

**“THE SYMBIOTIC RELATIONSHIP BETWEEN
IMMIGRATION AND NATIONAL SECURITY: A STUDY
OF KENYA’S MIGRATION MANAGEMENT”**

BY

**MUGO WILLIAM NJOROGÉ
R40/9266/2004**

**A PROJECT PAPER SUBMITTED IN PARTIAL
FULFILLMENT OF THE REQUIREMENTS FOR THE
POSTGRADUATE DIPLOMA IN STRATEGIC STUDIES,
INSTITUTE OF DIPLOMACY AND INTERNATIONAL
STUDIES, FACULTY OF ARTS, UNIVERSITY OF
NAIROBI**



NOVEMBER, 2009

11-22572

40

5x

2490

•K-1N173

DECLARATION

This project is my own original work and has not been presented for a degree in any other University.

SIGNED 
MUGO WILLIAM NJOROGE

1ST DECEMBER 2009
DATE

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

SIGNED 
DR. ADAMS OLOO

2/12/09
DATE

DEDICATION

To all who offer selfless service to humankind.

ACKNOWLEDGEMENTS

The writing of a project of this nature is always a collaborative effort. I acknowledge with sincere gratitude, the staff and lecturers at the Institute of Diplomacy and International Studies (IDIS) who contributed immensely to the success of this work.

Special thanks to my supervisor Dr. Adams Oloo of the Department of Political Science and Public Administration for his patience and academic insights that ensured that this project met the University requisite standards.

I must also mention the invaluable assistance received from superiors and colleagues at the Department of Immigration who offered input and advice regarding the subject. Thanks also to various scholars who took time to grant me interview on their area of expertise.

ABSTRACT

This study was undertaken to determine if there is a symbiotic relationship between Kenya's immigration management and national security. The work set out to achieve three major objectives. Firstly to determine if a symbiotic relationship exists between Kenya's national security and immigration management. Secondly to examine how Kenya's immigration management contributes to the enhancement of national security. Finally to assess whether Kenya's immigration officers correlate national security issues and immigration policies and practices.

The study research critically discussed relevant literature and also conducted personal interviews with immigration practitioners and security scholars.

The study came out with the following findings. Firstly, there indeed exist a symbiotic relationship between immigration and National Security. Secondly, Kenya Immigration Department plays a crucial role in ensuring that the country is not infiltrated by individuals who might want to harm its interests. Thirdly, Kenya's Immigration officers view their function as imperative in the safeguarding of National Security. Based on these findings, the study made pertinent recommendations to the academic researchers as well as to policy formulators and implementers.

LIST OF ABBREVIATIONS AND ACRONYMS

AIO	Assistant Immigration Officer
APIO	Assistant Principal Immigration Officer
AU	African Union
CID	Criminal Investigations Department
CIN	Certificate of Identity and Nationality
CIO	Chief Immigration Officer
DDIS	Deputy Director Immigration Services
DIS	Director of Immigration Services
DPIO	Deputy Principal Immigration Officer
IGAD	Inter-Governmental Authority on Development
IO	Immigration Officer
IOM	International Organization for Migration
ISS	Institute for Security Studies
NSIS	National Security and Intelligence Service
PIO	Principal Immigration Officer
SAPIO	Senior Assistant Principal Officer
SIO	Senior Immigration Officer
TEM	Temporary employment Pass
UDHR	United Nations Declarations on Human Rights
UN	United Nations

TABLE OF CONTENTS

DECLARATION.....	i
DEDICATION.....	ii
ACKNOWLEDGEMENTS.....	iii
ABSTRACT.....	iv
LIST OF ABBREVIATIONS.....	v
TABLE OF CONTENTS.....	vi
LIST OF MAP.....	ix
CHAPTER ONE.....	1
1.0 BACKGROUND OF THE STUDY.....	1
1.1 INTRODUCTION.....	1
1.2 STATEMENT OF THE PROBLEM.....	4
1.3 RESEARCH OBJECTIVES.....	6
1.4 RESEARCH QUESTIONS.....	6
1.5 JUSTIFICATION OF STUDY.....	7
1.5.1 ACADEMIC JUSTIFICATION.....	7
1.5.2 POLICY JUSTIFICATIONS.....	7
1.6 LITERATURE REVIEW.....	8
1.6.1 INTRODUCTION.....	8
1.6.2 KENYA'S NATIONAL SECURITY CHALLENGES: A SPECIAL REFERENCE TO THE POST SEPTEMBER 11 ERA.....	9
1.6.3 MIGRATION MANAGEMENT AND ITS CHALLENGES.....	14
1.7 THEORITICAL FRAMEWORK.....	18

1.8	HYPOTHESIS.....	20
1.9	DEFINITION OF TERMS.....	20
1.10	RESEARCH METHODOLOGY.....	22
CHAPTER TWO.....		25
2.0	HISTORY AND DEVELOPMENT OF KENYA'S IMMIGRATION DEPARTMENT AND ITS BEARING ON NATIONAL SECURITY.....	25
2.1	INTRODUCTION.....	25
2.1.1	COLONIAL IMMIGRATION ORDINANCES.....	25
2.1.2	POST-COLONIAL IMMIGRATION LEGISLATIONS AND REGULATIONS.....	28
2.2	FUNCTIONS OF IMMIGRATION DEPARTMENT.....	29
2.3	IMMIGRATION ACT, CHAPTER 172 OF THE LAWS OF KENYA.....	31
2.4	KENYA IMMIGRATION ADMINISTRATION AND MANAGEMENT	34
2.5	IMMIGRATION AND BORDER MANAGEMENT.....	37
2.6	CONCLUSION.....	37
CHAPTER THREE.....		43
3.0	THE SYMBIOTIC RELATIONSHIP BETWEEN NATIONAL SECURITY AND KENYA'S MIGRATION MANAGEMENT.....	43
3.1	DRAFT KENYA NATIONAL MIGRATION POLICY.....	51
3.1.1	INTRODUCTION.....	51
3.1.2	POROUS AND UNMANNED LONG BORDER STRETCHES.....	51
3.1.3	PERSONNEL SHORTAGES.....	53
3.1.4	LACK OF ADEQUATE FACILITIES.....	53

3.1.5 UNCOORDINATED INTER AGENCY CO-OPERATION.....	54
3.1.6 DOCUMENT AND IDENTITY FRAUD.....	54
3.1.7 INADEQUATE BUDGETARY PROVISIONS.....	55
3.1.8 CONCLUSION.....	55
CHAPTER FOUR.....	57
4.0 A CRITICAL ANALYSIS OF THE RELATIONSHIP BETWEEN KENYA'S MIGRATION MANAGEMENT AND NATIONAL SECURITY.....	57
4.1 SECURITIZATION OF IMMIGRATION AND HUMAN RIGHTS.....	67
4.2 CONCLUSION.....	67
CHAPTER FIVE.....	74
5.0 SUMMARY, FINDINGS AND RECOMMENDATIONS.....	74
5.1 INTRODUCTION.....	74
5.2 SUMMARY.....	74
5.3 FINDINGS.....	76
5.3.1 THE SYMBIOTIC RELATIONSHIP BETWEEN NATIONAL SECURITY AND IMMIGRATION MANAGEMENT.....	76
5.3.2 KENYA'S IMMIGRATION MANAGEMENT AND ITS CONTRIBUTION TO ENHANCEMENT OF NATIONAL SECURITY	77
5.3.3 THE CORRELATION OF NATIONAL SECURITY ISSUES AND IMMIGRATION PRACTICE BY IMMIGRATION OFFICERS.....	78
5.4 RECOMMENDATIONS.....	79
5.4.1 TO ACADEMIC RESEARCHERS.....	79
5.4.2 TO POLICY MAKERS AND IMPLEMENTERS.....	80
REFERENCE LIST.....	84

LIST OF MAP

Figure 1: MAP OF KENYA SHOWING KENYA IMMIGRATION EXISTING AND PROPOSED BORDER CONRTOL POINTS.....	36
--	-----------

THE SYMBIOTIC RELATIONSHIP BETWEEN IMMIGRATION AND NATIONAL SECURITY: A STUDY OF KENYA'S MIGRATION MANAGEMENT

CHAPTER ONE

1.0 BACKGROUND OF THE STUDY

1.1 Introduction

Kenya has, on several occasions been a target of terrorist attacks; the most notable being in 1998 when the American embassy in central Nairobi was bombed resulting in the death of 290 people, including 12 US citizens and injuring several thousands more. Then in 2004 when an Israeli-owned hotel in Kikambala at the Kenyan coast was attacked leading to the death of 13 Kenyans and 2 Israeli citizens. In that attack an attempt to bring down an Israeli plane, failed. The two attacks were a threat to Kenya's national security a core national interest.

