Reconciling Security Concerns and Refugee Protection

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Abstract:

Global refugee problem is not a new phenomenon. Both the Nazi Holocaust and World War II resulted in serious refugee situations in the western world that led to need to come up with framework to address the problem. The UN Refugee Convention of 1951 became the main instrument that provided international refugee law that provides for among other things, the legal definition of a refugee, the protection of refugees as well as the durable solutions. Protection of refugees essentially became the responsibility of the international community. In Africa's context, the 1951 Convention and its 1967 protocol, as well as the Organization of Africa's Unity (OAU) Refugee Convention of 1967 are instrumental in providing the legal framework under which the refugee situations are handled. Kenya started hosting refugees in the 1960s primarily from Sudan. In early 1970s many refugees from Uganda arrived in Kenya following the Idi Amin's misrule there. However, the major influxes of refugees into Kenya occurred in the early 1990s following violent conflicts in a number of countries within the Horn of Africa and Africa's Great Lakes Region. These included Uganda, Sudan, Ethiopia, Somalia, Zaire (DRC) and Rwanda. This paper examines the extent to which Kenya implements international refugee law in the light of security concerns that are linked to refugeeism. The main questions the paper attempts to answer are, to what extent does Kenya implement international refugee law? To what extent are the durable solutions applied? The paper argues that states implement international refugee law only to the extent to which the refugee question does not raise serious security concerns.

Introduction

Refugee phenomenon is not a new problem. It has existed from the ancient days. However, in modern times, refugeeism gained international attention with the outflow of Russian and Armenian refugees in the 1920s. During this period the League of Nations attempted to identify refugees by nationality, through the 1926, 1928, 1933 and 1938 arrangements. Global refugee situation was exacerbated by the Nazi Holocaust in the 1930s and early 1940s and the impact of world war two. By 1945, it was evident that the world refugee situation had reached an alarming proportion. It is important to point out that the responses to the refugee problems were focused on the European experience. The Nazi Holocaust for instance primarily impacted on Europe, with a number of Jews and other minorities seeking refuge in places such as United States and Canada. Furthermore, world war two had severe consequences in Western Europe where many of the battles were fought. It is against such background that the United Nations did not only establish United Nations High Commission for Refugees (UNHCR) to handle refugee matters, but in 1951 had the United Nations Convention Relating to Aspects of Refugees. The Convention became the main instrument of international refugee law. Besides providing the legal definition of a refugee, the Convention made comprehensive international law, providing for minimum standards, refugee rights and obligations.

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Background to Kenya's Refugee problem

In Africa, refugee problem has been linked to misrule and conflicts. The continent faced numerous intrastate conflicts in the post cold war era. The 1990s and 2000s experienced some of the worst violent conflicts in the continent. Such included civil wars in Liberia, Somalia, Sudan, Uganda, Sierra Leone, Mozambique, Angola, and Democratic Republic of Congo, among others. These conflicts triggered movement of hundreds of thousands and in some cases, millions of people as refugees. In Africa's case, most of refugees cross the borders into the neighboring countries. Kenya has been a host to refugees since the 1960s. However, refugee influxes that reached crisis proportion was not experienced until the early 1990s and the situation has continued to today. Many of the first refugees to arrive in 1960s were from Sudan following the military take-over of government in 1969 under General Jafaar Numeiry. These were primarily elite refugees that included ministers of the deposed regime and their families The atrocities committed by the Idi Amin's military regime in Uganda in the 1970s, followed by civil war in the country in late 1970s and early 1980s influx of thousands of refugees into Kenya. These early refugees were urbanites and many of them were professionals who could be absorbed into the national economy. The so-called "Ugandan Teachers" for instance imparted knowledge to young Kenyans in high schools in the 1970s and 1980s. Their contributions in Kenya's education sector were indeed starling. By the time of the first International Conference on the Assistance to Refugees in Africa (ICARA-I) in 1984, Kenya had only 6000 refugees (Gorman, 1987). This compared to massive influxes of refugees from 1991 onwards was paltry.

