International Refugee Protection Framework's Influence on Human Security in Kenya: Focus On Nairobi County"

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Abstract: This paper presents and discusses findings on the international refugee protection framework's influence on human security in Nairobi, Kenya. The study, seeks to interrogate how the ever changing character of the refugee phenomenon has impacted and even transformed the Kenyan security and protection system. According to the 2015 Global Terrorism Index, acts of terror in total cost $52.9 billion across the globe in 2014. Kenya has been hit hard in the last 5 years by acts of terror causing unbearable deaths of people, damages, destruction of property and knocking the development prospects of the country. In 2002, 2013 and 2014 there have been attacks in Kenya that are attributed to refugees' terror networks with a Somali-based group called Al-Shaabab. Some refugees have been suspected to be conduits of terror networks in Nairobi, Kenya. The author argues that, not all refugees in Kenya are battle ready though the refugee movement has an influence on national security as other forms of international crimes set in; illegal arms proliferation, drugs, human trafficking and smuggling. Such an examination, ultimately seeks to rethink through the international refugee protection framework which is operational in Kenya in terms of its own positive and negative impacts and influence on security. Should Kenya protect its citizens alone or should it protect refugees as well? The shifts in the international refugee protection framework have questionably augmented state duty and widened the parameters of defense due to terrorism. The major principles in the 1951 Agreement included non-refoulment, non-penalization and non-discrimination of refugees. The question that this paper seeks to answer is; what is the nature, scope and structure of refugee protection framework operational in Kenya generally and Nairobi specifically? The study was struck by the significant progress and large degree of gaps that existed between the assumptions on the implementation of the refugee protection framework of 1951 vis-à-vis the articulation of Vision 2030 security strategy. This study recommends that the host state analyzes the flow of refugees on a case-by-case basis, rather than applying blanket ban; there is also the need for different nations to cooperate in addressing refugee issues. Investing in human capital, developing physical infrastructure, cooperation from the country of origin; and the use of technological advancement in surveillance of refugees will maintain the state's power. Hence forth the above study showed thatmore insecurity, more learning. The persistent failure of refugee protection framework is due to the on-going terrorist attacks that left scant confidence that parties are working in good faith toward its resolutionbetween the Republic of Kenya, the Federal Republic of Somalia and United Nations High Commission on Refugees.A new refugee protection framework is inevitable, new institutions like the Refugee Secretariat are not.

Key words: Refugee, International refugee protection framework, security, human security

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I. INTRODUCTION

This paper is an examination of Kenya's efforts to meet its international obligation of responsibility to protect refugees on the one hand, and its duty to secure its citizenry, security and sovereignty on the other. Such an examination, ultimately seeks to rethink through the international refugee protection framework which is operational in Kenya in terms of its positive and negative impacts and influence on human security. In Kenya no data exists on the refugee protection framework's influence on human security and its relationship to violence. With prevalent terrorist attacks and threats, there is need to evaluate the nature, scope and structure of refugee protection framework in relation to human security in Kenya.

In a statement to the media, the Government of Kenya delivers a decision to 'end hosting of refugees' clarifying that the country's national security interest is threatened by challenges posed by Al Shaabab and other terror groups (The Standard, 7 May 2016).Data from the National Counter Terrorism Centre (NCTC) in Kenya indicates that at least 900 people have been killed in terrorism attacks since 2000. A project document drafted by

the Government of Kenya (GOK) and United Nations Development Programme (UNDP) in 2015, states that terror attacks and killings in Kenya are led by jihadist terrorist groups; Al Shabaab and Al-Qaeda. Refugees have been suspected to be conduits of terror networks in Nairobi, Kenya. In the wake of increased terrorist activities in Kenya, asylum has become a threat to national security (Mulatya, 2014:78). Mulatya argues that immigrants posed the highest threat to national security in Kenya. The author argues that refugees are not the only cause of insecurity in Kenya, other factors must be considered.