The planning and execution of the two attacks is believed to have been the work of international terrorist cells apparently with local backing. The two attacks justify attention to Kenya's immigration policies, procedures and practices in relation to their capacity to deter terrorist attacks. However the convergence of national security and international immigration has not been adequately studied¹. This study aims to establish if a symbiotic relationship exists between Kenya's immigration management and its national security. Moreover such an

¹See Robert S. Leiken, in, Europe's Mujahideen: Where Mass Immigration Meets Global Terrorism (April 2005)

understanding would enable the country to preempt future incidences of terrorist attacks within its borders. This study will attempt to understand the relationship between Kenya's immigration practices and their role in securing Kenya's national security.

National security and state survival is a primary national interest. Other national interests that states seek to protect as well as achieve include sovereign integrity, political independence and functioning government institutions². National security as a concept is relatively new and contested by strategic studies scholars. It came into prominence in 1648 with the birth of the Westphalian state.

Various scholars have opted for a sectoral approach in analyzing the concept of national security. This includes; sovereignty and territorial integrity, which mainly falls under the purview of the military, economical, social, political, environmental and diplomatic appendages. National security can therefore be defined as the capacity of a society to protect individuals, groups and the nation from the physical and socio-economic dangers and from the threat of such dangers created by both systemic and attributional conditions³.

² "http://en.wikipedia.org/wiki/National_interest"

³ See Abdul-Monem Al-Mashaal, National Security in the Third World (London, Westview Press: 1985), p. xvii.

In another attempt to fully understand and discuss national security, some scholars have also defined the concept in terms of military, economic, societal and ecological aspects⁴. Like in many countries, Kenya seems to have failed to recognize the link between immigration and national security⁵. As a result, her immigration policies and practices have been allowed to develop into unorganized and non-prioritized elements of our government. This lack of theoretical foundation connecting immigration and national security has meant that immigration policies are drawn haphazardly which fails to take into cognizance the systematic shortcomings of the immigration department. This has harmfully negated any efforts at defining and securing its national security. Moreover, the way a country approaches its domestic population growth or handles foreigners traveling, living and working amongst the locals is also an important component of national security⁶.

The Immigration department, which is charged under Chapter 172 of the Laws of Kenya as well as other acts of parliament with the legal responsibility of regulating entry through the issuance of entry and re-entry passes, work permits, and the investigation and prosecution of offences committed under the immigration acts, needs to understand the role it plays in the protection of

⁴See Buzan Barry, People, States and Fear: An Agenda for International Security Studies in the Post Cold War Era, (Harvester, Wheatsheaf, 1991), pp. 166-184.

⁵See Kristine M. Holland, Immigration and National Security: A Comprehensive Look at the Connections and Policies (Diplomacy and World Affairs, April, 2002).

⁶See Kamath P. M., "Human Rights and National Security" in, Macharia Munene, J.D Olewe Nyunya et al, (Eds) The United States and Africa (Nairobi, East Africa Educational Publishers: 1995), pp.51-52.

national security. This is only possible if an empirical and theoretical connection can be determined between immigration and national security.

1.2 Statement of the problem

A country's national security is of paramount importance to her survival in an anarchical international system. It is this desire for national security that guides a country's overall foreign policy and predetermines what kind of relations it will have with other actors in the international system. Furthermore, this determines the hierarchical order in terms of which foreign policy will be given utmost preference over other national interests.

It has become increasingly evident that increased global interconnectivity has brought with it a new security challenge to states in terms of the proliferation of small arms, spread of transmittable diseases and the now increasing real threat of terrorist attacks.

Kenya has been no exception in having an encounter with the above emerging challenges to her national security. She has, in fact been on several occasions a victim of terrorist attacks and the spread of illegal arms has been cited as a major factor in the spiraling insecurity in the country. This has often been attributed to her extensive and porous borders with her neighboring countries coupled with her lax border controls.

The role of immigration controls in reducing national security threats not only needs to be carefully studied but also emphasized in policy circles so that Kenya's utmost national interest can be achieved. After the September 11 2001 attacks on fortress America, debate has been rekindled on the security threat posed by poor and ineffective immigration controls.

It has been cited that having a stricter immigration regime at points of entry could curb the influx of illegal arms, drugs and the entry of terrorist groups intent on staging attacks on western interests in the country. This is not only a security issue but also an economic one bearing in mind the resultant economic impact of such an attack on infrastructure, people and other key sectors of the economy. The August 1998 terrorist attacks in Nairobi and the subsequent attacks in Mombasa ably demonstrate the importance of having an efficient immigration system able to give passes to foreigners, monitor their activities and liaise with the security system in identifying suspicious alien activities.

These attacks also demonstrate the need for adequate decision-making apparatus in terms of legislative and policy decisions that would have enabled the immigration system work more efficiently with a more professional security apparatus.

This study therefore aims to examine the response the decision making process has had in linking the national security discourse with the immigration

regime. There is need for security and immigration to be symbiotically linked in the drive at securing the country's national security. The problem of the study is to determine if there is a symbiotic relationship between Kenya's immigration regime and national security.

1.3 Research objectives

This study aims to achieve the following objectives:

1. To determine if a symbiotic relationship exists between Kenya's national security and immigration management.
2. To examine how Kenya's immigration management contributes to the enhancement of national security.
3. To assess whether Kenya's immigration officers correlate national security issues and immigration policies and practices.

1.4 Research questions

The major question to be addressed by the study will be: Is there a symbiotic relationship between immigration and national security? Do Kenya's Immigration policies and practices guarantee her national security?

1.5 Justification of the study

The study to be carried out will add value not only as far as filling a literature gap but also in informing policy makers on the need for a closer linkage of national security policies and immigration controls.

1.5.1 Academic justification

The literature on the complementarity between national security and the immigration regime is inadequate particularly in the analysis of these variables. The existing literature is only extensive as far as separately discussing the concepts of national security and immigration are concerned. In the post 9/11 world where focus on immigration has grown, there is need for a clearer understanding of how the two concepts are related. This study will seek to do so.

1.5.2 Policy justification

The policy justification will seek to establish the important role that immigration plays in safeguarding Kenya's national security .This study seeks to persuade decision-makers the legislature and the executive on the need to incorporate immigration controls in Kenya's national security plan. Policy makers in the immigration department will also benefit from the study particularly in its emphasis and demonstration of the linkage between national security needs of the country and the role of the immigration department in its day to day operations. This study will thus shed light on the necessary role played by the immigration department in Kenya's national security.

1.6 LITERATURE REVIEW

1.6.1 Introduction

This section examines the existing literature review on national security and immigration. Before examining the literature though, an attempt will be made to put the study into a theoretical perspective so as to further enrich it

The first section of the review of literature is on national security. In this section the different conceptions of national security is highlighted especially in the light of the cold war and post-cold war perspectives. National interest and sovereignty are treated as related concepts. The second section will center on immigration as a national regime. Various insights on the concept are examined. A final submission is then made as to whether immigration and national security are symbiotically interlinked based on the reviewed literature.

This section on the literature review is subdivided basically because (as is demonstrated below) the two concepts of national security and immigration have for a long time developed as two distinct areas of study and it is only with the advent of globalization and its attendant effect on the state that suggestions of their relatedness has been put forward. It is also important to first examine the two concepts in separate details before determining if there is any relationship.

1.6.2 KENYA'S NATIONAL SECURITY CHALLENGES: A SPECIAL REFERENCE TO THE POST SEPTEMBER 11 ERA.

Baylis ⁷ (2005) observes that security is a contested concept. Pointing out that the traditional conception leaned heavily towards military capabilities, he backs Buzan's argument for the widening of this security definition to include political, economic, societal and environmental aspects.⁸ Baylis further argues that the emergence of a new security agenda as a result of the globalization process has meant that it is no longer a question of wars between states but of sub-state conflicts, globally networked and financed that have emerged as threats to national security.⁹

Debates about security have traditionally focused on the role of the state in international relations. Hiteng ¹⁰observes that states have been regarded as the most powerful actors in the international system for the simple reason that states have been "the universal standard legitimacy" with no higher authority to regulate the relations between them. Thus, the overriding interest of states has been national security, defined largely in terms of military capability. He however takes note of the emergence of new frameworks in security studies and identifies himself with the "wide" as opposed to the "narrow" conception of national security which stresses the emergence of other non-military sources of threats to nations

⁷See John Baylis "International and Global Security in the Post-cold War Era", in, John Baylis and Steve Smith (Eds) The Globalization of World Politics: An Introduction to International Relations. 3rd Edition (Oxford, Oxford University Press, 2005), p. 300

⁸Ibid

⁹Baylis op cit p. 301.