Statement of the Problem

A number of countries both in the Horn of Africa and the Great Lakes region of Africa faced some of the worst violent conflicts in the immediate post-cold war period (early 1990s). These included Sudan where conflicts between Sudanese people Liberation Army and the Khartoum government, Uganda, Ethiopia, Rwanda, Burundi and Somalia. In Somalia, the protracted conflicts led to collapsed state. These conflicts led to thousands of refugees fleeing to Kenya. By 1992, Kenya was host to over 400,000 refugees (UNHCR, 1993). It is important to emphasize that these were documented refugees who primarily lived in camps. By then, there were numerous urban refugees, many of whom were undocumented. By 2000 a study estimated out that the city of Nairobi alone had about 100,000 refugees (Ndege, 2000). Other urban centers also host refugees. In terms of numbers, Kenya still hosts large number of refugees. As of January 2016, there were 593,881 refugees and asylum seekers in Kenya, of whom 347, 980 were in Dadaab complex, 184, 550 in Kakuma, while another 61,351 were in urban areas (UNHCR, 2016). The figures here present a picture of refugee problem which may not be wished away. The large influxes are themselves a problem, particularly in considering their economic, environmental, and security impacts. Indeed, as pointed out above, Kenya experienced refugee crisis.

Further, despite the refugee problem and the need to implement international refugee law, for over one and a half decades since the start of the crisis, Kenya did not have a municipal refugee law. How did Kenya implement international refugee law in the absence of a corresponding municipal law for along time? Studies of refugees in Africa tend to focus more on humanitarian assistance. Analysis of implementation of international refugee law amidst security threats that are posed by major influxes of refugees is therefore an area that needs deeper inquiry. What are the security concerns that are linked to refugeeism? How have these impacted on the implementation of international refugee law? How can the two issues, refugee and security concerns be reconciled? To what extent does Kenya observe the provisions of international refugee law? These are some of the questions that this paper analyzes. Analysis of implementation of international refugee law reveals the extent to which security problems linked to large influxes of refugees do affect the extent to which governments adhere to those laws.

International Refugee Law

As indicated above, the UN Refugee Convention of 1951 became the cardinal instrument of international refugee law. While the 1926, 1928, 1933, and 1938 refugee instruments defined refugees by nationality based on the European experience by then, the UN Convention's definition of a refugee was more general. It defined a refugee as "one who due to well-founded fear of persecution due to race, religion, nationality, and membership of a particular social or political opinion is outside the country of his nationality, and is unable, or due to such fear is unwilling to

avail himself to the protection of that country". Or a refugee is a stateless person who is outside his country of former habitual residence is unable or unwilling to return for fear of being persecuted (Brownlie and Goodwin-Gill, 1998).

The convention further laid down the basic minimum standards for the treatment of refugees to be applied by the states in handling refugee issues. It provides that the terms of the convention be applied without discrimination as to race, religion or country of origin. It provides safeguards against forced expulsion of refugee, that is, the principle of non-refoulment (UNHCR, 2002). The convention provided a comprehensive catalogue of refugee rights that include the right to recognition of the legal status of refugees, the right to recognition of the domicile state, artistic rights, the right of access to courts, the right to gainful employment among others (UN Convention, 1951). The convention also makes formal link between its provisions and UNHCR.

The convention had some weaknesses. For instance, it applied to those who were displaced before 31st January 1951. Second, like the earlier arrangements, it was based on the European experience and therefore Eurocentric. Emphasis on persecution was more informed by the Holocaust and world war two experiences. Besides, it ignored both the refugee generating states and smaller states in the drafting of the law. Of the four African states that were independent by then (Egypt, Ethiopia, Liberia, and Libya), only Egypt sent a delegation (Oluoch, 2012).The reality of the global refugee situation led the United Nations General Assembly to convene the 1967 Protocol Relating to Refugees. While the protocol upheld the provisions of the 1951 Geneva Refugee Convention, it removed the time limit by which one would qualify to become a refugee. This was primarily on the realization that refugee problem had persisted several years after the January 1951 dateline provided for in the Geneva Convention.