In as much as most scholars focus on the protection of refugees and refugee interests by way of legal protection, they don't put the interest of human security element about challenges of refugee hosting state's human security and institutional agenda. These variations are very significant in the hosting of refugees, as they might find that they are under threat of retaliation from refugee-sending state for cross-border attacks carried out by illegal refugees. Kenya Defense Forces (KDF) is part of the African Union Mission in Somalia (AMISOM) humanitarian intervention peacekeeping mission. KDF has sacrificed and contributed a lot to the stabilization of about 80% of Somalia using Kenya's own resources. Illegal refugee migration is costly to the economic development of Kenya. Travel advisories are issued to potential tourists to Kenya.

II. MATERIAL AND METHODS

The study involved a survey on a cross-section of the affected area, with one (Nairobi County), representing urban refugees as the main unit of analysis. Refugees are affected with the Government of Kenya directive due to terrorist attacks; and human security aspects provided by the Government of Kenya to its citizens in Langata and Pumwani Sub-Counties, Nairobi. This study was conducted through a descriptive survey focusing on the international refugee protection framework's influence on human security in Nairobi, Kenya. The purpose of this design was to gather data at a particular point in time with the intention of describing the nature of existing conditions or determining the relationships that exist between specific events. This study was conducted between June2016 to December 2017.**Sample size:** 285 refugees. **Sample size calculation:** The sample size was estimated on the basis of a single proportion design. The target population from which the sample was randomly selected was considered to be 46,000 urban refugees.

Procedure methodology

After written informed consent was obtained, a well-designed questionnaire was used to collect the data of the recruited patients retrospectively. The questionnaire included socio-demographic characteristics such as age, gender, nationality, level of education and occupation.

Study Area

This study is carried out in Nairobi County, neighbouring Central Kenya. Nairobi is both the political and commercial capital of Kenya and serves as a major transit route for air traffic in Africa and a tourist destination. Administratively, Nairobi County is divided into 8 sub-counties namely: Central, Langata, Makadara, Kasarani, Embakasi, Pumwani, Westlands and Dagoretti. This study focuses on Pumwani and Langata sub-counties only. It is densely populated with a total population of about 4 million people according to the national census of 2009 (KNPC, 2009).

The population of this study includes all urban refugees above eighteen years from: Eritrea, Somalia, Congo, Rwanda, Ethiopia and South Sudan; organizations dealing with refugees, state departments dealing with refugees and human security issues, host community households and households. Households are important social units of a nation and included clan elders, youths, women leaders, religious leaders, business personnel and household heads. Secondly, state officials are also interviewed and included: intelligence/anti-terrorism operatives, chiefs, ward administrators, County Commissioner's office, Refugee Consortium of Kenya officials, immigration officers, teachers, police, military and District Peace Committees. Relevant organizations: International Organization of Migration, United Nations High Commission on Refugees and civil society representatives. The unit of analysis is the refugee in Nairobi County. Total number of refugees in selected sub-counties is 285.

Sources of Primary Data

Primary data collection is done in three stages. In the first stage, data is collected from refugees in Langata and Pumwani Sub-Counties. Structured interviews are conducted using pre-tested questionnaires administered to state officials dealing with refugees, civil society organizations and focus group discussions. Information is collected on the demographic characteristics of refugees, state officials and household of residents of Nairobi factors. Unstructured interviews are used to obtain qualitative information from household/residents about human security aspects in Nairobi. Direct observation is an important tool in collecting data from refugees. In the second stage, quantitative data is collected from military (KDF), security officers (police/intelligence), immigration officers, judiciary, ministry of foreign Affairs officers, teachers, local residents, UNHCR official.

Statistical analysis

Data is analysed using statistical package for social sciences (SPSS) Version 21 to get frequency and influence ranking. The analysis is carried out to establish the relationship between the international refugee protection framework's influence on human security and variables such as poor state capacity, social cleavages, corruption, state fragility in general of Kenya and human insecurity.

