadaab camps (Kamau, KII, 11/11/2016).
On his part, Warsame, a livelihoods specialist based in Dadaab revealed in a key informant interview that in 2004, there were already micro credit programs in Dadaab camps run by CARE International and other NGOs that Somali refugees benefitted from (Warsame, KII, 13/11/2016). For instance, he talked of some loans that were provided by CARE International to vulnerable individuals including single females heading households.

I noticed that initial loans of 5,000 Kenya Shillings were provided to groups of five people. This was small but good enough do some businesses in the camp (Warsame, KII, 13/11/2016).

Abubakar, an FGD participant in Hagadera camp who had been a livestock trader during the period, confirmed to have benefitted from the CARE loans. He and his partners however struggled with local market trading which was ever complicated by the fact that refugees were ever locked up in camps. It continually got complicated for Somali traders to have access to goods from urban centers including Nairobi without the help of middle men (Abubakar-Hag, FGD, 07/11/2016).

Though livestock farming was booming in the camps, more support from NGOs could have made things better. I was one of the lucky refugees who regularly got remittances from my elder brother in Manitoba Canada (Abubakar-Hag, FGD, 07/11/2016).

Mukhtar, another FGD participant in Dagahaley camp was not happy of the fact that in the entire camp, there were no animal husbandry projects because refugees were not officially allowed to keep animals. He said his business was hugely affected in 2004 when the local government banned refugees from doing farming activities in the camps. This was because
of tendencies by some refugees to fencing off some huge potions of available land denying the host community some grazing land (Mukhtar-Dag, FGD, 08/11/2016).

Kamau further observed that following an influx of Somali refugees in Dadaab in 2011, the UNHCR and the Norwegian Refugee Council (NRC) established some tertiary training programs and centres called Youth Education Packs (YEP) in 2013. These were geared towards improving refugees’ self-reliance skills and livelihoods (Kamau, KII, 11/11/2016).

From this analysis, while available legal frameworks may not have done much to reform Somali refugees’ right to work in Kenya, it would seem that piecemeal support from NGOs in the camps and remittances from abroad made Somali refugees hugely independent and self-reliant. Also, the largely peaceful engagement between refugees and their host community could have encouraged the booming of the informal economy within the camps.

4.4.5 Access to Basic Services

Carciotto & d’Orsi (2015) describe the lack of a specific domestic law for managing refugee affairs before the year 2006 as a violation of human rights. Humanitarian assistance to Somali refugees was mainly organized by the UNHCR and NGOs following the encampment policy that formed Dadaab and Kakuma refugee camps.

By 2001, there was already donor fatigue on the Somali refugees’ situation which had now gone far beyond the emergency period. Dadaab had become a protracted refugee settlement. However, because the situation in Somalia had not improved, Hyndman & Nylund, (2010) argue that donor assistance to Somali refugees in Dadaab was sustained, albeit on a reduced scale. In their assessment, more donor resources were channelled
towards establishment of a domestic refugee law and towards efforts to improve security in the camps.

As discussed in previous sections, the Refugee Act 2006 may not have been expected to bring total change to the entire refugee management system but it was expected to be at least a point of departure from the old way of managing refugee affairs. The Refugee Act 2006 established the Department of Refugee Affairs (DRA) as a public office within the Ministry of State for Immigration and Registration of Persons. The DRA was mandated with the role of managing matters of refugee affairs by developing policies coordination international assistance, processing asylum claims, refugee camp management and issuing travel authorizations to refugees (Refugees Act, 2006).

Section 7 of the Act established the office of the Commissioner of Refugees, an office in the public service, to be headed by the Commissioner of Refugee Affairs. He or she was given the responsibility of formulating policies related to refugee affairs and to take lead alongside the UNHCR in coordination international protection and availing basic services. He/she was also tasked with leading the processes of finding durable solutions, managing refugee camps and giving advice on resource mobilization (Refugees Act, 2016).

Even after its enactment in December 2006, limited institutional capacity and policy gaps tended to undermine the law and its potential for management of refugee affairs. This included the government which could have leveraged on it to increase its tax base, regularize refugees’ contribution to the economy and in turn improve safety environments around refugee settlements. The poor security situation around Dadaab camps also undermined the spirit of the new law (Lindley & Hammond, 2014).
According to Konzolo (2014), due to serious security concerns, the Kenya Somalia border was closed in 2007 by the Government of Kenya. This development hampered education for children arriving in Dadaab from Somalia. It also greatly affected cross-border trade and led to the increase in price of commodities. The situation led to the use of unconventional routes into Kenya by most asylum seekers, which complicated the government process of vetting entrants. Konzolo (2014) further notes that border closure and frustrations among the many desperate asylum seekers, led to the worsening of humanitarian situation in Somalia, which eventually spilled-over into Kenya.

The Government of Kenya however, allowed humanitarian aid to pass through the border into Somalia, although according to Konzolo (2014), there were instances where food convoys and other humanitarian items could be blocked by criminal elements.

In 2007, the Government of Kenya closed a key transit center at Liboi, which was only 15 kilometers from the Somali border and 80 kilometers away from Dadaab camps. To further discourage admission of any new arrivals, the government also closed a safe house, which was usually the only shelter at Liboi (Konzolo, 2014).

Human Rights Watch (2010) treated rampant police abuse of asylum seekers in Dadaab during this period as a direct consequence of the closure of the border as well as the transit center. However according to Keitany, during the 2008/2009 period, provision of essential services including child protection, community services and community based programs steadily improved. With an increasing population caused by a new influx of refugees from Somalia in 2011, more funds were needed to sustain service delivery in the camps (Keitany, KII, 10/11/2016).
He indicated that because of the influx in 2011, the number of agencies operating in Dadaab increased significantly and more services were offered than it was the case before. For instance in 2012, a total of 30 NGOs operated in Dadaab working alongside UN agencies that included the United Nations High commissioner for Refugees (UNHCR), United Nations Organization for Coordination of Humanitarian Affairs (UNOCHA), United Nations Division of Security Services (UNDSS), World Food Program (WFP) and Unicef (Keitany, KII, 10/11/2016).