In the context of Africa's refugee situation, besides the UN Refugee law, the OAU one is also critical in refugee protection. Africa's refugee problem was first brought to the attention of the OAU in 1964. The 1969 OAU Convention on Specific Aspects of Refugee Problem in Africa extended the definition of a refugee to include those who have fled their countries of origin due to generalized violence. That is besides the UN Convention and its Protocol's definition of a refugee, the OAU in Article 1 paragraph 2 also defined a refugee as "every person who owing to external aggression, foreign domination, or events seriously disturbing public order in either part of or whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality (OAU, 1969). The extended OAU definition was due to the realization that many refugees in Africa were not necessarily targets of persecution but were victims of violent conflicts. The instruments on international refugee law therefore make provisions that are meant to ensure not only the security and welfare of refugees, but also the need to protect their rights by the various implementing partners, including the host states. Both the UN and OAU refugee conventions, for instance, provide for the right of refugees to be engaged in gainful employment after a given period of being granted legal status. Before discussing how the state implements these provisions, it is important to discuss the security issues that complicate refugee protection.

Security Implications on Refugee Protection

Although refugee protection is a responsibility of the international community, in reality the host states play a central role in that regard. Refugee protection include ensuring that the right to asylum is implemented as provided by the various instruments of international refugee law and other instruments such as the Universal Declaration of Human Rights (1948) and the International Convention on Civil and Political Rights (1966). Protection involves ensuring that refugee wellbeing and safety as well as rights is assured. These are areas in which the host state work hand in hand with the UN refugee agency and a number of humanitarian agencies. Since 1990, Kenya has been a host to refugees from countries within the Horn of Africa and the Great Lakes. Studies reveal that majority of refugees are from Somalia followed by South Sudan. The table below presents recent trend by major countries of origin.

Trend by Major Countries of Origin

Country of Origin	2012	2013	2014	2015	2016
Somalia	513,421	477,424	427,311	418,913	419,119
Ethiopia	32,687	31,209	30,478	30,473	30,541
DR Congo	12,766	14,510	17,303	24,738	25,263
South Sudan	34,607	46,176	89,474	95,765	96,648
Total	608,113	587, 223	585, 363	593, 881	596,094

Source: UNHCR,2016

From the table, it's evident that for the five consecutive years, Somalia is the home state of about seventy percent (70%) of refugees in Kenya. This is followed a distant by South Sudan.

The year 2012 is noteworthy in this study since South Sudan had just seceded from the Sudan. By 2006, Somalia was still the leading generator of refugees in Kenya followed by Sudan, in the latter the majority was from Southern Sudan. By then there were 136,959 Somali refugees at the camps of Kakuma and Dadaab, while Sudan had 74,546 refugees in the two camps (UNHCR, 2006). By then, the number of Sudanese refugees was almost half that of Somalis. After South Sudan became independent in 2011, repatriation program was effected. However, the increasing number of refugees from the country not only presents case of volatility in the world's youngest state but is also a pointer to failed expectations. A number of returnees realized that the young nation lacked several basics that they could be provided with at the Kenyan refugee camps. Such included schools and health facilities. Others became victims of hostility from those who had remained in areas such as Bor District, Bar-el-Gazel, and Equatorial regions of South Sudan. Some of these opted to return to Kakuma which many considered as home.