¹⁰See Hiteng C. Ofuho, "Security in Africa" in, Makumi Mwangi, (Ed), African Regional Concerns in the age of Globalization (Nairobi, Heinrich Boll foundation: 2004), p. 8.

(which embraces environmental, economic societal and political aspects of security).

Hiteng¹¹ notes that the individual rather than the state is now the focal point of security and cites the Horn of Africa conflict system where the individual has suffered but also been the architect of the refugee problem and the proliferation of small arms.

Other commentators¹² on security also argue that the stress on national and international security is less appropriate because of the emergence of an embryonic global society. Globalization, they argue, though being beneficial to the world, bring new risks and dangers that threaten individual security more.

National security writers like Hobbes, Machiavelli and Rousseau¹³ tended to point a rather pessimistic picture of the implications of state sovereignty. They viewed the international system as a brutal arena in which states would seek their own security at the expense of that of their neighbors. Hans Morgenthau and E.H Carr¹⁴ advanced this view into a realist conception of international relations.

¹¹Hiteng C. Ofuho, Page 12

¹²See John Baylis, International and Global Security in the Post-Cold War Era for the different viewpoints see page 301

¹³See John Baylis, op. cit pp 301-303

¹⁴ibid

Zacarias¹⁵ explains that the concept of national security has its theoretical roots in the Realist school of international relations which views security as the absence of threats from other states. He posits that since war tops the list of threats to national security, states should strive to increase their power capabilities, symbolized by military superiority.

Buzan¹⁶ argues that national security implies strongly that the object of security is the nation. To him, it is therefore in a state's interest to guarantee its security first. Clinton¹⁷ writing on national interest defines it as a real common good and the means for promoting the norms of a nation. Snow¹⁸ notes that the concept of vital national interest is the lynchpin of the traditional study of security based on realism. To the realists, he observes, state sovereignty is the basic reality, and the protection of sovereign interests is the state's important order of business.

¹⁵See Agostinho Zacarias, "Redefining security", in Baregu M. and Linderberg C. (Eds), From cape to Congo: Southern Africa's Evolving Security challenges (Colorado, Lynne Rienner Publications Incorporated: 2003), p.32.

¹⁶ See Barry Buzan, in, "The Idea of the State and National security", in Richard Little and Michael Smith (Eds), Perspectives on World Politics. 2nd Edition (London, Routledge: 1991) p.87.

¹⁷See David W. Clinton, "The National Interest: Normative Foundations" in, Richard Little and Michael Smith (Eds). Perspectives on World Politics. 2nd Edition (London Routledge, 991) pp.47-50, p.48.

¹⁸See Snow D.M, in, National Security Defense Policy in a Changed World Order (, New York St Martin's Press, 1998), p.23

Brown and Snow¹⁹ criticize the realist emphasis on state-level of analysis and point to the emergence of new non-state entities that not only impact on international peace and security but also national security. They further note that national decision-makers must translate the vague concept of national interest into more clearly articulated policy objectives. They stress that the policy makers must also continually maintain a sophisticated understanding of existing threats to those interests and objectives.

Brown and Snow²⁰ further call for a reassessment of foreign policy objectives and a redefinition of national security threats and priorities in light of the changed post-cold war era. Choucri and North²¹ advance the idea that a state can be threatened from "below" (by individualistic or organizational pressures on the regime, revolution or civil war); from "above" by oppressive or otherwise threatening governmental initiatives; or strategically from outside (by expansionist or antagonist activities of other states). Dewitt et al²² advances this viewpoint by positing that security no longer presumes a principal concentration on challenges to a government and country from outside its borders. They point out that illicit drugs, unregulated movement of large amounts of capital or people, epidemic diseases and terrorism are part of this wider security agenda.

¹⁹See Snow D.M and Eugene Brown, in, The Contours of Power: An Introduction to Contemporary International Relations (New York, St Martin's Press: 1996) pp 9-24.p.17

²⁰ Ibid, p.240.

²¹ Ibid

²²See Dewitt D. et al, in, Building a New Global Order Emerging Trends In International Security (New York, Oxford University Press, 1993) p.2.

Chweya²³ also criticizes the realist definition of security and notes that a state can be free from aggression of different kinds from other states in the international system yet face more devastating threats from non-state actors such as international terrorist organizations, cross-border bandit cattle raiders and drug, gun and human being traffickers. He concludes that security can be applied to refer to state (security) or the well being of non-state actors (including individual and communities and to military) and non-military aspects of states and societies. Solutions (to insecurity) thus need to be found not only within but also outside state frontiers.

Various scholars identify terrorism as a new threat to national security. Deutsch²⁴ focuses on the aims and characteristic of terrorism and conceptualizes it as a threat to national security while Kiras²⁵ observes that terrorist movement and insurgencies have traditionally sought support and sympathy within hospitable national boundaries. He observes that mobility has often been considered a crucial part of terrorist operations and the advent of modern technology has enabled terrorists to build global networks and share information on terrorism operations.

²³See Ludeki Chweya, in, "Emerging Dimensions of Security in the IGAD Region", in, Makumi Mwangi (Ed) African Regional security in the Age of Globalization (Nairobi, Heinrich Boll Foundation: 2004) pp. 31-34, p.33.

²⁴See Deustch K.W. in, The Analysis of International Relations. (New Jersey, Prentice Hall: 1988) pp 193-201, p.197.

²⁵See John D. Kiras, in, "Terrorism and Globalization" in John Baylis and Steve Smith (Eds) - The Globalization of World Politics Op cit pp 489-494.

Bell ²⁶ writing on how states should respond to terrorism argues that both terrorism and to some extent measures aimed at combating terrorism constitute threats to national security. He however fails to delve deep into the subject. From the review of the literature on national security it is evident that the concept has evolved to now embrace new definitions that are not solely state centered. The individual is now the focus of security studies rather than the state. The literature was examined for any linkage between national security and immigration but little was found. This is the reason why the focus is now turned to immigration literature in an attempt to discover the gap in knowledge on the symbiotic relationship between the two concepts

1.6.3 MIGRATION MANAGEMENT AND ITS CHALLENGES

The literature on immigration was found to be scanty and little in detail as far as linking security and immigration goes. Kritz and Zlotnick ²⁷ observe that there has been a marked change in migration flows to comprise more of temporary migration (work, study business, refuge, and leisure) than permanent resettlement.

They argue that the importance of temporary migration and the growing linkages between migration policies and other state objectives call for new

²⁶See, Bell J.B, in, A time of Terror: How Democrat Governments Respond to Revolutionary Violence (Basic Books Incorporated, New York 1988) p.278

²⁷ See Mary M Kritz and Hania Zlotnik, in, Global Interactions: Migration Systems Process and Policies "in Mary M. Krita et al (Eds), International Migration Systems (Oxford, Clarendon Press, 1992) pp. 1-10, .p.3.

theories and approaches to the study of migration. The International Organization of Migration (IOM) observes that migration is increasingly being considered one of the defining global issues of the early 21st century owing to the increased international travel.²⁸ The IOM further notes that security is an important component of a State's effort to balance facilitation and control of migration. That new security measures and agreements have an impact on migration hence the need for legislation to link security and migration since migration policies can complement a State's security.²⁹

In another report the IOM opines that a national migration policy is vital for security in the management of the entry, transit, departure and return of foreigners in and out of a territory and facilitation of those who are granted right of residence³⁰. The report further stresses the need for stakeholder involvement in the national security and migration discourse. Therefore, the challenge for policymakers is to ensure and facilitate mobility to serve the needs of dynamic economies while ensuring the safety and security of the whole country.³¹

Makinwa³² traces the historical, geographical and economic forces behind the migration system in West Africa. The author however fails to link immigration

²⁸ See IOM, *Essentials of Migration Management*, vol.1, (Geneva, 2004), p.3.

²⁹ *Op cit*, vol.2, p.4.

³⁰ See IMO, *International Agenda for Migration Management*,(Geneva,2005)p.29

³¹ *Op cit* p.30

³² See Paulina Makinwa – Adebusoye, “The West African Migration System”, in, Mary M. Kritz and Hania Zlotnik, *op cit*, page 76.

and national security but rather describes the cross-border labor movements in West Africa.

Brimelow³³ argues that American society is being eroded by the influx of immigrants who might constitute the majority in future if current trends continue. He further argues that the traditional conception of a nation is now in doubt in the face of alien influx and that America is no longer a nation but rather an idea.