On his part, Kamau indicated that as a result of increased humanitarian need in Dadaab camps, more schools and tertiary education institutions were established in 2011. For instance, by July 2015, there were thirty four primary schools, seven secondary schools and four tertiary institutions in the entire Dadaab complex (Kamau, KII, 11/11/2016). A UNHCR statistics report (2015) shows that by July 2015, there were four hospitals and 18 clinics in Dadaab complex, all accessed free of charge by refugees. These health centres and schools are run by the UNHCR and its supportive NGOs.

Mukhtar, an FGD participant in Dagahaley camp reported that 2012 was the very first time that his community was provided with construction bricks to construct shelters. This brick project was however opposed by the Government of Kenya in 2013: Mukhtar said he was one of the first people to use the provided bricks in Dagahaley camp to replace his old house made of mad, plastic sheet and corrugated iron sheet. He hoped that bricked houses which were more permanent would be more dignified but most importantly improve security in camps and ease the pressure on the environment. The number of trees cut for house construction would also have decreased significantly but that was not to be (Mukhtar-Dag, FGD, 08/11/2016).
Kamau argued that bricked housing was seen to be promoting some sort of permanency, yet according to government policy, a refugee camp was supposed to be temporary. The Government of Kenya therefore did not want any structures that would encourage refugees to get a sense of permanency in their stay in Dadaab. Refugees were instead supplied with corrugated iron sheet and sheets of plastic for shelter construction (Kamau, KII, 11/11/2016).

In his observation though, by early 2014, key organizations like WFP were already facing financial constraints and had to announce food cuts. The UNHCR had also already cut down some of its expenditure in education, community services and human resources (Kamau, KII, 11/11/2016).

In conclusion, if government initiatives in Dadaab were to be guided by more comprehensive refugee assistance policy frameworks, then perhaps there could have been a more consistent humanitarian environment. Unfortunately from the findings above, basic assistance seems to have been dependant on the level of donor support and the humanitarian situation in Somalia. The Refugee Act 2006 could therefore do very little to change the dynamics.

4.4.6 Access to Justice

In the early 2000s, disputes in Dadaab continued to be resolved at the community level outside the formal institutions of law just like it was the case in the 1990s. The refugee leadership and traditional forms of justice were the main agents of justice for the vast majority of the Somali refugee population (Taylor, 2011).

Mobile courts, however, attempted to take justice closer to the refugee community. The Dadaab Mobile Courts which included, the Magistrates court and the Kadhi court had been
established in April 1998 as a joint initiative between the Government of Kenya and the UNHCR. Through a memorandum of understanding, UNHCR provided logistical support which included transport, accommodation, a court house, allowances and interpreters (Wangui et al., 2012).

The judiciary on the other hand provided salaries for court staff. It was however not until 2012 that the judiciary took over the cost of allowances for judicial officers. However, UNHCR continued to pay allowances for prison and probation staff that accompanied the mobile courts (Wangui et al., 2012).

According to a UNHCR Report (2003) the Magistrate courts which were headed by the Chief Magistrate had jurisdiction over matters of personal and criminal law. The Kadhi courts had jurisdiction on matters concerning marriages and divorce, as well as issues to do with inheritance especially for Somali refugees in the Muslim religion. The mobile courts conducted weekly visits targeting refugees in Dadaab and their Kenyan neighbors who lived near refugee camps.

The UNHCR Report (2003) further indicates that the Dadaab mobile court sessions were an extension of the magistrate and Kadhi courts in Garissa town. Both the Kadhi and the Magistrate courts were also involved in legal awareness campaigns in the camps. The mobile courts ensured that the refugee communities understood various rights and how those rights could be accessed through the courts.

According to Hammond (2010), the purpose of these courts was to take justice closer to the people of Dadaab which was considered remote and difficult to access. Hammond further argues that during the early operations of mobile courts, there were problems of lack of magistrates willing to travel there. This was a serious problem because as a result, many
cases were postponed and this meant that the accused got detained in remand for long periods.

Despite the challenges, UNHCR always worked with the Refugee Consortium of Kenya (RCK) and assigned a lawyer to facilitate and observe proceedings in court as “amicus curie” (friend of the court) and to help in the interpretation of refugee law thereby ensuring that instances of arbitrary arrest and detention or forcible return did not occur (Hammond, 2010).

Hammond (2010) also argues that access to justice as a result of improved reach of courts minimized exploitation and bribery taking. The courts provided an alternative option to the Maslaha, the traditional justice mechanism which was male dominated and unfriendly to the rights of women and children in the camps.

Whereas mobile courts endeavored to bring justice closer to people, the so called Maslaha traditional courts continued to be used by the community for minor conflicts. These courts were convened by elderly members of the involved clans and they represented ethnic values. Proceedings would involve compensation which in most cases involved valuable items or livestock that would be paid to the aggrieved party (Taylor, 2011).

According to Warsame, the traditional system had several courts that operated within its set-up in Dadaab camps. It consisted of low level courts known as payam courts. The payan had two categories; the Kongor Payam and the Bahr-el-Ghazal’ regional courts. This is where complaints were first launched. The next levels were the bench court and the appeal court. The appeal court was the highest court (Warsame, KII, 13/11/2016).

He further explained that lower courts’ presiding elders did not receive any pay from the UNHCR or any agency operating in Dadaab. They however collected some form of fees
from plaintiffs as compensation for their time. Due to the patriarchal nature of the Somali culture, the presiding elders were always men and they preferred to preside over their cases under a tree in public places (Warsame, KII, 13/11/2016).

Warsame explained how unsatisfied complainants were allowed to raise the matter before the Maslaha court. For opening of cases at all levels, a down payment was needed. It was not always the case that UNHCR would be informed of these sessions, so it wasn’t able to keep up on monitoring. The mobile courts or the formal Kenyan justice system in general was perceived as complicated, lengthy and often inconclusive. Many Somali refugees preferred the Maslaha system because it was part of their culture of justice that was easily understood and delivered monetary or livestock compensation. Maslaha proceedings were however influenced by the social standing of the clan involved but most importantly, those with negotiating power had more influence (Warsame, KII, 13/11/2016).

A UNHCR Report (2003) describes the Maslaha system as an unsuitable system. It indicates that at times, these Maslaha courts had tendencies of presiding of matters that were beyond their capacity and needed attention at formal Kenyan courts. These matters would include sexual assault. In the Maslaha proceedings, sexual assault were handled casually by ordering perpetrators to pay a certain determined prize to the clan of the victim or be forced to marry the victim if pregnancy was involved. The report indicates that due to this fact, the UNHCR started requiring its appointed refugee leaders to discourage the application of Maslaha for criminal cases within their zones and instead, help to report all criminal cases to the police.