III. RESULTANT DISCUSSION

The nature, scope and structure of refugee protection framework operational in Kenya generally and Nairobi specifically

Kenya's effort to meet its international obligation of responsibility to protect refugees and national security from the study area are assessed to determine whether Kenya's obligation to comply with the international refugee protection framework had an effect on national security. A nation needs security and development; respect and recognition from the international community. Therefore, Kenya has its national interests defined in its foreign policy. According to the Responsibility to Protect principle, failure by states to take action when mass violence occurs result in a transfer of responsibility to the international community.

This paper indicates that the relationship between the refugee protection framework and human security is threefold. First: there is an apparent absence of the nexus between the conventions, their implementation and the effectiveness with regard to the host state institutional agenda and human security. While refugees are still a significant issue there is a growing concern of state responsibility to protect vis-à-vis human security and of meeting humanitarian objectives. Secondly, the relationship between the refugee protection framework and human security is opportunistic; this is not a spontaneous relationship. Due to the organized nature of some refugee populations in Kenya, the status of the refugee protection has important implications for countries of asylum. This is because the reflection of refugees as people in call for protection was not wrong, but it is deficient— refugee situations are not just about passive anguish and humanitarian aid. Thirdly, it israndom and for the most part, urgent. But before we interrogate the empirical evidence, we need to understand why the refugees are embedded in the Nairobi county community. It is important to understand that nexus because the policy and administrative recommendations are informed by the workings of the country of origin which is the source of Al Shaabab terrorist group construction, nourishment and reproduction networks. The recruitment is done passively and leadership is collective, shared and rational based on the religious fundamentalism.

Previous research under President Moi (1978-2002) showed no significant refugees are subject to what Kagwanja and Juma (2008) referred to as "abdication and containment." This study reveals that Kenya preserves and championed national interests over those of aliens and refugees and, therefore, has insisted on fairly restrictive criteria for identifying those who are to benefit from refugee status. Further, in recognition of the refugee crisis in the Eastern and Central African region and in adherence with the international conventions relating to the protection of refugees, Kenya has permitted and assisted the UNHCR to operate freely in the country in order to manage the influx, control and protection of refugees. This statement is in resonating with the Kenya Government's view of Somali refugee with suspicion; that they can be a security threat.

Muggah (2014), argues that the nature of the Rwandan and Congo refugees has taken a new twist. The ex-FAR and 'interahamwe' has made use of camps they were hosted into continued posture of insecurity hence making the refugee situation still fluid (Mthembu-Salter, 2014). With camps in Kivu being destroyed by the Rwandan authorities and the Congolese authorities on the other hand launched a protracted war that engulfed almost the whole of DRC, which subsequently led to the ouster of the Government of the day. Ten years later the same has happened thus leading to another refugee crisis (Muggah, 2014).

Refugees as a security threat to Nairobi Kenya

Assessment of security threat on Nairobi County residents and the perception of threats of refugees from the study area are carried out in order to determine whether the presence of refugees has an effect on their freedom from 'fear'. The study reveals that there is a significant association 7 (87.5%) in the Somali refugee presence and the security threat to Nairobi residents, therefore, affect their daily living.

Previous work by Melander and Oberg (2006) present the argument that refugees might serve as catalyst of war between warring states but unconsciously or deliberately ignore the impact of refugee influx in the host state. This research differ with other studies in international refugee and security studies in that rather than dwelling entirely on the causes of war and expulsion of a population, it explores the protection problems faced by refugees in light of international refugee protection framework's influence on human security.

Table 3.1: Refugees as a security threat to Nairobi County in Kenya

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	7	87.5	87.5	87.5
	No	1	12.5	12.5	100.0
	Total	8	100.0	100.0	

Findings from the County Commissioner's office, Nairobi County make it clear that the government is obliged to provide security to all people within its jurisdiction. The County Commissioner notes that the Government has achieved greatly in terms of the refugee protection in relation to human security since it embarks on an exercise of re-identifying the refugee status. For example, all Somali refugees in Nairobi are encamped in Kasarani Stadium, from that exercise; those who are in the country illegally are repatriated back to Mogadishu. This study reveals that bomb attacks around Kamukunji area has also gone down.