Nedzel³⁴ commenting on immigration concludes that immigration law should be aimed at the protection of the health, safety and welfare of the citizenry by regulating or preventing the immigration of those who carry disease those who bring crime, or those whose presence is perceived as a threat to the economy (through fraud and labor saturation).

Desbarats³⁵ notes that large concentration of refugees found in the third world has wide-ranging political, economic and social ramifications to these countries. She observes that refugee regulation by sovereign governments, though generally prompted by domestic considerations, their implementation is not necessarily immune to national security and foreign policy considerations.

³³ See Peter Brimelow, "Time to Rethink Immigration?" in, Nicholas Capaldi (Ed), Immigration: Debating the Issues (New York, Prometheus Books: 1997).

³⁴See Nadia Nedzel, "Immigration Law: A Bird's Eye View" in Nicholas Capaldi (Ed) Immigration Op. cit. Page 149.

³⁵See Jacqueline Desbarats, "Institution and Policy Interactions Among Countries and Refuge Flows", in, M. Katz et al Global Interactions op .cit pp 279-281,P.280

Hussein³⁶ observes that in the case of South Africa, the presence of aliens has witnessed an increase in criminal activities, small arms proliferation the spread of diseases and a depletion of the natural resource base. He points to a multi-sectoral solution to the problem but does not offer concrete suggestions. The Global Commission on International Migration posits that irregular migration is linked to growing insecurity and argues that migration policies aim to facilitate the entry of only those foreigners whose presence is desired and also to identify and deter the entry of aliens whose presence may be a security risk.³⁷

The Kenyan immigration manual details the steps to take in receiving aliens at border points. It also gives the requirements that foreigners need to comply with before being granted entry into the country. But perhaps an important addition to the manual is the acknowledgement of the risk posed by illegal aliens as far as national security is concerned.³⁸

This literature survey revealed a gap in knowledge as far as demonstrating a symbolic relationship between immigration and national security. Current international developments in technology have facilitated faster interaction between people and new threats to national security have emerged. The role of national immigration regimes in reducing threats to national security

³⁶See Hussein S. in, Illegal Immigration in South Africa (Johannesburg, ABC press: 2003), p.2.

³⁷ See The Global Commission on International Migration, Migration in an Interconnected world: New Decisions for Actions, October, 2005.p.32

³⁸ See Kenya: Immigration Border Procedures manual. (July 2006) especially sections on entry requirements, interrogations and the functions of the Immigration Department.

should be one major way of doing this but unfortunately the existing literature does not feature this. The goal of this study aims to not only fill this gap but to offer suggestions on how immigration informs national security priorities and approaches.

1.7 Theoretical framework

The debate on what really constitutes "security" has over the years continued unabated particularly so in international relations. Various writings that have emerged regarding security studies have adapted different theoretical standpoints that suit their different perspectives. Some of these frameworks include the Human security agenda and the Copenhagen School's Securitization approach. Other theoretical approaches which might also have a bearing on national security and immigration include chaos theory and the globalization theory.

Chaos theory which was developed in the mid 1970's is extremely sensitive to initial conditions. The theory is concerned with the question of whether or not it is possible to make good long-term predictions about how a system will act.

Globalization theory can be better understood by first understanding the term globalization which is the process of forming global institutions. These are institutions that operate as though the world were a single place. The theory

posits that with the proliferation of the internet there will be a decrease in nationalistic competition and conflict.

The Human security agenda is an emerging paradigm whose advocates attempt to understand global vulnerabilities by challenging the traditional view points of national security. Human security proponents argue that the proper referent for security should be the individual rather than the state. These theorists hold that a people-centered view of security is necessary for national, regional and international security. This is why this theory is considered as a policy-making agenda, while the Copenhagen School is a theoretical tool for the analysis of security policies³⁹.

For the purpose of understanding the symbiotic relationship between immigration and national security this paper will consider the Copenhagen school of thought which is credited with widening the security studies agenda of the post cold war period.⁴⁰ The proponents of this framework have broadened the concept of security to include not only military, but also environment, economic, political and societal concerns⁴¹.

³⁹See Human Security Journal Volume 5, Winter 2007, p .1

⁴⁰ Melissa Curley, Security and Illegal Migration in Northeast Asia

⁴¹ See Barry Buzan, Ole Weaver and Jaap de Wilde in Security: A New Framework for Analysis.(Boulder,CO,Lynne Rienner 1998)

The Copenhagen School of thought has come to be referred to as the securitization theory since it attempts to understand the process by which certain issues within a given political context are securitized. According to Weaver (1995) and others, security is a speech act. This means that an issue becomes a security issue if society speaks of it as such. Accordingly, security is not "a reality prior to language"⁴². The securitization act involves a securitizing actor, speech act, referent object, an appropriate audience and an existential threat.

Since the traditional aspects of security that had to do with the military have continued to lose saliency, new aspects have emerged that are of equal importance to national security. Immigration has through speech become recognized as a prominent security issue.

When something is securitized it means that it is considered a security problem or a threat. This means that urgent and outstanding measures have to be put into place to combat it. This study which is based on the securitization framework attempts to find out whether immigration management in Kenya has been securitized enough so as to develop policies that thwart any threats to her national security.

⁴² See Weaver, Ole. "*Securitization and Desecuritization*" (New York: Columbia UP, 1995)

1.8 Hypothesis

A symbiotic relationship exists between National security and immigration management in Kenya.

1.9 Definition of terms

For ease of understanding the contextual and theoretical framework used in the study, some key terms will be operationalized. These terms include national interest, national security, immigration, and immigration management

1. National interest will in this study refer to Kenya's goals and ambitions be they economic, military, cultural or social.
2. National security will in this study refer to the capacity of a society to protect individuals, groups and the nation from the physical and socio-economic dangers and from the threat of such dangers created by both systemic and attributional conditions.
3. Immigration will in this study refer to the movement of persons into the country for the purpose of seeking permanent residence or for short visits.
4. Immigration management will refer to those procedures and policies which the government through its agency the immigration department has put into place for the regulation of individuals moving into the country for the purpose of seeking permanent residence or for short visits.

1.10 RESEARCH METHODOLOGY

This study proceeded from the explorative standpoint, in that it was seeking to establish a hitherto underscored complementarity between immigration and national security. It was therefore imperative for the study to embrace nonprobability sampling and to discriminately look for learned respondents and to avoid as much as possible to have a pre-determined sample size.

This study benefited from primary and secondary data collection. This entailed the collection, reviewing, and content analysis of both primary and secondary data. Primary data was sourced by way of interviews. This type of field data collection entailed the use of unstructured interviews administered on face to face with the selected respondents. This allowed for flexibility in generating responses and issues for further probing and clarification. Field revisits were done to fill up any apparent gaps and grey areas in the information assembled.

Experts and intellectuals in the fields of national security and immigration and with a Kenyan bias were relevant as respondents. For instance the views of Dr. Ludeki Chweya, Prof. Makumi Mwangi and Mr. Patrick Maluki among others were useful in this case study. Also considered were views from experienced immigration practitioners in Kenya's immigration department. Views were therefore sought from the Deputy Director of Immigration services, the Principal Immigration Officer in

charge of Passports issuance, the Principal Immigration Officer in charge of Kenya's Premier airport, Jomo Kenyatta International Airport as well as other officers who were deemed capable of enriching the study.

Views were also sought from non-governmental institutions with interests in Security and immigration. These include the Institute for Security Studies (ISS) and The International Organization for Migration (IOM) both based in Nairobi.

The sample frame was chosen using the purposive sampling (of non-probability sampling method) technique which involved the selection of the key informants based on their expert knowledge of the said subject areas or a proven track record of hands on experience in the said fields. The choice of this sampling method was based on the fact that the study was explorative and therefore there was need for more insights from the intellectual world. This also facilitated the expeditious completion of the study and ensured that only relevant and useful data was gathered.

Secondary data included the collation and reviewing of information from documented sources such as published materials, unpublished academic papers and journals.

From the primary and secondary data gathered, the researcher was able to draw well –founded inferences that will not only be beneficial to the academic world but also in policy circles. The primary data was collected and thoroughly examined to ascertain any tendency for or against the correlation between the two variables. This was examined against the secondary data collected in order to come up with a final conclusion on whether there is a relation between the two objects of study.

CHAPTER TWO

2.0 HISTORY AND DEVELOPMENT OF KENYA'S IMMIGRATION DEPARTMENT AND ITS BEARING ON NATIONAL SECURITY

2.1 Introduction

Kenya is one of the five East African countries which have come together to form the East African Community. It covers an area of 582,650 sq. kilometers with a border and coastline of 4013 Km. She borders five countries namely, Somalia (682 km) on the north east, Ethiopia (861km) to the north, Sudan (232 km) to the north west, Uganda (933 km) on the west and Tanzania (769 km) to the south. Kenya's coastline at the Indian Ocean covers 536 km. Out of these countries which borders Kenya only Sudan is not part of the budding East Africa community which also includes Burundi, Rwanda, Uganda and Tanzania.