It is important to note that the latest flare-ups between the government forces of Salva Kiir and those loyal to the rebels led by former South Sudan's vice president, Riak Machar, have pushed the latest figures much higher than the 2016 one presented in the table. The trend of Somalia refugees is notable. While in 2006 there were 136,959 refugees in the camps of Dadaab and Kakuma, by 2012, the number had gone up to 513, 421. That was about 400 percent increase in the numbers. The almost fourfold number of the Somali refugees could be explained from the increased violence since the Al-Shabaab, the militant wing of the Islamic Courts became the dominant group that was fighting the Somalia Transitional Federal Government (TFG). Al-Shabaab uses terror to achieve its activities. The militant group's operational techniques, its linkages with the al Qaeda, as well as its rapid growth, became a regional security concern. In 2006, the UN Security Council and African Union authorized for a regional military intervention. Initially authorized under Inter-Governmental Authority (IGAD), the UN Security Council that barred the states bordering Somalia from sending participating forces into the country led to the expansion from force from IGAD Mission in Somalia (IGASOM) to African Union Mission to Somalia (AMISOM) in 2007. The Security Council's Resolution technically barred Kenya and Ethiopia, both immediate neighbors of Ethiopia, from sending participating forces to the mission.

The large number of Somalia refugees in 2012 could have been as a result of the military intervention by Kenya Defense Forces into Somalia in 2011; an intervention dubbed, operation "lindanchi" (defend the nation) and was a response to several terrorist attacks launched by Al-Shabaab militants in Kenya's territory. During that operation, the various forces that included KDF, AMISOM, and Ethiopian forces intensified their attempts to root out Al-Shabaab. Al-Shabaab on the other side carried out retaliatory attacks, not only against Somalia government facilities, but also against, the bases of the various forces, as well as in Kenya. These led increased influxes of refugees from Somalia into not only Kenya, but also into Ethiopia and Yemen. Besides insecurity, the 2011-2012 drought and famine in Somalia combined to result in that higher number of refugees.

Even though international refugee law does not dictate on where refugees have to reside in a country, since the refugee crisis of the early 1990s, Kenya has officially been hosting its refugees in the camps. Initially the camps were spread in various parts of the country, for logistical and security reasons, they were later consolidated into Kakuma refugee camp in Turkana County, and the Dadaab camps of Ifo, Hagadera and Dagahaley. Logistical in the sense that the players in the refugee regime had anticipated that the refugee situation would be a short term one, hence, the need to place refugees where their repatriation would be less costly and faster to their home countries. The location of Kakuma camp was therefore influenced by the large number of refugees from Sudan, while those of Dadaab in were influenced by its proximity to Somalia. Besides considering the visibility of refugees in the camps for purposes to justify humanitarian assistance, encampment policy was also adopted due to the security concerns that are linked to refugee problem. The security concerns even motivated for the establishments of those camps in within the remote areas where they are. The fact that Kenya has been a host to millions of refugees for decades suggests its compliance to international refugee law. In line with OAU Convention, Kenya for a long time had an open door policy in regard to refugee admission. Further, most of the refugees who were fleeing violent conflicts in the region were admitted on prima facie status that is they all admitted as asylum seekers and thereafter processed while at the camps. By 2009, Kenya ranked eighth globally as refugee host, hosting 320,000 refugees (UNHCR, 2009).

The other leading refugee hosts included Pakistan (1.8 million), Syria (1.1 million), Iran (980,000), Germany (582,000), Jordan (500,400), Chad (330,000), and Tanzania (321,900). Apparently, among the largest generating countries of refugees are also the source countries of refugees in Kenya. These include Somalia, South Sudan, and Democratic Republic of Congo. The fact that most refugees today come from countries faced with violent conflicts raise fundamental security concerns to the host state. In Kenya and elsewhere, security concerns affects response to the extent of adopting measures that are generally tougher, a departure from the original open door policy and hospitality. Such concerns have been a trend linked to problems faced in the refugee source states. The government of Tanzania for instance took tougher measures that included screening of Rwandese asylum seekers in the aftermath of the 1994 genocide. Thousands of those asylum seekers fled to Uganda.

The most pressing security concerns include militancy, proliferation of arms and terrorism. These are challenges involved in human migration and specifically to influx of refugees in the twenty first century. In a study conducted by this researcher, security and intelligence sources indicated that militants who mingle with refugees and get into the camps actually pose security threat. A source pointed out that they do not abandon their activities but may use the camps to relax and regroup while strategizing to continue pursuing their missions. These were particularly common at Dadaab camps (Oluoch, 2012). The same study established that extension of conflicts among Southern Sudanese to some extent was due to presence of some former fighters among the refugees. In another study, the same researcher was informed by a university vice chancellor that some of his students from South Sudan would sneak back to their country to fight when there were outbreaks of conflicts. He adds that he would only get to know this when they return to campus when physically disabled, a common result of the violent conflict (Oluoch, et al, 2007).