As has been discussed in previous sections of this study, the enactment of the Refugee Act 2006 gave a chance to the Government of Kenya to fully take over refugee management in Kenya.
The Act may not have become the ultimate reference for administering justice to refugees but as Atero (2010) argues, at least on the part of determining refugee status, a triple-tier hierarchy was established in Section 8 of the Act. It was a shift from the previous tendency of giving too much influence to members of the executive arm of government by allowing the transfer of powers of determining refugee status to various other committees within the state. Still in Section 8 of the Act, in contrast to the High Court of Kenya where appeals are based on points of law, the Act is silent on the nature of appeals that can be lodged at the Refugee Appeals Board. It fails to expound whether these will be based on points of law of fact, or both law and fact (Atero, 2010).

In as far as detention of refugees is concerned, Kiragu indicated that things did not change much from the old practice, despite the enactment of the Refugees Act 2006. For instance, in his observation, prolonged pre-trial detention continued to happen and asylum would be arrested but not get charged within the time allowed in the Kenyan law. Most of the time, these prolonged detentions were as a result of low capacity by the police to investigate and provide evidence and lack of enough magistrates to dispense off the cases (Kiragu, KII, 05/11/2016).

He also explained that there was often overcrowding and poor sanitation within detention centers. The UNHCR did not have enough funds for refugees’ legal representation but it sometimes facilitated their access to pro-bono legal services from some local NGOs. He mentioned that he himself was one of the lawyers who offered to provide pro-bono assistance to those in detention especially at Garissa law courts (Kiragu, KII, 05/11/2016).

In conclusion, it is something to be proud of that Kenya finally enacted a domestic refugee law in 2006. From the discussion above however, it would appear that a more comprehensive policy framework is needed to complement the Act. The policy framework
could for instance ensure that state officers including judicial officers and the police receive continued training on international protection of refugees and international law in general, and be acquainted with the Kenya Refugee Act, to ensure proper adjudication of matters before them.

4.4.7 Access to Durable Solutions

Local Integration

By 2016, local integration as a durable solution was still not an option in Kenya. This was mainly as a result of lack of political will from the part of Kenya and the unavailability of any legal reference that could allow refugees to be locally integrated (Carciotto & d’Orsi, 2017).

Resettlement

According to a global UNHCR Report (2016), out of the total number of refugees in the world which by end of 2015 was approximately 10.5 million, only about one per cent was getting submitted by the UNHCR for resettlement to third countries. Between 2000 and 2016, only a small number of states took part in UNHCR resettlement programs. Globally, UNHCR statistics ranked United States as the world's top recipient of resettled refugees, while Australia, Canada and the Nordic countries also provided a sizable number of opportunities for resettlement annually. The report further indicates that in 2011, UNHCR submitted about 90,000 refugees globally, for onward movement to donor countries for resettlement. About 10% had been reserved for vulnerable young girls and women. In the
same year, almost 62,000 individuals out of the submitted 92,000 departed to 22 resettlement countries with the UNHCR's assistance (UNHCR, 2016).

About 30,000 Somali refugees in Kenya were resettled to various western countries between 1995 and 2010, the biggest recipient of these refugees being the US. Others recipients of Somali refugees included United Kingdom, Netherlands, Finland, Australia, Germany, Sweden, Canada and Norway (UNHCR, 2016).

In 2012, it was reported by the Danish Refugee Council (DRC) that about 16,000 refugees were processed for onward resettlement to third countries. Those with special needs including the sick, vulnerable women and children, the elderly and people with serious protection concerns were prioritized. It was also apparent that the number of Somali refugees getting processed for resettlement was reducing year by year (DRC, 2012).

Details in the UNHCR Report (2016) show that the UNHCR was submitting to countries of resettlement an average of 6000 individuals with heightened protection concerns. Only about half of them were getting successful in interviews conducted by resettlement countries. Resettlement numbers for Somali refugees had been reduced while resettlement numbers for minority communities including Somali Bantus and refugees from Uganda, South Sudan and the great lakes region had remained steady.

The fact that Dadaab complex became a high security area during 2000-2016 period, most foreign embassies in Kenya could not approve their state officials or citizens to travel to Dadaab camps. As a result, foreign state officials could not conduct interviews with Somali refugees from Dadaab but from other locations including Kakuma refugee camp in Turkana County. Relocating these Somalis from Dadaab to Kakuma camp was an expensive exercise (Lindley & Hammond, 2014).
Kamau, a humanitarian worker revealed that that due to global security concerns, many western nations became less enthusiastic in resettling Somali refugees from Dadaab, especially after 2007 when Dadaab generally became associated with insecurity and the border between Kenya and Somalia got closed (Kamau, KII, 11/11/2016).

Kamau also noted that the fact that the Somali refugee situation in Dadaab was protracted, many donor countries got tired of supporting the same situation that was no longer seen as an emergency. Donors therefore prioritised the resettlement of refugees in fresh emergency situations. In his opinion, refugees from the Middle East were more preferred than refugees from Kenya. This contributed to the downscaling of resettlement numbers for Somali refugees (Kamau, KII, 11/11/2016).

Maghan, a middle aged FGD participant in Ifo camp had hoped that he and his family would get resettled to Canada between 2003 and 2007. He claimed to have attended interviews at the UNHCR but never succeeded. His application was rejected because it was determined that he was not in dire need for more protection as he had claimed in his application (Maghan-Ifo, FGD, 09/11/2016).

Bilado and Omar, FGD participants in Ifo and Hagadera camps respectively, expressed concern that the Somali community had been discriminated by the international community on many issues including resettlement to third countries. Bilado revealed that though she and many others in Dadaab camps met the vulnerability standard to be resettled, the processes for determining eligibility were long and tiring and they most often ended not in the affirmative (Bilado-Ifo, FGD, 09/11/2016).

Omar on his part knew of family members whose names had been forwarded by UNHCR to foreign embassies for consideration but ten years later, they were yet to be resettled. He
therefore wondered why it was taking too long to get Somali refugees resettled (Omar-Hag, FGD, 07/11/2016).