It must also be noted that four out of the five countries that border Kenya namely Sudan, Somalia and Ethiopia have experienced or continue to experience various level of insecurity which sometimes spills over to Kenya. These incidences have a direct influence on Kenya's national security and also impacts on how the immigration department performs its duties.

2.1.1 Colonial immigration ordinances

Kenya's immigration management can be traced way back in 1906 when the Immigration Restriction Ordinance was introduced by the British colonial administrators. The major aim of the ordinance was to restrict the influx of

foreigners mainly Indians who were coming to the then Kenya Colony and Protectorate when the Kenya–Uganda Railway was completed. This ordinance provide for all prospective immigrants to make cash deposits as financial security to cover their own possible repatriation out of Kenya should they be found undesirable. All immigrants from Europe were to pay a fee of fifty sterling pounds while those from India paid ten pounds.

This ordinance was later followed by others in 1940, 1944, 1948 and 1956. The sole aim of all these ordinances was to impose restrictions on persons who wished to travel in Kenya for permanent settlement.

In the early ordinances of 1940 and 1944 immigration operated under three legislations:

- (i) Immigration restriction ordinance (Cap 62 laws of Kenya) as amended by various ordinances. This restricted immigration and there was no provision for bona fide visitors to be granted entry.
- (ii) The defence (admission of male persons) regulations 1944, and
- (iii) The defence (admission of women and children) regulations 1940.

These were wartime laws that ensured that all persons with intent to coming to Kenya obtained the requisite entry permits. The legislations also set out the conditions to be met before the permits were granted.

After the end of the war new legislation was enacted which were less prohibitive and restrictive. The 1948 laws formed the basis of the current

immigration Act. The ordinance instituted a system of permit and passes and introduced the immigration registry with a reference number filling system. It also provided for the Governor to appoint the Principal Immigration Officer and vested him with the powers to perform immigration work. The head of the department was also given powers to delegate in writing some of his duties to other immigration officers. The ordinance did also provide the creation of a statutory board whose function was to consider the approval and denial for entry permits. Another provision included in the 1948 ordinance was for the establishment of the appeal tribunal against the decision of the statutory board.

A closer scrutiny of the 1948 ordinance reveals that it resembles the current Immigration Act Cap 172 .The only differences in the two Acts is that in the present Act the President takes the role of the governor of colonial Kenya while the Minister in charge of Immigration matters takes the role of the appeals tribunal.

In 1st July 1956 the colonial government enacted more controls in a new ordinance known as the Immigration Ordinance 1956. This ordinance did not radically alter the 1948 ordinance but had few fundamental inclusions. It introduced the Temporary Employment Pass (TEP). This pass was meant to alleviate the shortage of skilled manpower which the country was grappling with. The pass allowed individuals with skills which were in short supply to come and work in Kenya for a period of one year with a possibility of an extension of up to

four years. It was hoped that these skilled workers would transfer their skills to locals before the expiry of their passes.

The 1956 laws also authorized for the issuance of permits to professionals, investors and industrialists with assured annual incomes. These meant persons in these categories would now be considered for permanent residency.

2.1.2 Post-colonial Immigration legislations and regulations

At independence Kenya like the other East Africa countries developed migration laws, regulations, procedures and policies. This according to some observers was a symbol of independence and sovereignty⁴³. There was also need to ensure that Kenya Africans took control of key policy formulation and implementation functions of government. Subsequently the Immigration Ordinances were revised in 1962 and 1964 and renamed the Immigration Act. The immigration Act of 1964 was revised and a new Immigration Act of 1967, Chapter 172 Laws of Kenya came into force on 1st December 1967.

This new Act gave the Minister in charge of immigration matters powers to require a non-citizen or a class of persons who were residents of Kenya under the provision of the old ordinance to apply to an immigration officer for a permit or pass authorizing that person to enter Kenya for a specific purpose. Those who

⁴³ See Capacity Building in Migration Management Programme for East Africa: A survey of East Africa Departments of Immigration (August 2005) pg 11

were not citizens of Kenya but resided in Kenya were allowed three months to regularize status or be declared unlawfully present in Kenya.

Over the years the Immigration department has found itself placed under various ministries. At independence, the Department was placed in the Ministry of Home Affairs before it was transferred to the Office of the President, then Ministry of Constitutional Affairs and back to the Office of the President .Under President Kibaki's administration in 2003 the Department was again taken back to the Ministry of Home affairs before being placed under the Ministry of Immigration and Registration of Persons where it is currently.

This constant placement of the Department in different Ministries by the various political regimes is perhaps an indication of the Governments' indecision as to the exact role the department plays in the country's national development and security strategy.

2.2 Functions of Immigration Department

Based on Immigration Act Cap 172, allied legislations and government administrative arrangements Kenya's immigration department plays various delineated functions. These include

- i. To control and regulate entry and exit of all persons at our airports, seaports and land border posts.
- ii. To control and regulate residency through issuance and renewal of entry/work permits and other passes as provided for by the Immigration Act.

- iii. Issuance of Kenya passports and other travel documents including United Nations Travel Document (UNTD) in conjunction with UNHCR.
- iv. To consider and grant Kenya citizenship to qualified foreigners under the Kenya Constitution and the Citizenship Act.
- v. Issuance of entry visas as provided for under the Kenya Visa Regulations.
- vi. To register all non-citizens resident in Kenya under the Aliens Restriction Act and Orders.
- vii. Declaration and removal of prohibited immigrants.
- viii. To offer Quasi-Consular functions on behalf of a number of commonwealth countries who are not represented in Kenya and who have requested the Kenya Government to do so.
- ix. To provide consular services to our nationals and foreigners at our missions abroad.
- x. To investigate and prosecute persons who contravene the Immigration Laws and Regulations.
- xi. To enforce the Citizenship Act, the Immigration Act, the Aliens Restriction Act and the Visa Regulations.
- xii. To maintain liaison with other state organs e.g. National Security Intelligence Service (NSIS), Criminal Investigation Department (CID) and Police.
- xiii. Research, Data collection and analysis.
- xiv. Maintain records.

The present day Immigration Department derives its mandate from different legal and procedural instruments. These include

- Immigration Act Cap 172
- Kenya Citizenship Act Cap 170

- Aliens Restriction Act Cap 173
- Kenya Constitution Chapter 6 which guides the department in processing travel documents.

Due to the inadequacies that exist in Kenyan laws governing the issuance of travel documents, the Department also applies international instruments like the 1953 Geneva Convention and other relevant laws promulgated by the United Nations .

2.3 Immigration Act Chapter 172 of the laws of Kenya

Since the Immigration Act Cap 172 is the main Act from which the department derives its mandate, there is need to better understand it if one is to fully examine the symbiotic relationship between Kenya's immigration management and national security. The Immigration Act is divided into four main sections namely

- Prohibited Immigrants
- Entry and removal of immigrants
- Administration, offences and Legal proceedings
- Regulations

Section 3 of the Act which deals with prohibited immigrants identifies a prohibited immigrant as a person who is not a citizen of Kenya and who is incapable of supporting himself and his dependants in Kenya or who is mentally defective .It also Includes a non-Kenyan who has been convicted in

any country for murder, or a prostitute or a person living on the proceeds of prostitution. A non-Kenyan who upon entering or seeking to enter Kenya fails to produce a valid passport to an immigration officer is also deemed to be a prohibited immigrant.

Section 4, 5,6,7,8 and 9 deals mainly with the various entry permits and passes that non-Kenyan needs to enter and remain in Kenya. It also sets out the various ways a non-Kenyan can be removed for being in Kenya unlawfully. Section 5 also identifies the various classes of entry permits including how they are issued and invalidated. Section 8 gives to the Minister in charge of immigration matters powers to remove persons considered unlawfully in Kenya.

Sections 10 to 16 deal with the administration, offences and legal proceedings of the Act. Section 10 states that in performance of their functions, immigration officers shall act in accordance with instructions given by the Minister. Section 11 gives an immigration officer all powers and immunities conferred by law on a police officer while performing his duties. Section 12 also gives an immigration officer powers to arrest and search suspects deemed to have contravened the Act without having to get a warrant from the law courts.

Section 13 is an important section in the Act since it focuses on the various immigration offences. These offences include making of a false declaration or statement for the purpose of obtaining an entry permit, permit pass, written authority, consent or approval.