The problem of proliferation is of great concern to policy makers in regions that are awash with such arms. Countries that face some of the worst conflicts in the region are unstable and have millions of such arms in circulation. Human movements have potentials of resulting in proliferation of such arms. Sources point to correlation between influx of refugees and proliferation of arms. This writer however argues that arms dealers take advantage of refugee situation and mingle with them for their own benefit. In a study, refugee respondents were asked to state the extent to which they were concerned about existence of small arms within their environment. About 39 percent of the respondents pointed out that they were greatly concerned, while 30 percent said that they had some concern, while another 22 percent, though concerned, are less concerned. Only 7 percent stated that they are not concerned, and only 2 percent did not respond to the question (Oluoch, 2012). These figures demonstrate that concern for the existence of small arms is real; hence, the high probability of existence of these arms in refugee areas, including camps and urban refugee concentrations.

Though maintenance of security at the camps is a function of the national government, sources point out that there are numerous security challenges, thus encourage some individuals within the camps and their vicinity to arm themselves. This writer argues that there are three interacting factors that results in the proliferation of arms. One, there is existing market within the camps and their surroundings and beyond. Two, there is abundance of arms in circulation in the countries that are faced with prolonged conflicts such as Somalia. Third, is the means of delivering the arms; the latter case is where human movement is involved (Oluoch, 2012)The Kenya National Focal Point on Small Arms and Light Weapons points to linkage between refugee movement and proliferation of arms in the region. It argues that the armed conflicts in the neighboring countries results in both human displacement and arms trafficking, pointing out that arms may be brought to Kenya by some of those who seek refuge (GoK, 2006). Further, conflicts between refugees and the communities living around the camps push the demand for arms further.

Asked to state their relations with host community, 40 percent of refugee respondents points out that there is hostility from the hosts (Oluoch, 2012). Sources of conflicts include rape of refugees by locals and vice versa, struggle over scarce resources, and general perception among the locals in camp areas that the government and other agencies favor refugees at their expense. In the latter, the locals' perceptions are reinforced by the position taken by local political leadership. Rape of refugee women can be a source of serious conflict between refugees and locals (Patrick, 2007). This can be explained from the high esteem in which some of the cultures hold their women and girls. Among the Dinka and the Nuer of South Sudan, girls are a major source of investment. It would therefore be a tragedy for one to elope with their ladies. Their men are ready to take up arms and fight in such situations. The Somali culture equally holds their ladies in high regard. Their ladies are supposed to maintain their virginity to marriage. Further, Somali women are customarily married to Somali men. As such sexual assault that involves those from other communities may be considered an abomination, hence a source of serious conflict (Oluoch, 2012).

When asked about source of threat to them, 62 percent of refugees pointed to host community as the major source that threat. Another 23 percent identified other refugees as the source of threat, with 14 percent of that specifying on refugees from the same country, while 8 percent are from the other nationalities, while 7 percent identified refugees generally. Another 4 percent pointed to others, and the rest did not respond (Oluoch, 2012). Whatever the response, the fact that there exists threat is a potential for one to arm himself. This explanation is in line with Thomas Hobbes thought in his work, Leviathan, that in the absence of strong sovereign; man may and rightly arm himself as self-reliance mechanism.