**Voluntary Repatriation**

Between 2001 and 2006, there was little facilitation of voluntary repatriation of Somali refugees from Dadaab. The deteriorating security situation in both Dadaab and Somalia made the choice of voluntary repatriation unattractive even though some Somali refugees still left for Somalia spontaneously (Hammond, 2010).

The rise of the Al Shabaab terror group that sought to instil the use of a fundamentalist Islamic Sharia law in Somalia became a scare to both Somalis in Dadaab and to those that remained in Somalia. As a result, there were not so many Somali refugees voluntarily willing to move from Dadaab back to Somalia between 2001 and 2006, although some are still believed to have spontaneously returned home anyway (Lindley & Hammond, 2014). A look into a UNHCR Report (2015) found that a huge number of Somali refugees in Dadaab could often be noted spontaneously returning to Somalia without giving notice to the UNHCR. Demolished shelters and vacated homesteads could often be noted in Dagahaley, Ifo and Hagadera camps.

In 2011, a new influx of asylum seekers fleeing war, drought and hunger related conflicts arrived in Dadaab. The arrival of over 130,000 people in 2011 and about half of the same number in 2012 caused the population of Dadaab to suddenly swell to a half a million refugees. Two new camps – Ifo 2 and Kambioos were created to accommodate the new population (UNHCR, 2015).
The same report further indicates that in late 2013, the drought that had caused many Somalis to flee Somalia in 2011 was coming to an end. Many refugees who had fled the drought began to spontaneously return to Somalia. Towards the end of 2013, as many as 100,000 refugees were believed to have returned to Somalia without giving notice to the UNHCR. This was again noted through the reduced ration food collections and vacated shelters in the camps.

As a result, in 2013 the Government of Kenya signed a Tripartite Agreement with the Federal Republic of Somalia and the UNHCR to be a framework for another facilitation of voluntary repatriation of Somali refugees. The first group of refugees to be facilitated to voluntarily return to some safe parts of Somalia left Dadaab in December 2014. By June 2015, only about 6,000 Somalis had returned home (UNHCR, 2015). A discussion with Keitany revealed that in 2015, the security officials in Kenya were getting highly dissatisfied with the slow pace of the voluntary repatriation of Somali refugees. In October 2015, after a terror attack that had happened at Garissa University College, the Government of Kenya alleged that the attack was planned in Dadaab camps. As a result, the UNHCR and its partners were issued with an ultimatum of three months to speed up the repatriation process and close the camps by December that year (Keitany, KII, 10/11/2016). Therefore, the government’s rhetoric in 2015 promising to construct a wall between Kenya and Somalia to stop the free flow of asylum seekers into Kenya would be illegal.

In an FGD discussion in Ifo, Yassin, was not happy with the way the voluntary repatriation activities were being rushed in Dadaab. Though he reported to have earlier held discussions with his family and friends about returning to Somalia, activities around 2015 concerning the pending closure of Dadaab camps were not motivating. His reasons of having wanted to leave were unfavourable political environment in Kenya and the deteriorating security
in Dadaab camps (Yassin-Ifo, FGD, 09/11/2016). Yassin also cited the lack of prospects in the other durable solutions as the reason for his fears and desire to voluntarily want to leave:

Eventually, I chose not to return to Somalia because upon weighing options, I could not get my children out of the good schools in Dadaab to take them to Somalia where I flee from, more than twenty years ago (Yassin-Ifo, FGD, 09/11/2016).

Another FGD discussion in Hagadera camp, Shukri revealed that the repatriation plans proposed by both the Government of Kenya and the UNHCR in 2013 upon the signing of the Tripartite Agreement, were in bad faith and would undermine Kenya’s international obligations by causing some refugees to undertake involuntary returns to Somalia.

My five children have lived in Hagadera their entire lives. I will therefore not return them to a country that they do not know, let alone the fact that it is still unstable. The Government of Kenya should consider Somali refugees for local integration as an alternative durable solution (Shukri-Hag, FGD, 07/11/2016).
4.5 Heightened Insecurity after 2011 and Implications to Refugee Protection

For a long time, Kenya has been the biggest host of refugees from neighboring countries technically making it to be the most admired country in East Africa. Its unique position has also motivated it to be at the forefront of finding long lasting solutions for refugees, in particular, Somali refugees who have continued to stay in the country for decades. Due to global attention in Kenya, its motives for any slight push for repatriation of Somali refugees is highly monitored (Stanley, 2015). According to an Amnesty International Report (2016), the Government of Kenya has in the recent past been seeing Somali refugees as a security burden and a threat to national security. This is mostly because of historical factors which have also contributed to several shifts in refugee policies from restrictive to more restrictive, the latest which led to the signing of the Tripartite Agreement.

4.5.1 Government’s Reaction to Security Threats Allegedly by Somali Refugees

The perception of Somali refugees as a threat to national security became heightened when Kenya was attacked severally by the Al-Shabaab around 2011. This was around the same time that Kenya had sent troops to Somalia to deter the Al-Shabaab from the Kenya Somali boarder in a security operation termed as Operation Linda Nchi. As a result of the attacks, refugee registration in urban areas were stopped with a directive requiring refugees to move to refugee camps (UNHCR, 2014).

Soon after the 2012 government directives halting refugee registration activities in urban areas, the Government enacted a security amendment law in 2014 which sought to enforce the refugee encampment policy and regulate the number of refugees in Kenya (Amnesty, 2016).
The Amnesty International Report (2016) found that upon enactment of this law, security apparatus embarked on forcefully relocating Somali refugees who they alleged had illegally settled in Nairobi back to Dadaab camps. In an operation called *Usalama Watch*, the Government arbitrarily arrested men and women that did not have Kenyan identity cards, put them in buses and transported them to Dadaab camps. This led to family separation and other abuses that Amnesty International termed as a violation of human rights.

Amnesty International also found this new law to be an infringement to the asylum space in Kenya, though a civil society organization filed a case at Kenya’s High Court which resulted in the nullification of provisions targeting refugees by Justice Majanja (Amnesty, 2016).

In March 2016, the Government of Kenya once again showed dissatisfaction with the slow pace of the Somali refugees’ voluntary repatriation exercise. The Ministry of Interior and Coordination of National Government alleged that the UNHCR and NGOs in Dadaab were frustrating the voluntary repatriation exercise because they were financially benefitting from the continued stay of Somali refugees in Kenya (UNHCR, 2016).