Kagwanja & Juma (2008) also argue that refugees living within a country play a great role in facilitating human smuggling and trafficking. Refugees working in a host country are used by traffickers and smugglers to traffic people and illicit goods to Kenya. Most of the community household respondents (77.5%) consider refugees to fuel corruption, while 82.5% consider that the Kenyan authority force the refugees/immigrants to pay bribes. This make security framework to be compromises. This study delves into matters of state fragility and insecurity.

Other protection threats affecting refugees in Nairobi County, Kenya are shown in Table 3.2

Table 3.2: Activities done by the refugees that make them unnoticed

	YES		NO	
Condition	Frequency	Percentage	Frequency	Percentage
Are refugees entrepreneurs in the County?	16	40.0	24	60.0
Are there any economic motivation opportunities for the refugees	8	80.0	32	20.0
Does the government offer any skills training to the refugees or host community to facilitate economic integration	9	22.5	31	77.5
Do refugees run any business in the community and pay taxes	27	67.5	13	32.5

Source: Field Data, 2016

When results for activities done by the refugees that make them unnoticed are tabulated, as shown in table 3.2

Out of the 16 (40.0%) of the respondents said that refugees are entrepreneurs in Nairobi while majority 24 (60.0%) disagree that refugees were not entrepreneurs. On the other hand, respondents are asked whether there are any economic motivation opportunities for the refugees where 8 (80.0%) agreed that there are economic motivation opportunities for the refugees in Nairobi whereas 32 (20.0%) disagree that there are economic motivation opportunities for the refugees. Respondents are also asked if the government offered any skills training to the refugees or host community to facilitate economic integration and out of 9 (22.5) agreed that the government offered some skills training to the refugees or host community to facilitate economic integration whereas majority 31 (77.5%) disagreed that the government offered any skills training to the refugees or host community to facilitate economic integration.

In addition, 27 (67.5%) said that the refugees run business in the community and paid taxes while 13 (32.5%) said that neither do the refugees run any business in the community nor pay taxes. They often contribute to incidences of criminal control. Failure of the state to address the problems emanating from vast tracts of informal settlements as observed in the case of Nairobi has provided grounds for social disorganization and negative resilience among residents.

Police attitudes towards refugees in Nairobi and implications for refugees' protection

Effort should be put in resource mobilization to support the Command and Control center of all security agencies in order to prevent and respond to crime as elaborated by the Table 3.3.

Table 3.3: Factors influencing security framework in Nairobi County, Kenya

Condition	YES		NO	
	Frequency	Percentage (%)	Frequency	Percentage (%)
Do refugees fuel corruption	31	77.5	9	22.5
Are refugees/immigrants forced to pay bribes	33	82.5	7	17.5
Do refugees commit crime	31	77.5	9	22.5
Are refugees victims of crime	25	62.5	15	37.5
Are refugees assisted by criminal groups to commit crimes	23	57.5	17	42.5
Are refugees abused by criminals	21	52.5	19	47.5
Are irregular refugees facilitated by organized criminal groups	19	47.5	21	52.5