The large number of those who point to threat from the hosts may suggest xenophobic tendency towards refugees. This can be a serious challenge to refugee protection. Hostility is not directed at camp refugees alone, urban refugees are equally vulnerable. In urban centers, there are reports of refugees who have been victims of robbery, assault, rape, and insult by those who are able to identify them as such. There are also cases whereby they are harassed by the same agencies that are supposed to protect them. Such threats to their safety may lead to market for illegal arms. Some studies document cases where political leadership in Kenya directly link proliferation of small weapons to refugees, with some pointing out that this is an economic strategy (Mogire, 2003).Sentiments particularly from top political leadership are likely to impact on the policies and the legislations that are meant to protect refugees. These undermine efforts to adhere to and implement international refugee law and to protect them accordingly. The rise of global terrorism in the twenty first century has had major impact on human migrations in general and refugees and asylum-seekers in particular. Since the September 11, 2001 terrorist attacks in the United States, world major powers have gone a notch higher in their anti-terrorism war. The wars in the Gulf (2003) and Afghanistan (from 2001) were part of United States - led war against terrorism. States undertook stricter measures with regard to migrations.

In the west, situations have been worsened by the rise of Islamic State in Syria (ISIS), and the wars waged in the states such as Syria. The mass migrations into Europe that followed resulted in a refugee crisis that had never been experience in Europe since the end of world war two. While states such as Germany viewed the migrations as a blessing in disguise, in that they could get manpower from it, the terrorist attacks that followed in some of the European capitals led to a retreat from the accommodative policy. Terrorist attacks that took place in France and Belgium were linked to ISIS and their sympathizers, thus having a negative impact on asylum process in Western Europe. This undermines the right to asylum as provided for by the relevant international instruments. In Kenya, the main terrorist threat is the Al-Shabaab. Military and intelligence sources reveals that the Somalia based militant group, in collaboration with Al-Qaeda, have been involved in recruitment of many young Kenyans into their group. Such recruitments have largely taken place at the coastal and North Eastern regions, as well as in Nairobi. Radicalization and Islamic fundamentalism remain key variables in these recruitments.

* As such, Somali refugees and asylum seekers get affected most since the extremist group is based in Somalia. Sources indicate that Al-Shabaab's infiltration into Kenya started by 2007 when the extremist group became visible. Initially they would infiltrate into Kenya with the aim of getting recruits. In subsequent years, its members carried out numerous attacks in Kenya, particularly in Mombasa, Nairobi, and towns in North Eastern region. In 2011, due to security and economic threats emanating from Al-Shabaab attacks, Kenya militarily intervened in Somalia. Operation "Linda Nchi" was meant to root out the Al-Shabaab. It is however important to point to Kenya's long term foreign policy goal of attaining stability in the volatile neighboring country. Following the deployment of Kenya Defense Forces in Somalia, there have been increased terrorist attacks both on Kenya's territory as well as its AMISOM bases in Somalia. It is important to point out that since the extremist group is a party to the Somalia conflicts, its activities impacts on the implementation of international refugee law in Kenya.

The security concerns helped shape the domestic refugee law. Section 4 of 2006 Refugee Act for instance makes provision on prohibition of refugee status. Section 4(a) excludes a person who has committed crime against peace, war crime or crime against humanity as defined in any international instrument to which Kenya is a party. Section 4 (b) of the Act excludes a person who has committed serious non-political crime outside Kenya prior to the person's arrival and admission in Kenya as a refugee. Section 4 (c) on the other hand excludes a person who has committed serious non-political crime after arrival and admission into Kenya as a refugee.

In the latter case, the government can use the basis of a crime to revoke the refugee status. Section 4 (d) prohibits one who is guilty of acts contrary to the principles of the United Nations and the African Union. It is important to point out that the latter would include those who have promoted warlike activities. Further, both the UN and AU have defined terrorism as a crime, and as such, should be viewed in that context (GoK, 2006). Section 5 of the Refugee Act (2006) provides grounds upon which one ceases to be a refugee. These include committing serious non-political crime outside Kenya. Section 4 (h) of Kenya Refugee Act, 2011, excludes a person who is a combatant and who continues to engage in armed activities. While it is important to point out that the provisions reflect those of the UN and OAU conventions, the timing suggests that they were informed by threats to national security.