In May 2016, an radical announcement was made by the Government of Kenya that Dadaab camps would be closed and all refugees in Kenya would be required to return to their home countries. In less than a week later, the Government of Kenya through the Ministry of Interior and Coordination of National Government retracted its earlier announcement and said that it would only close Dadaab refugee camps by end of November 2016, citing security and refugee protraction as the reasons for the decision (Amnesty, 2016).
The decision was highly condemned by the UNHCR and the international community as a breach to international law and was particularly seen to be against human rights because it only targeted Somali refugees in Dadaab camps (Amnesty, 2016).

In May 2016, for the very first time since 1991, the Government of Kenya suspended the prima facie refugee status determination and announced that all Somali asylum seekers arriving in Kenya would be screened individually and will no longer receive prima facie refugee status. This is despite the fact that the Somali boarder with Kenya was still officially closed. The Department of Refugee Affairs (DRA) was also disbanded and later replaced with the Refugee Affairs Secretariat (RAS) which was tasked with all functions formerly undertaken by DRA including refugee status determination (UNHCR, 2016).

A discussion with Oduor, a community services expert in Kenya’s refugee sector, revealed that Kenya’s strategic importance in the region was well known and this could be the reason the Government of Kenya continued to be pressured by the international community to help in the fight against terrorism. In his opinion however, this did not have to justify the government’s disregard for refugees’ rights. He said he was one of those who had condemned the rhetoric around the issue of Somali refugees as a security threat. The rhetoric was a misplaced perception about Somali refugees more than it was evidence based. In his opinion, Somali refugees in Kenya were not responsible for the terrorist attacks but were a perfect ‘boogieman’ for politicians in government (Oduor, KII, 14/11/2016).

On his part, Warsame argued that even with the unfavorable perception about Somali refugees, the presence of refugees in Dadaab has brought benefits to Garissa and Wajir Counties where Dadaab camps are based. The presence of the UNHCR and NGOs has in
his opinion contributed to improved infrastructure and social services (Warsame, KII, 13/11/2016).

He further explained that while hosting many Somali refugees puts pressure on limited resources, benefits to Garissa and Wajir Counties are greater than the costs, which he perceived to have increased employment opportunities, commerce, health services, and improved infrastructure (Warsame, KII, 13/11/2016).

4.5.2 The 2013 Tripartite Agreement for Repatriation of Somali Refugees

In September 2013, the Government of Kenya signed a Tripartite Agreement with the Federal Republic of Somalia and the UNHCR to be a framework for facilitation of voluntary repatriation of Somali refugees (UNHCR, 2016).

The voluntary repatriation exercise commenced in December 2014. However, the initial repatriation exercise was a pilot only for those going to three regions in Somalia (Luuq, Kismayo and Baidoa) which were generally considered to be safe. After pacification of several other regions in Somalia in 2015, more regions were later added in the voluntary return support list. They included Mogadishu, Belewane, Johar, Afgoye, Wanla Weyne, Balad, Afmadow, Belahawa and Diinsoor town (UNHCR, 2016).

Details in the UNHCR Report (2016) further show that the returnees were supported with transport, a return package of USD 200 per person and a reinstallation grant of USD 200 per returnee upon arrival in Somalia. In Somalia, returnees were also supported with healthcare and education within the first three months of return. From December 2014 to August 2016, slightly above 30,000 Somali refugees had been supported to voluntarily return to the twelve regions in Somalia. About 70,000 more were waiting in the pipeline to be supported for repatriation.
Earlier in May 2016, the Government of Kenya had made an announcement that it would close Dadaab camps by the end of November 2016. This indicated that all Somali refugees would be forcefully repatriated to Somalia (Amnesty, 2016).

However, in high level discussions held with the Government of Kenya, the UNHCR proposed a more practical plan that would humanly support voluntary repatriation of Somalis. Its plan would include conducting a joint refugee population verification exercise in Dadaab jointly with the Government of Kenya to first ascertain the exact number of Somali refugees (UNHCR, 2016).

Through the plan, UNHCR hoped to first reduce the population of refugees in Dadaab by 150,000 before the end of 2016. This would include relocating all 16,500 non Somali refugees in Dadaab to Kakuma camp, deregistration of some 40,000 Kenyan Somalis in the refugee register and sustained support of up to 80,000 Somalis to voluntarily return to Somalia by end of 2016 (UNHCR, 2016).

The UNHCR urged the international community to help restore security in more regions in Somalia so that some 220,000 Somali refugees who would not have left Dadaab by December 2016 could also be supported to voluntarily return to Somalia before the end of 2018 (UNHCR, 2016).

A detailed look into the UNHCR Report (2016) found that a verification exercise was finally conducted jointly in Dadaab refugee camps by the UNHCR and Kenya’s Refugee Affairs Secretariat (formerly Department of Refugee Affairs) in August 2016. The exercise established that the actual total population in the camps in August 2016 was 280,000. This was a reduction from a population of 350,000 refugees and asylum seekers that had been recorded in July 2016 and an indication that besides those Somali refugees who were
supported to return home, there were others who had continued to spontaneously return to Somalia (UNHCR, 2006).

A discussion with Kiragu revealed that despite the mixed response from both the Government of Kenya and the UNHCR on repatriation, the repatriation exercise under the 2013 Tripartite Agreement did not meet the UNHCR repatriation pre-conditions set in 1996. He dismissed the UNHCR’s decision to promote repatriation of Somali refugees simply because there were some refugees returning home spontaneously. To him the determining factor for promoting returns ought to have been an improvement in the situation in Somalia (Kiragu, KII, 05/11/2016).

In his opinion, the UNHCR might have decided to sign the Tripartite Agreement to calm the calls for mass repatriation. He attributed his argument to the significant pressure exerted by the Government of Kenya on the organization especially by regularly threatening and giving ultimatums for closure of Dadaab camps (Kiragu, KII, 05/11/2016).