Source: Field Data, 2016

On whether refugees fuel corruption 31, (77.5%) of the respondents said refugees fuels corruption whereas 9, (22.5%) said refugees does not fuel corruption. In terms of whether refugees/immigrants are forced to pay bribes, majority 33 (82.5%) said that refugees are forced to pay bribes specifically to the police, however, 7 (17.5%) said that refugees/migrants are not forced to pay bribes. In addition, majority 31 (77.5%) of the respondents said refugees commit crimes in Nairobi while (9; 22.5%) said refugees do not commit crime. When the results are tabulated as shown in table 5.4 above, out of 25 (62.5%) majority of them said refugees are victims of crime while 15 (37.5%) said are not victims of crime. On the other hand, 23 (57.5%) of the respondents said that refugees are assisted by criminal groups to commit crimes whereas 17 (42.5%) said they are not assisted by criminal groups to commit crimes. In addition, 21 (52.5%) of the respondents said that refugees are abused by criminals while 19 (47.5%) of the respondents said refugees are not abused by criminals. Lastly, most 19 (47.5%) are irregular refugees facilitated by organized criminal groups while 21 (52.5%) said there are regular refugees not facilitated by organized criminal groups.

Further, the findings indicate that police officers, particularly in the junior ranks, seem to be unfamiliar with refugee documentation and are usually highly suspicious of the validity and authenticity of refugees' documents. Although UNHCR routinely passes copies of its documents to police stations in Nairobi, staff turnover and a lack of training mean that many officers did not have the necessary knowledge and awareness to properly police areas with large refugee populations. According to a Police Commander interview in Kasarani police station, there have been instances when refugees have been arrested and taken to court, only to find that they are in fact in Kenya legally and have valid documents.

Focus group discussions with refugee communities in Eastleigh reveal widespread patterns of abuse and extortion, with refugees being routinely stopped, arrested and charged with 'idling with intent of committing a crime' or being an 'unlawful presence.' According to the entire refugee interview in Eastleigh, patrols and searches are deliberately arranged to maximize bribe-taking. For example, men are mostly targeted during the day, while women are usually target at night, because police officers know that families and communities fear the possibility of sexual abuse and are willing to pay substantial amounts of cash to release a woman. Arrests are almost always made with a view to extorting money from detainees, who are usually released once a bribe has been paid. Allegedly, so lucrative is extortion in Eastleigh (a legal advisor we spoke to called it a 'green pasture' for the police) that officers not based in the County often came to 'work' there specifically to extort money from refugees. This practice intensified on Fridays, as more police officers are lures to Eastleigh to look for extra money for the weekend.

Katumanga & Ngunyi (2014) with reverence to the 'Principle of Mass and Economy of Force', large numbers of the police force are deployed in areas where they are least needed. This paper reveal that the limited coordination and resource deficiency of Centralized Command, security gaps existed even where numbers are present. The author observed that during the West-Gate terror attack in 2013.

Table 3.5: The relationship between refugee influx and security

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Proliferation (SALW)	10	10.0	11.1	11.1
	general insecurity	50	50.0	55.6	66.7
	Radicalization	20	20.0	22.2	88.9
	resource competition	10	10.0	11.1	100.0
Total		100	100.0		

Source: Field Data, 2016

Respondents are asked about the relationship between refugee influx and security. An observation made by the researcher is that inadequate planning to secure Nairobi on the side of the government was apparent. There are too many entry points to the city. The entry point for community policing has failed to a large extent. It is not easy for neighbours to notice a stranger as compared to Uganda and Rwanda. The re-designing of the '*Nyumba kumi*' meaning security for 'ten houses' initiative is required.

How do you see the future of the international refugee protection framework vis-a-vis security concerns of host states?

States are keen on protecting their citizens from terrorism, and the refugee situation reveal emerging challenges that states needed to address jointly, including the proliferation of terrorist elements within the refugee populations. International refugee protection therefore need to evolve and re-examine admission criteria for immigrants and asylum seekers, who claim to be seeking refugee status, but not all of them are genuine asylum seekers. Stringent screening mechanisms need to be put in place across border points into Nairobi and armed elements quarantined and denied access to the territory within acceptable security processes. Given the current trend in security in Kenya generally and Nairobi specifically, there is apparent evidence that the admission criteria need to be revised. The revision of the act is on-going in parliament right from March, 2017.