Theoretical Framework

A state behavior with regard to its security concerns is best explained using realism, specifically classical realism. Classical Realism dominated the understanding of international relations from the immediate post world war two to the early 1980s. This is the realist theory that is associated with scholars such a Hans Morgenthau .Realism concerned with two fundamental questions; what accounts for the behavior of state? What accounts for the dynamics of the international system (Morgenthau, 2005)? The answers to these two questions are found in two levels of analysis: the state level and the international level (Morgenthau, 2005).Realists start from the premise that the international system is anarchical. Anarchy does not necessarily mean chaos. Its existence is linked to an international system where states are sovereign. There is lack of order, which prompts states to adopt self-help strategies (Dougherty & Pfaltzgraff, 2005). State is the principal actor in international relations. States are preoccupied with their own survival. They therefore have to assure their capability. National interest of a state is defined as power. Power thus becomes the central variable in understanding behavior of the state.

Reliance on international law, in this case international refugee law and the kind of cooperation that characterizes refugee protection also defines liberalism. As pointed out above, there are numerous agents that are involved in this. The state is a principal player. The United Nations refugee agency (UNHCR) has been at the forefront in the coordination of refugee affairs. Before the creation of Department of Refugees Affairs and the enactment of refugee legislation in Kenya, refugee protection was primarily a function of UNHCR. The agency played critical roles such as refugee admission, status determination, as well as finding durable solutions. The state's role remained less visible until the creation of department of refugee affairs and the enactment of refugee legislation. More so, before these, the state's approach to the refugee problem was reactionary in nature. Humanitarian agencies such Lutheran World Federation, Handicap International, International Rescue Committee, Don Bosco, and others, have played significant role in fulfilling their mandate in refugee assistance. The kind of international cooperation that underscores these can best be explained from liberalism.

However realism best explains the state response in regard to security concerns raised by the refugee problem. As earlier stated in this paper, although international refugee instruments do not stipulate where refugees stay in the host countries, Kenya adopted encampment policy. Besides the need to make refugees visible for assistance purposes, security concerns remain primary. The location of the camps in remote areas had this in consideration. Security considerations led to refouler of Ethiopian Asylum seekers who were believed to be members of Oromo Liberation Front (Oluoch, 2012). Although Kenya still admits several asylum seekers, security concerns now informs decision making more than ever before. The 2014 rounding up and detention at Moi International sports complex, Kasarani, of thousands of members of the Somali ethnic group represents case of ethnic profiling in the war against terrorism. The proposed wall that separates Kenya and Somalia is another significant measure that is informed by security concerns. In respect to implementation of international and domestic refugee law, such a wall, if built, should serve security purposes as opposed to being used to contravene principle of non-refoulement.

Even the downgrading of Department for Refugee Affairs to Directorate of Refugee Affairs may be interpreted in the same light. It's important to consider that the main reason that led to upgrading of the domestic department in handling refugee affairs in 2006 was to strengthen refugee protection and to ensure implementation of the Refugee Act of 2006. Besides, for a long time, since the UN refugee agency had been playing roles that ought to have been functions of the Kenya government. The move was meant to have the government play its rightful role in refugee protection. Therefore abolishing the Department and replacing it with directorate may signal not only diminished position of that department in terms of its functions and mandate, but also manpower as well as financing.In 2013, the Kenya government, UNHCR, and Somalia government arrived at a tripartite agreement governing the voluntary repatriation of Somali refugees living in Kenya.

The process was supposed to be gradual and voluntary. However, the announcement by the Government of Kenya in 2016 that it would close the Dadaab camps was primarily informed by the security threats that are discussed above. Beside, high ranking government officials also lamented inadequate support from the international community in refugee protection. The dwindling contributions by the donor community is a development that could be attributed to emerging global issues and challenges such as natural disasters, continued conflicts in Africa and increasing refugee situations and the associated donor fatigue. In the next section, the paper discusses how durable solutions are handled.