On the other hand, Kiragu criticized the Federal Republic of Somalia for agreeing to sign the Tripartite Agreement, despite the fragility of peace and stability within Somalia. In his assessment, around 2013, it was apparent that the conditions in Somalia were not ripe for returns. The Government of Somalia was also not equipped to settle a large number of returnees. President Hassan Sheikh had just been elected into power and his Federal Government had only begun to operate outside the capital city. In my opinion, the Federal Republic of Somalia’s political motivations impacted the decision to sign the agreement in order to show the international community that after over two decades of conflict and civil war, there was now relative stability in the country. To him, it was apparent that Somalia might also have been motivated by the possibility for donor funding if refugees returned (Kiragu, KII, 05/11/2016).
CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Summary of Findings

The year 2016 marked the 25\textsuperscript{th} anniversary of Dadaab existence as a refugee camp. Refugee camps are ideally supposed to be temporary settlements where international protection and assistance is organised for people in need of asylum. Dadaab remained a protracted refugee situation for many years. The study found that since the civil war that led to the outflow of refugees from Somalia to Kenya and Ethiopia in the early 1990s, Somalia never remained the same. Over years, the situation degenerated from civil war to an economy controlled by clan based warlords and later to the spread of the terrorism ideology by the Al Shabaab. This instability was a major reason as to why Dadaab camps continued to exist even beyond the emergency periods.

The study also found that voluntary repatriation and resettlement to third countries to have been the only durable solutions known for refugee situations. Resettlement to third countries was applied consistently since the arrival of refugees in Dadaab camps, though the numbers were inconsistent and dwindled over years.

The perennial instability in Somalia made most of Somalia to be undeveloped and unsafe. It also made voluntary repatriation of Somalis from Dadaab difficult. Though some Somalis who sought refuge in Dadaab eventually returned to Somalia, the study found that returns were far between and unsustainable. They were also hugely uncoordinated owing to the fact that most of them were spontaneous and unrecorded. The prolonged stay of refugees led to the rise of a second and third generation of refugees most of whom considered Dadaab their ‘country’.
Even though local integration is considered a durable solution globally, in Kenya, it was never availed as a solution. The Government of Kenya did not show any interest in this durable solution and this was compounded by the fact that there was no refugee specific domestic law that could enable its application.

The study found that not much effort was made to explore other solutions like economic integration. The environment for discussion of such solutions was never availed. This meant that stakeholders would continue to rely on the two available durable solutions even though they had proved not to be sustainable for the Somali context. As a result, Somali refugees were left with no choice but to continue staying in Dadaab where humanitarian aid was always made available.

Because of the perennial instability in Somalia, Dadaab camps would always be supported by the international donor community. Even though humanitarian aid was differentiated during the entire period between 1991 and 2016, it was established that somehow, humanitarian support in these camps was sustained. Some of the assistance including education and community services was improved over time. Also, most Somalis could receive remittances from their friends and relatives resettled abroad. Dadaab therefore remained a safer haven to most Somali refugees compared to Somalia.

The responsibility of giving asylum to refugees and ensuring protection lies primarily in refugee host governments. The Government of Kenya was therefore expected to take full charge of the refugee management in Kenya when it established Dadaab camps. Instead, the study found this responsibility of refugee management to have been left to the UNHCR, even without there being a domestic refugee law for management of refugee affairs. As a result, the government had very little control on critical refugee protection matters,
including registration, refugee status determination and even to some extent control of security in the camps.

The domestic refugee law in Kenya was only enacted in 2006. Before then, the findings implied that there was a huge void in terms of strategic policy guidance on refugee affairs. Even after the enactment of the new law, its provisions were not fully put into use. There was general confusion that even led to an attempt to introduce controversial clauses on refugee management in the Security Amendment Act 2014. Provisions of the Refugee Act 2006 also seemed not to be fully appreciated by both the government and the civil society. This is why there were several attempts to formulate other complementary laws like the Security Amendment Law Act 2014 or the amendment to the Refugee Act 2006.

5.2 Conclusion

The findings in this study have led to three main conclusions; Firstly, in the international practice of asylum and finding solutions for refugees, repatriation of refugees is supposed to be voluntary and should be undertaken in conditions of safety and dignity. The Government of Kenya announced in May 2016 that it would close Dadaab by November 2016.

The study found that although some Somali refugees at the time were willing to return home, they wanted to do it in an orderly manner with safety and dignity. However, by giving ultimatums and timelines as the Government of Kenya did, the nature of return of any Somali refugee who would return home under these circumstances could not be termed as voluntary and would be a breach of the Refugee Convention.
Secondly, the UNHCR’s plan with timelines aiming to assist all refugees in Dadaab to return home by the end of 2018 may also lead to a situation where the whole exercise may be seen as not in compliance with the Refugee Convention. The fact that timelines and deadlines have been set takes away the voluntariness.

Since the establishment of Dadaab refugee camps, most Somali refugees in Dadaab were issued with refugee status on prima facie basis. No special regard was given to the fact that Dadaab camps lied in a Kenyan territory occupied by Somalis of the Kenyan descent. Based on the August 2016 population verification exercise findings that up to 40,000 Somali Kenyans registered themselves as refugees so as to benefit from free humanitarian aid, the study concludes that prima facie refugee status recognition should not have been used in the case of Somalis.

Had individual status recognition been carried out, this anomaly would not have occurred. It is possible that through prima facie refugee status recognition, many other Somalis who would not have qualified to be refugees ended up in the refugee registers hence degrading the quality of international refugee protection in Dadaab.

Thirdly, when the Government of Kenya enforced the encampment policy in the early 1990s, it had hoped that this would be a temporary measure. It is not clear what the government’s long term action plan was with the creation of Dadaab camps.

Based on the findings of gradual deterioration of security in Northern Kenya by virtue of being close to refugee camps, the study concludes that encampment of refugees in situations like Dadaab where there is little chance for refugees to be engaged in nation building activities is not healthy. It is possible that such a situation may lead to deterioration of security especially if the settlement of refugees in protracted.
5.3 Recommendations

From the findings, some policy recommendations with practical suggestions as well as recommendations for further research have been made below;

5.3.1 Policy Recommendations

The 2006 Refugees Act should be amended to be in line with the new Constitution of Kenya, 2010. As currently is, it does not have provisions on long term management of refugees in Kenya. The encampment policy as practiced in Kenya is not anchored in this Refugee Act yet its enforcement remains in place. The law does not have provisions on how to categorize individuals born from a mixed marriage of refugees and Kenyan citizens. In the same length, it should be amended to provide exit regulations for refugees returning to their countries of origin particularly Somalia, without notifying authorities and later sneak back into Kenya to an automatic restoration of their refugee status.