It is also considered an offence for a person to knowingly mislead an immigration officer seeking information material while exercising any of his powers. The altering or defacing an entry permit, pass or endorsement in or passport is also considered an offence.

A person who also knowingly uses or has in possession a forged passport, entry permit or pass is also deemed to have committed an offence. So is a person who gives, sells or parts with the possession of a passport, entry permit or pass knowing that it may be used by any other person.

Other immigration offences under the Act include, using somebody else's passport, returning to Kenya after having been removed and harbouring a person who was removed from Kenya. Any person who commits any of the named offences is considered guilty and the Kenya law imposes a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding three years or both.

Other offences which also attract a fine not exceeding twenty thousand shillings or one year imprisonment include, obstructing an immigration officer in the exercise of his powers, unlawful entry or presence in Kenya, working or doing business without a permit and employing a person who does not have a work permit. Finally section 17 empowers the minister to make regulations geared towards facilitating the implementation of Immigration Act Cap 172.

2.4 Kenya Immigration Administration and Management

The 1967 Immigration Act also created the following administrative cadres: The Principal immigration Officer (PIO) as the head of the Immigration Department. The PIO was assisted by the Deputy Principal immigration Officer (DPIO), Senior Assistant Principal Immigration Officer (SAPIO), Assistant Principal Immigration (APIO), Senior Immigration Officer (SIO) I, II, and III. Assistant Immigration Officer (AIO) is the lowest ranked officer cadre.

However as the department grew and migration management became more complex the department saw the need to transform itself into a semi-autonomous government agency or a service organization. In preparation of this undertaking the department has expanded the various cadres and administratively created more positions in the management structure. Currently the department is headed by the Director of Immigration Services (DIS). He is assisted by a Deputy Director of Immigration Services (DDIS) and the Assistant Director of Immigration Services (ADIS) in charge of Finance and Administration.

Also in the new structure are Principal Immigration officers (PIO), Chief Immigration officers (CIO), Senior Immigration Officers (SIO), Immigration Officers (IO) I and II who form the lowest cadres of officers.

To fulfill its mandate the immigration department has over time come up with various administrative sections whose tasks are clearly set out to ensure efficiency. Section 'A' deals with the general administration and registry. This section takes care of all accounting responsibilities, transport, human resources, discipline and the day to day running of the Immigration headquarters' at Nyayo house.

Section 'B' deals with the registration of as well as issuance of aliens certificates. The section is also tasked with the responsibility of extending visitors passes for visitors wanting to extend their stay beyond the time they had been allowed at the ports of entry.

Section 'C' is arguably the most prominent section of the Immigration department given that it deals with the issuance of travel documents namely the Kenya passport, certificate of identity and nationality (CIN) and temporary permits for travel in the East Africa region.

Section 'D' concerns itself with the issue of entry permit and passes to foreigners intended to work, or reside in Kenya.

Section 'F' is the investigative and prosecutorial unit of the department whose broad mandate is the investigation of immigration related offences as well as the prosecution of those who breach the Immigration laws.

Section 'G' is tasked with the issuance of visa to persons who require visa to enter Kenya. Whereas visa can be gotten at all gazetted ports of entry in Kenya, there are incidences where certain nationalities have to file their applications at the immigration headquarters' since they cannot have their applications processed at the port of entry. Section 'G' basically deals with these applicants.

Section 'H' is the research and statistics arm of the department which is mandated with the collection and collation of data emanating from all immigration related activities. A training dimension has overtime also been incorporated in this section to look into the training needs of immigration personnel.

Section 'I' is the unit which deals with the processing of applicants who wish to acquire Kenyan citizenship through registration or naturalization.

Section 'J' is referred as the 'Kenyanization' section since it aims at ensuring that all companies and organizations put in place measures to enable

indigenous Kenyans get the opportunity to work in places that are held by foreigners on work permits.

2.5 Immigration and Border Management

Whereas all these sections are crucial for the efficient functioning of the department, there are some which are considered vital in the maintenance of an overall migration management system. According to a survey of East Africa Departments of immigration undertaken in 2005 by IOM and the US Department of State in 2005, the border point section which ensures effective border management is one such section.⁴⁴ Border controls are one of the means the immigration department uses to regulate and control entry and exit of persons in and out of Kenya.

These controls are used to admit individuals whose entry is deemed beneficial while denying entry to those whose entry is considered not enhancing the national interests of the country. It is at the border controls that Immigration officers ensure that all immigrants into Kenya are vetted and are in possession of requisite passes and permits.

Currently Kenya has 35 border control points which are located in strategic entry points including sea ports, inland waters, airports and land controls. The existing border points are as indicated in figure 1 below. As can be deduced from the map the borders are too few and so widespread. This

⁴⁴ Ibid

means that people can sneak in and out of the country without being noticed by the authorities.

KENYA IMMIGRATION EXISTING AND PROPOSED CONTROL POINTS



Moreover the border controls are dilapidated and in some instances are housed in old buildings not fit for human habitation. They are also inadequately manned and ill equipped⁴⁵. It has also been noted that six border controls points are actually not located at the actual borderline making migration management prone to abuse and also posing a risk to national security. Among these, is Lungalunga border control which is 4 km from the actual borderline, Taveta border control which is 6 km and, Lokichoggio border control which is 27 km from the actual border. Others include Kiunga border control on Kenya Somali border which is located 15 km from actual border, Liboi border which is housed inside a police station is 16 km from Kenya Somalia border.

It must however be noted that the department has appreciated the risks posed by the porous nature of Kenya's borders. In its strategic plan for 2005-2010 the immigration department has a strategic objective to enhance control on entry and exit of migrant by relocation of border offices to actual border points, opening of seventeen new border points, upgrading of existing ports and recruitment of Immigration guards.

The department has also given itself a target of purchasing 3 Immigration naval boats as well as 2 speed boats for better monitoring and surveillance of the lake and sea ports.

⁴⁵ Ibid

2.6 Conclusion

A closer scrutiny of the formative years of immigration management suggests that the various ordinances did not view national security as an important aspect. The main aim of the laws was to check on the influx of foreigners particularly 'Coolies' from the Indian subcontinent. The then British administrators of the Kenya Colony were not concerned with national security but by the desire to maintain the status quo.

Even as the ordinances were reviewed over the years after Kenya got her independence, the issue of national security was not of major importance. The various immigration laws, policies and procedures were concerned with regulating entry and exit, perhaps as a symbol of independence and sovereignty. At one point it was used to deport former colonial administrators who were considered to have oppressed the Africans drive for independence⁴⁶.

Even as the immigration Department has been placed under various Government ministries, it emerges that national security was not a factor that was seriously considered. At independence for example the department was placed in the Ministry of Home Affairs later transferred to the office of the President, the Ministry of constitutional Affairs, back to the office of the President before reverting back to the Ministry of Home Affairs after the 2003 General elections. Currently the department is in the Ministry of Immigration and Registration of Persons which still falls under the Office of the President.

⁴⁶ Ibid

Unlike other security apparatus which have been consistently under the Office of the President, the placement of the Immigration department in different ministries during different political regimes has meant that the department has been partially de-linked from national security apparatus of government⁴⁷.

Over the years the department of immigration has derived from various instruments none of which seems to lay emphasis on national security per se. For example the immigration Act Cap 172 which is the main Act that immigration officers use in delivering their mandate does not explicitly seem to acknowledge that certain aspects of Immigration management have a very strong bearing on national security. As a result the Act is insufficient and does not accord the issue of national security the respect it deserves. As a result immigration policies and practices have been allowed to develop into unorganized and non-prioritized elements of government that do not clearly spell out the important role immigration plays in the maintenance of national security.

Apart from Immigration Act Cap 172 other laws that deal with Immigration in Kenya are scattered in various Acts of parliament most of which are outdated and almost incoherent.

⁴⁷ Ibid

CHAPTER THREE

3.0 THE SYMBIOTIC RELATIONSHIP BETWEEN NATIONAL SECURITY AND KENYA'S MIGRATION MANAGEMENT

This research aims at examining the symbiotic relationship between immigration management and national security. As earlier noted the difficulty in determining whether immigration in Kenya constitutes a national security threat, is determining what constitutes national security. As has however been argued national security refers to the capacity of a society to protect individuals, groups and the nation from the physical and socio-economic dangers and from the threat of such dangers created by both systemic and attributional conditions.

It is however worthy to note here that the term "security" means different things to different scholars. Traditional notions of national security are held by theorists such as Hans Morgenthau for whom national interests contained two elements, namely one that is logically required and necessary and the other that is variable and determined by circumstances⁴⁸. Modern theorists like Buzan, Weaver and De Wilde on the other hand are of the opinion that national security involves much more than traditional notions of geopolitics and military defense⁴⁹.