IV.   CONCLUSION

The causal relationship between the nature, scope and structure of refugee protection framework operational in Kenya generally and Nairobi specifically;andhuman insecurityis struck by the significant progress and large degree of the gaps that existed between the assumptions on the implementation of the refugee protection framework and the articulation of the Kenya Government Vision 2030 security strategy. The paper reveals that there are no significant associations between the international refugee protection framework's influences on human security. The shifts in the international refugee protection framework has questionably augmented state duty and widened the parameters of defense due to terrorism. This statement is in resonating with the Kenya Government's view of Somali refugees with suspicion; that they can be a security threat. The United Nations Security Council officials and the Secretary General of the United Nations visit to Kenya is a testimony that the intensity of threats to Kenya through terror attacks highlight security gaps as a function of state fragility at economic, political and social levels.

Kenya has made remarkable progress in the refugee protection framework implementation since 2006, enacted the Refugee Act, and learnt the game of refugee's mischief despite the persistence of violence instigated by some Somali 'refugees' who are suspected to be conduits of terror networks in Kenya. The context for the interrogation is the prerequisite in the definition of a refugee and whether the fear of persecution is well founded, and as such, it is not an independent element of the definition. Therefore, it is difficult to measure the 'well-founded fear' of a refugee. In Kenya, the law allowed anyone to acquire refugee status easily compared to the western countries where they are referred to as 'migrants', and therefore, not bound by the international treaty. State protection is to be considered in context. This is because many factors required determination. The Government of Kenya has made in-roads with the assistance of the Supreme Council of Imams and Preachers of Kenya (SUPKEM) in dealing with radicalization of the population. The current Refugee Bill (2017) in parliament review may deepen these trends. More insecurity, more learning. Countries that have undergone more than 10 terror attacks have done better in subsequent insecurity, creating a culture of prevention and community and regional-building among international stakeholders. Setbacks, setbacks. Building institutions is not a uni-linear process, there are going to be setbacks; but unlike in the past where the pattern was one step forward, two steps backwards, Kenya was on the institutional trajectory of two steps forward, one step backward. The emergency of using Unexploded Ordinances by terrorists in the North Eastern Kenya was a setback, but the investment the Government has made in the Rural Border Patrol Unit (RBPU), is going to beef up security for Nairobi. Peace, stability, drought and famine seem elusive in the Eastern and Horn of Africa. No Generational Change without Institutional Change.There are no short-cuts to real regeneration via institutions. There are no short-cuts. A new refugee protection framework without sound institutional anchorage in systems of control on security would merely inherit the institutional failures that have been witnessed.

The paper recommends the Government of Kenya to track and monitor timing, location, scale, intensity and refugee entry dynamics into Nairobi from neighbouring countries by employing the Kenya Defense Forces (KDF) component who may determine combatants or illegal weapons at border points. Additionally, the host state should analyze the flow of refugees on a case-by-case basis, rather than applying blanket ban.On the one hand there has been too much diplomacy in managing political relations, while on the other there has not been enough mediation to resolve terrorist attack situations that could be addressed on the ground. It is clear that terrorism remains a major security threat for years to come. Instead of interpreting Article 2(2) of the OAU Convention to question absolute host state responsibility, the emphasis will be better placed on the second half of the clause: "*The grant of asylum to refugees…shall not be regarded as an unfriendly act by any Member*

State." If states must worry about being regarded as a belligerent in a conflict by granting asylum, refugees who legitimately need the protection guaranteed under international framework will likely be turned away along with militants who do not. The US, for example, relied heavily on the language in Article 33 (2) of the 1951 Convention to exclude from protecting individuals suspected of having links to terrorism. Given the current concerns over terrorism worldwide, there is great potential for other States like Kenya to follow the United States and weaken refugee protection by enacting broad policies based on article 33 (2) exceptions and derivability of the principle. The government should establish a fair training policy by investing in cyber-crime systems to combat trans-national organized crimes to go hand in hand with investing in the people that are entrusted with the assets and systems in these state departments dealing with refugees, and also organisations. Investing in the people of Kenya is the way forward.

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