The Refugee Act does give reference to provisions in a closely related domestic law, Citizens and Registration of Persons Act relating to foreigners. It is therefore not clear if provisions in this law apply to refugees too. The Citizens and Registration of Persons Act indicates that foreigners who legally live in Kenya for a consistent period of seven years would be eligible to apply for citizenship.

Besides the amendment of the refugee law, there should be in place a national asylum policy framework that will clearly outline the provisions of the domestic refugee law in detail. For example, the national policy framework should have details on how to reintegrate Kenyan citizens who have posed as refugees for a long time. It should also provide for procedures for refugees to apply for work and business permits as provided in the refugee law. The
national asylum policy should also clearly articulate details on exemptions for refugees who settle in urban areas.

5.3.2 Recommendations for Further Research

Research should be conducted to establish how development models can be integrated in refugee settlements to promote refugee’s self-reliance and bring to an end the overreliance of humanitarian aid. Findings in this study established that in Dadaab refugee camp, there has been an attempt by refugees to get involved in the informal business sector but it has not been scientifically established if their involvement can end overreliance to humanitarian aid. Refugee settlements as currently set up are purely humanitarian and refugees are not allowed to participate in the growth of the local formal economy.

New research should provide a platform for piloting a different and better approach to refugee assistance programming. Considering that the Government of Kenya may not be keen to give Kenyan citizenship to Somali refugees, perhaps guidance on how to integrate them economically in this respect may lead to ending their plight as perennial aid recipients and in turn contribute to the economy of Kenya.
REFERENCES

a. Primary Sources

Oral Materials

These are transcriptions from the study as was conducted in November 2016. They include transcripts from key informant interviews and Focus Group Discussions. Due to the nature of the study, only the first names of the FGD participants were revealed in the study to protect their identity. Each of the key informant discussants was identified with a pseudonym also to protect identity.

i. Key Informant Interviews

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Age</th>
<th>Place</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kiragu</td>
<td>54</td>
<td>Nairobi Kenya</td>
<td>05/11/2016</td>
</tr>
<tr>
<td>Keitany</td>
<td>41</td>
<td>Dadaab Kenya</td>
<td>10/11/2016</td>
</tr>
<tr>
<td>Warsame</td>
<td>54</td>
<td>Dadaab Kenya</td>
<td>13/11/2016</td>
</tr>
<tr>
<td>Oduor</td>
<td>40</td>
<td>Dadaab Kenya</td>
<td>14/11/2016</td>
</tr>
</tbody>
</table>

ii. Focus Discussion Groups

<table>
<thead>
<tr>
<th>Participants</th>
<th>Place</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heads of households</td>
<td>Hagadera primary school</td>
<td>07/11/2016</td>
</tr>
<tr>
<td>Heads of households</td>
<td>Dagahaley secondary school</td>
<td>08/11/2016</td>
</tr>
<tr>
<td>Heads of households</td>
<td>Ifo community centre</td>
<td>09/11/2016</td>
</tr>
</tbody>
</table>
b. Secondary Sources

i. Published books


**ii) Statutes**


Kenya Immigration Act (1967). Cap 172 *Kenya Gazette Supplement No. 36*


**iii) Reports/Journals**


UNHCR Kenya Updates October 2013 – [www.unhcr.org](http://www.unhcr.org)


UNHCR EXCOM. *Note on International Protection*, 7 July 1999, [http://www.unhcr.ch/refworld/unhcr/excom/reports/914e.htm](http://www.unhcr.ch/refworld/unhcr/excom/reports/914e.htm)

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APPENDIX I - INTERVIEW SCHEDULE

This is an academic study and any information you will provide shall solely be used for purposes of writing an academic research paper. Please provide the information below;

Name (Optional):__________________________________________________________

Marital Status____________________________________________________________

Number of wives (If Married)________________________________________________

Number of children_________________________________________________________

Year of Birth____________________________________________________________

Place of birth____________________________________________________________

Habitual residence_________________________________________________________

First Date of arrival in Dadaab_____________________________________________

Second Date of arrival in Dadaab if at all____________________________________

Level of Education________________________________________________________

Any leadership role (Sheikh, Camp leader, CPPT)___________________________

I voluntarily agree to participate and provide information for this academic study which is intended to establish trends in international protection of Somali refugees from 1991 to 2016. Date:……………………………………………………………..

Sign………………………………………………………………………………….
APENDIX II - FOCUS GROUP DISCUSSIONS (FGDs) QUESTION GUIDE

1. Indicate your name (optional), age, place of origin in Somalia and when you settled in Dadaab camps. Also state your reasons for fleeing Somalia?

2. What is your occupation and how do you cater for the needs of your family?

3. How has been the stay for you in these camps, what assistance were you/are you given and tell us some of the challenges and opportunities you face?

4. Have you been back to Somalia since your arrival in Dadaab? If yes, how was the situation there and would you consider returning home?

5. Given an opportunity to be a Kenyan Citizen, would you consider that?

6. Do you think you are given sufficient information about the situation in Somalia? How do you always get to hear about Somalia?

7. Do you have knowledge of Kenya’s 2006 Refugee Act?

8. Have you read about the UN Refugee Convention (1956) and its 1967 Protocol?

9. Tell us your experience with protection since you arrived. Has the kind and level of protection offered changed in any way? *Probe on different protection items.*

10. Describe to us what has changed and indicate when exactly the change occurred?

11. What should be improved in the administration of protection?

12. Are you or any members of your immediate family in the resettlement pipeline? If yes, for how long have you been in the pipeline?