It is with this new understanding of national security that the symbiotic relationship between national security and immigration can be examined. After

⁴⁸ Morgenthau, 1982:972

⁴⁹ See Buzan, 1991; Buzan, Weaver and De Wilde, 1997

the September 11th 2001 attacks on the United States, national security and immigration has become more increasingly intertwined not just in America but also around the world. Whereas prior to 2001 "securitizing" immigration was considered the preferred argument of restrictionists and xenophobes, it is now widely accepted that immigration has significant implications for security⁵⁰.

After the 9/11 attacks in the United States for example, pertinent questions were asked about the capacity of the immigration officers to stop or deter the terrorists. A commission tasked with reconstructing the attacks established that the immigration authorities exhibited serious vulnerabilities that were promptly utilized by the terrorists. The hijackers were said to have used fraudulent passports, obtained visas on false pretences and even violated the terms of their visas. *The US National Commission on Terrorist Attacks Upon the United States* were of the opinion that 15 of the 19 hijackers could have been intercepted by immigration authorities had the authorities been aware of and put in place measures against the terrorist travel tactics.⁵¹

With these attacks, immigration in United States became symbiotically related with national security. These events also lead a significant securitization of all immigration related activities. Kenya like America has been a target of terrorist attacks, first during the 1998 bombing of the American Embassy in

⁵⁰ See Chris Rudolph, 2007 Pg 1

⁵¹ The National Commission on Terrorist Attacks Upon the United States, " The 9/11 Commission Report" (W.W.Norton and Company, Inc 2004 pg 384

Nairobi and during the 2001 attack of the Israeli owned Paradise Hotel on the Kenya coast. It is widely believed that the chief architects and participants in both attacks were foreigners who had entered the country using fraudulent documents or through Kenya's porous borders.

Taking into consideration the havoc wrought by these attacks and their implication it can be deduced that there exists a strong correlation between immigration and national security. This is a view held by senior immigration practitioners as well as other security scholars. Interviews conducted with various individuals exhibited a clear understanding of what national security constitutes as well as its convergence with immigration. Isaac Munyai of The International Organization of Migration (IOM) intimated that National security is the protection of citizens from perceived or actual threats.

A Senior Immigration Officer (SIO) Evans Kinyanjui of Aliens Section at the Kenya Immigration headquarters opined that national security is a situation where the citizenry feel protected and are not under any threat be it external or internal. This is similar to the view held by Carlos Maluta a Chief Immigration Officer (CIO) with the Prosecution and investigation unit at the immigration headquarters. He however adds that the ability of citizens to go about their activities without interference and activities is an important component of national security.

Without necessarily deviating from the definition advanced by immigration practitioners as to what national security entails, Philip Njuguna a researcher with the Institute for Security studies (ISS) In Nairobi, sees the protection of human rights and sanctity of human life as an important perspective in defining national security.

While discussing the convergence of immigration and national security, it was observed that virtually all immigration officers and security studies scholars and practitioners interviewed strongly agreed that the two were intertwined. Isaac Munyae of IOM was of the opinion that the role of immigration is to intercept and deter external threats. According to him as the custodian of boundaries the department is supposed to intercept documents of individuals perceived as threats to national security.

Evans Kinyajui of Aliens Section adds that immigration is about regulating entry and exit of individuals whose character is at best unknown and who might compromise national security. This view is buttressed by Carlos Maluta of the Investigating and prosecution unit who further adds that immigration is a law enforcing agency and part of other security agencies. According to Maluta border security is a key component of national security.

Philip Njuguna of ISS identifies key areas that need input from the

immigration department. These include refugee affairs, terrorism, border conflicts, and proliferation of small arms and weapons. All these areas, he argues play a part in maintaining national security.

Another perspective highlighting the symbiotic relationship between immigration and national security is held by Edward Rintaugu a Deputy Director of Immigration Services (DDIS). According to him the proliferation of illegal aliens in the country leads to increased incidences of joblessness which in turn can lead to rising crime and eventually insecurity. Magnified further this can pose a serious risk to national security.

In its presentation to the Inter-state and Intra-regional cooperation on migration management in the IGAD region held in Ethiopia in 2008⁵², the Kenya Immigration Department acknowledges the link between Immigration and national security. The Department indicates that the country has been able to identify threats posed by migration and therefore deals with it as part of her national security and development agenda with an aim to identify legal (regular) migration and facilitate it in the entry and exit border points, including provisions for it to be orderly. It also works at identifying illegal (irregular) migration and stop it just like any other security threat.

⁵² See Kenya's Presentation to the Inter-state and Intra-regional Cooperation on Migration Management in the IGAD region 12-14 may 2008 A.U Hqs, Addis Ababa, Ethiopia

To further exemplify how serious the immigration department regards the symbiotic relationship between immigration and national security , the head of the Department in 2004 set up a task force of Senior officers whose recommendations were to take into cognizance the dynamic nature of international migration and the increase in international crimes, inter alia, terrorism. The team was to also consider that the Department is in the front line in the war against international crimes.

Their terms of reference included studying and recommending the establishment of the Department under an Act of parliament as well as draft a national migration policy.

In 2006 the task force in its report noted that recent rise in the criminalization of some migration activities by the international community is a clear manifestation of security concerns posed by migration thus the need for a comprehensive immigration policy. In its efforts to link immigration and national security concerns, the report further cites various International conventions which have been introduced to come to grips with the phenomenon. These include

- (i) The Convention against Transnational Organized Crime and the two protocols dealing with human smuggling and trafficking which was drafted and adopted by the UN General Assembly In 2001.

- (ii) The International Convention for the Suppression of the Financing of Terrorism which came into force on 10th April 2002.
- (iii) The International Convention for the Suppression of Terrorist Bombing was to come into force on 23rd May, 2003.
- (iv) In the wake of the September 11th attacks on the USA, the UN Security Council adopted resolution 1373 calling for states to prevent the movement of terrorists groups by effective border controls and control on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery and fraudulent use of identity papers and travel documents.
- (v) The 74th ordinary session of AU Council of Ministers, in July 2001 in Lusaka, initiated the Lusaka Declaration which called for the formulation of a strategic framework on Migration Policy in Africa.

While still acknowledging the symbiotic relationship between immigration and national security, the department advocates for the inclusion of the department into the various security committees. These include the District, Provincial and National Security Committees. The report notes that In the current setup, security committees draw their membership from Provincial Administration, NSIS, Department of Defense, Police, CID and the Ministry of Foreign Affairs, but

excludes the Department of Immigration whose operations also have a bearing on security. This scenario according to the department hampers prompt sharing of intelligence information in the fight against crimes perpetrated by both nationals and foreigners.

The report further notes that recent trends in international crimes among them; terrorism, money laundering, human trafficking and smuggling and drug trafficking have put the Department of Immigration in the forefront in the war against these vices. It thus concludes that there is therefore; need to make the Department a bonafide member of these committees for effective management of security matters.

In its recommendations the 2006 task force advanced the need to have the department anchored in the Acts of Parliament like other security organs so that it can perform its mandate satisfactorily⁵³. It further proposed the transformation of the department into a service to be known as Kenya Immigration and Nationality Service.

The Task Force further appreciated the need for drafting a comprehensive national migration policy because of the complexity and growth of migration. In this regard it recommended that an inter-ministerial committee composed of all stakeholders be formed to discuss and formulate a

⁵³ Department of Immigration, Immigration Reform Report, 2006

comprehensive migration policy for the country. These stakeholders include Department of Immigration, National Security Intelligence Service, Central Bank of Kenya and Ministries of Foreign Affairs, Home Affairs, Trade and Industry, Tourism and Information, Labour, Planning among others

3.1 DRAFT KENYA NATIONAL MIGRATION POLICY

As a fulfillment to the recommendations of the 2006 report commissioned by the then Chief Executive Officer, the immigration Department, embarked on drafting a National Migration Policy .The main impetus for the department pushing for a National migration Policy is so that it can be at par with other security agencies charged with the protection of national security.

In its introduction of the proposed National Immigration Policy, the Immigration Department emphasizes that the proposed service will play a very important role in enhancing national security and in performance of its other core functions.

The draft policy starts by identifying the challenges that the department currently faces in its endeavors to deliver on its mandate⁵⁴. These include inadequate legislative provisions, porous and unmanned borders, staff shortages, lack of facilities, uncooperative stakeholders, low budgetary provisions and increased incidences of document fraud.