Durable Solutions to Refugee Problem

International refugee law as stipulated in the Geneva Convention and UNHCR mandate provide three durable solutions. These are integration into the first country of asylum, voluntary repatriation to the home country, and resettlement into the third country. The Kenya experience reveals that refugee situation can be quite along one. The Sudanese "lost boys" who were admitted into Kakuma camp in 1990 in their teen ages, are now in their 40s, while some of Somali and Sudanese who were born in the camps are in their twenties. That means that left in their original status, they remain refugees for long. Although constitution provides for naturalization of foreigners, refugee law does not make provision for local integration. Refugee law empowers the relevant minister to put refugees in designated places (read as camps). Encampment in practice may not facilitate integration. As such, refugees are generally disadvantaged since vast majority are not involved in gainful employment, thus perpetuates continued dependency of humanitarian assistance. The strict enforcement of encampment policy leaves repatriation and resettlement as the options. The two also have their challenges.

In 2015 for instance, 5001 refugees were resettled in third countries, an increase by 100 over the previous year (UNHCR, 2016). Only a handful of countries participate in resettlement program. Besides, these states are increasingly becoming restrictive in their admission process, a development that is largely informed by the problem of terrorism. The main countries that admitted refugees from Kenya in 2015 were USA (3,610 -72%), Australia (514-10%), Sweden (341-7%), United Kingdom (308 -6%), and Canada (174-3%) (UNHCR, 2016). The number of those resettled considered against the number of camp refugees that year is just about 1.19 %, a very low proportion indeed. Resettlement is a popular option among refugees and their families. This is primarily because of the opportunities that they stand to benefit from in the countries of resettlement.

Where repatriation is viable, it becomes the most preferred option. However, it's important to emphasize that repatriation has to be voluntary. Article 33(1) of the Geneva Convention prohibits member states from repatriation refugees to states where they may still face persecution. This is the principle of "non-refoulment" that prohibits forced repatriation.

While it is important to note to that there are cases where repatriation has worked, in cases of Somalia, South Sudanese, and to some extent, Ethiopia, it faces monumental challenges. In the case of South Sudan, following the secession and attainment of its independence, many of its refugees returned home to start nation building. However, the reemergence of the intrastate conflicts has led to exodus of millions of Sudanese refugees into neighboring states. Many of whom have found their way into Kenya. In Somalia, the unilateral and multilateral military interventions have had some achievements, the situation remains volatile and the government is weak. Millions of Somalis remain internally displaced from decades of conflicts. As such, many refugees are still reluctant to return, despite the position that stability has returned to the country. The Tripartite Agreement has realized some efforts to encourage voluntary repatriation. The UNHCR supported pilot repatriation in which between December 2014 and June 2015, 2,589 Somali refugees returned to their areas of origin. Such data reveals that the traditional durable solutions to refugee problem are not achieving much in the short term.

Conclusion

Kenya has been one of the leading states in refugee hosting for the past two and a half decades. As such, it has been implementing international refugee law. However, as this paper argues that implementation of such laws are hampered by lack of well-developed institutional and legal framework, as well as comprehensive policy. For quite some time, the state would act in a less structured manner. Today, security concerns seem to drive response to refugee problem. In such circumstances, the actions may deem to contravene the law.

As such it becomes necessary for the actors in refugee protection regime to reconcile security concerns and refugee protection so as not to jeopardize further a population that is already vulnerable. Further, the major states and institutions should play their rightful role in refugee protection. Policy makers need to rethink about encampment policy. Long term encampment breeds dependency on humanitarian assistance and has serious mental health implications. It is socially not desirable. It's about time we thought about some form of integration. Besides, the various players need to find out ways and means of empowering refugees so that they can fend for themselves. Further, it's against natural justice to have human beings be born refugees and remain refugees for life in a democracy such as Kenya. The law should for instance allow for naturalization of children born to refugees in the country. As discussed in the paper, the main cause of refugees in the region is conflict. The African Union individual states and other international actors should help improve governance in the continent as a means of ending such conflicts. This calls for the establishment of functioning democratic institutions, adherence to the rule of the law and constitutionalism and democratic peace zone in the region. With peace in the region, voluntary repatriation will work as a durable solution

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