13. If resettlement was to be done away with today as a durable solution, what would be your options?

14. The Governments of Kenya and Somalia together with UNHCR recently signed a tripartite agreement setting the framework for repatriation of Somali refugees. Are you or any member of your immediate family considering returning to Somalia under this framework? Why?
APENDIX III – KEY INFORMANT INTERVIEW QUESTION GUIDE

1. What’s your general view in the presence of Somali refugees in Kenya?
2. Describe the protection environment for Somali refugees in Dadaab refugee camps from early 1990s when they were established and late 1990s.
3. How would you describe refugee status determination for Somali refugees in Dadaab in the 1990s in comparison to the 2000s?
4. How do you recall physical security for Somali refugees in Dadaab camps in the 1990s compared to the 2000s?
5. Could you describe Somali refugees’ freedom of movement in and out of Dadaab camps in the 1990s compared to the 2000s?
6. How would you describe Somalis’ access to employment in Dadaab camps in the 1990s compared to the 2000s?
7. What can you remember about provision of basic services to Somali refugees in Dadaab camps in the 1990s compared to the 2000s?
8. How can you describe access to justice for Somali refugees in Dadaab camps in the 1990s compared to the 2000s?
9. How would you describe availability of durable solutions for Somali refugees in Dadaab camps in the 1990s compared to the 2000s?
10. The Government of Kenya actively began to agitate for closure of Dadaab camps in 2011: What’s your understanding of the reasons behind this?
11. What would you say are the implications of government pronouncements and courses of action on this matter?
12. What’s your overall analysis of the Somali refugees stay in Dadaab since 1991?
13. Do you think Dadaab refugee camps will eventually be closed?
## APENDIX IV - STUDY BUDGET ESTIMATE

<table>
<thead>
<tr>
<th>Activity</th>
<th>Cost Estimates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pretesting and Population sampling</td>
<td>10,000.00</td>
</tr>
<tr>
<td>Conducting of FGDs (including pay for Research Assistants)</td>
<td>30,000.00</td>
</tr>
<tr>
<td>Refreshments for participants</td>
<td>5,000.00</td>
</tr>
<tr>
<td>Transcribing and data analysis</td>
<td>20,000.00</td>
</tr>
<tr>
<td>Compilation of findings (keying-in of data)</td>
<td>10,000.00</td>
</tr>
<tr>
<td>Other costs (materials, transport, communication, accommodation)</td>
<td>25,000.00</td>
</tr>
<tr>
<td><strong>Total Cost</strong></td>
<td><strong>100,000.00</strong></td>
</tr>
</tbody>
</table>
Description: A map of Dadaab region showing the location of three old refugee camps established in 1991 (Ifo, Dagahaley and Hagadera).

Source: City of Thorns – Nine lives in the world’s largest refugee camp by Ben Rawlence
APPENDIX VI – RESEARCH APPROVAL BY KENYATTA UNIVERSITY

KENYATTA UNIVERSITY
GRADUATE SCHOOL

E-mail: dean-graduate@ku.ac.ke
Website: www.ku.ac.ke

F.O. Box 43844, 00100
NAIROBI, KENYA
Tel. 8710901 Ext. 57530

Our Ref: C50/OL/24038/13

DATE: 9th September, 2016

Director General,
National Commission for Science
& Innovation,
P.O. Box 30623-00100,
NAIROBI

Dear Sir/Madam,

RE: RESEARCH AUTHORIZATION FOR DUKE NYAKUNDI MWANCHA– REG. NO.
C50/OL/24038/13

I write to introduce Mr. Duke Nyakundi Mwancha who is a Postgraduate Student of this University. He is registered for M.A. degree programme in the Department of History.

Mr. Mwancha intends to conduct research for an M.A. Proposal entitled, “Trends in International Protection of Somali Refugees in Dadaab Refugee Complex, Kenya (1991-2015)”.

Any assistance given will be highly appreciated.

Yours faithfully,

MR. LUCY N. MBAABU
FOR: DEAN, GRADUATE SCHOOL
KENYATTA UNIVERSITY
GRADUATE SCHOOL

E-mail: dean-graduate@ku.ac.ke
Website: www.ku.ac.ke

FROM: Dean, Graduate School
TO: Duke Nyakundi Mwancha
    C/o History Department.

DATE: 9th September, 2016
REF: C50/OL/24038/13

SUBJECT: APPROVAL OF RESEARCH PROPOSAL

This is to inform you that Graduate School Board, at its meeting of 31st August 2016, approved your Research Proposal for the M.A. Degree “Trends in International Protection of Somali Refugees in Dadaab Refugee Complex Kenya (1991-2015).”

You may now proceed with data collection, subject to clearance with the Director General, National Commission for Science, Technology & Innovation.

As you embark on your data collection, please note that you will be required to submit to Graduate School completed Supervision Tracking forms per semester. The form has been developed to replace the progress report forms. The supervision Tracking Forms are available at the University’s website under Graduate School webpage downloads.

Thank you.

JACKSON LUVUSI
FOR: DEAN, GRADUATE SCHOOL

Chairman, Department of History

Supervisors:

1. Dr. Susan Mwangi
   C/o Department of History, Archaeology and Political Studies
   Kenyatta University

2. Dr. Lumumba Exene
   C/o Department of History, Archaeology and Political Studies
   Kenyatta University

2/16
APPENDIX VII – RESEARCH AUTHORIZATION BY NACOSTI

NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY AND INNOVATION

Telephone: +254-20-2213471, 2243349, 3310971, 2219420
Fax: +254-20-318245, 318249
Email: dg@nacosti.go.ke
Website: www.nacosti.go.ke
When replying Please quote
Ref: No.

Duke Nyakundi Mwancha
Kenyatta University
P.O. Box 43844-00100
NAIROBI.

RE: RESEARCH AUTHORIZATION

Following your application for authority to carry out research on “Trends in international protection of Somali Refugees in Dadaab Refugee Complex - 1991 - 2016,” I am pleased to inform you that you have been authorized to undertake research in Garissa County for the period ending 5th October, 2017.

You are advised to report to the Commissioner, Department of Refugee Affairs, the County Commissioner and the County Director of Education, Garissa County before embarking on the research project.

On completion of the research, you are expected to submit two hard copies and one soft copy in pdf of the research report/thesis to our office.


BONIFACE WANYAMA
FOR: DIRECTOR-GENERAL/CEO

Copy to:

The Commissioner
Department of Refugee Affairs.

The County Commissioner
Garissa County.
THIS IS TO CERTIFY THAT:

MR. DUKE NYAKUNDI HWANCHA
of KENYATTA UNIVERSITY, 76550-100
Nairobi, has been permitted to conduct
research in Garissa County
on the topic: TRENDS IN
INTERNATIONAL PROTECTION OF
SOMALI REFUGEES IN DADAAB REFUGEE
COMPLEX - 1991 - 2016
for the period ending:
5th October, 2017

Permit No: NACOSTI/EP/16/55889/14039
Date of Issue: 9th October, 2016
Fee Received: Ksh 1000

[Signature]
Director General
National Commission for Science, Technology and Innovation

[Signature]
Applicant's National Commission for Science, Technology and Innovation

[Signature]
National Commission for Science, Technology and Innovation

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