⁵⁴ See Draft National Immigration Policy, 2008

3.1.1 Inadequate legislative provisions

The statutes upon which the policy is premised among them the Immigration Act, the Aliens Restriction Act and the Citizenship Act as currently constituted do not sufficiently address the emerging new economic, political and social dynamics in today's world. The statutes do not adequately address emerging crimes such as human trafficking/smuggling, terrorism, and other cross-border offenses that occur as a result of globalization. Where legislation exists, the punitive measures set out have remained minimal since inception and do not have the necessary deterrent effect.

3.1.2 Porous and unmanned long border stretches

There still remains a comparatively few number of gazetted border controls thereby leaving long distances of unsupervised territory between intermediate points of entry. These unmanned long stretches of the border remain porous and can be easily used as entry points by foreign criminals. The Kenyan coastline remains particularly less supervised in view of the fact that the department has no motorized boats or a marine patrol unit. The coastline is thus largely supervised by the Kenyan navy and the police, without the involvement of immigration personnel. Communication between controls remains inadequate, slow, non networked and uncoordinated.

3.1.3 Personnel shortages

The shortage of staff has meant that most of the existing immigration controls are understaffed to the extent of hindering service provision. Staff shortages have meant that border units are incapable of organizing efficient and structured patrols beyond the gazetted border points.

The recruitment of staff, deployment and development, including training for purposes of staff capacity building has been carried out at a slower pace than should have been the case.

3.1.4 Lack of adequate facilities

The funding for the construction of both regional and border offices has been low and inadequate. Important regions like the Coast headquarters in Mombasa have no offices of their own and remain housed in inadequate quarters at the Provincial Commissioner's office. This has impacted negatively on service delivery to the public. Other facilities such as vehicles, computers and verification machines are also in short supply at the various controls and ports of entry. The government is yet to identify, approve and construct the appropriate office facilities at most border controls and to network all the border offices with the Headquarters for ease of operations. There are also no holding facilities (cell-blocks) available for purposes of custody of arrested suspects.

Poor communication and information management systems due to inadequate networking and often times obsolete equipments, unserviceable machinery and vehicles has impacted negatively on service delivery.

3.1.5 Uncoordinated inter agency co-operation

In it's daily operations, the Immigration Service liaises with various branches of the Kenya Police, the Embassies and High Commissions, the Provincial Administration, the department of Civil Registration, the Registrar of births, the NSIS, the Ministry of Foreign Affairs, the AG's Chambers, the Kenya Airports Authority, the Ministry of labour, the Investment Promotion Authority, the Export Processing Zones Authority, the Kenya Civil Aviation Authority and various professional registration boards.

There is a lack of a harmonized and appropriate institutional framework to coordinate these inter-agency linkages. The operations of these agencies impact directly on the performance of Immigration service as most of the primary documents used in the processing of immigration documents are sourced from them.

3.1.6 Document and identity fraud

The forgery of both Kenyan and other foreign documents including visas and stamps remains a major concern for the Service. This concern is compounded by the fact that all documents issued by the Service are procured

through the central government system, which is slow and bureaucratic. Often, the documents particularly their security features have been overtaken by new advances in technology that is available to the counterfeiters/forgers.

Identity fraud has also manifested itself through the fraudulent acquisition of primary documents such as birth certificates and national identity cards that are used in the processing of the final document. Since the Service relies on funding from the central government, financing has been inadequate thereby limiting the capacity to respond to urgent needs such as advances in the quality of the security features due to new technology.

3.1.7 Inadequate budgetary provisions

In spite of the immigration Service raising substantial revenue, the Treasury's funding framework still inhibits faster realization of the mission and the prompt fulfillment of its mandate particularly in the light of emerging global challenges that require speedy intervention.

3.1.8 Conclusion

From the foregoing, it can be deduced that there indeed exists a symbiotic relationship between immigration and national security. Arguments advanced by security studies scholars as well as immigration practitioners buttress the fact that immigration is an important component of Kenya's national security regime. Security studies scholars further emphasize that immigration authorities

have to constantly remain alert to the new and emerging crimes of money laundering, human trafficking and the ever innovative terrorists if Kenya's national security is to be guaranteed.

The Immigration authorities have however indicated that they are well aware of their mandate and responsibilities as regards their role in safeguarding national security. Officers interviewed were categorical that they view their duties as having a strong correlation to matters of national security. Further, the Immigration Reform Report written in 2006 highlighted this aspect. A review of the recommendations of the report seems to propose a stronger and more effective Immigration Department that can be at par with other security organs of the state mandated to protect Kenya's national security. The reports' awareness of the various international conventions that impact Immigration activities and national security is a further indication of the realization of the symbiotic relationship between immigration and national security.

However, notwithstanding the governments' concerted efforts to write a comprehensive national migration policy, the department continues to face a myriad of challenges which have to be overcome for the department to play its rightful role as a security agency mandated to safeguard national security.

CHAPTER FOUR

4.0 A CRITICAL ANALYSIS OF THE RELATIONSHIP BETWEEN KENYA'S MIGRATION MANAGEMENT AND NATIONAL SECURITY

The national security can be defined as the freedom from threats that put in danger the survival and development of the society organized in the form of state⁵⁵. From interviewing Immigration practitioners and security studies scholars as well as scouring secondary data from Kenya's immigration Department, It is apparent that there is a consensus on the existence of a nexus between migration and national security. However it can be deduced that most of the arguments advanced are focused more on traditional security threats.

Recent studies indicate that there now exists new different values that have to be defended as key elements of the national security. Not only are states supposed to defend their territorial integrity and political independence, but also they should protect such values as economic independence, cultural identity and social stability⁵⁶.

There is therefore need to critically analyze the view held by migration scholars and practitioners on migration being a threat to national security. Basically it is imperative to determine whether securitizing migration is worth the

⁵⁵ See Anna Kicinger in International Migration as a Non-Traditional Security Threat and The E.U Responses to this Phenomenon P. 1, 2004.

⁵⁶ Ibid

interest it has generated over the last couple of years .We need to explore whether migration in itself is a threat or only some parts of the overall migratory movements namely illegal migration.

Securitization refers to the overall process turning a policy issue such as immigration into a security issue. The term securitization according to Tomas Faist refers to a perception of an existent threat to the ability of a nationally bound society to maintain and reproduce itself⁵⁷. Christina Boswell⁵⁸ writing on securitization of migration argues that the basic assumption underlying theories of securitization is because states have an interest in portraying migration as a security problem. States depicts certain issues as security threats so that they can consolidate notions of collective identity and hence mobilise political support. By securitizing migration, states can thus justify the introduction of new policies that would not otherwise have been considered legitimate. Boswell thus concludes that the state is able to expand its power through promising a "politics of insecurity".

However the idea of securitizing migration can be a risky proposition. This is because states have conflicting interests in the area of migration. This is because states at least have a responsibility of protecting citizens from security threats, but migration also touches on other core functions of the state. These

⁵⁷ See The Migration-Security Nexus. International Migration and Security Before and After 9/11, Malmö University pg 2,2004,

⁵⁸ See Christina Boswell, The Securitisation Migration: A Risky Strategy for European States, April 2007 pg 1.

include ensuring conditions for economic growth, equitable distribution of finite resource and guaranteeing individual rights of its citizenry.

Therefore by defining migration a purely security issue may conflict with the states other functions such as the creation of wealth for its citizenry. If migration is depicted as a security risk, this will make it more difficult for a state to for example justify issuance of work permits to foreigners.

Securitizing migration can also make a state lose credibility in the eyes of its citizenry. This is because the citizenry expects the state to be able to diagnose their social problems and propose adequate remedies. However if there occurs a wide discrepancy between what the state claims and the reality as perceived by the citizenry, the state risks losing credibility. If the state for example proposes to securitize migration but the public views are not contended, the government might end up disdained by its supporters.

Securitizing migration can also be a risky affair since as Boswell aptly asserts, it can bring to the fore issues of non-delivery of promises by the state to its citizenry⁵⁹.In Kenya for example, the issue of arresting and deporting illegal migrants has always been publicly articulated by the state but the delivery has not been exemplary. Failures to meet these performance indicators are

⁵⁹ Ibid

frequently highlighted by the media. This can easily result to what Boswell refers to as "scandalisation" of such failures and further erode the government's credibility.

Securitizing migration, adds Thomas Faist has served as a convenient reference point on unspecific fears. In the western countries and to a lesser extent in Kenya depiction of immigration as a security threat has reinforced stereotypes about cultural and religious fears that people deny.

Whereas some scholars like the ones discussed above accept that there is a link between migration and security and only argue about how beneficial securitizing migration is to the state, others deny that such a nexus even exists. Robert Leiken⁶⁰ for example, argues that there exists no empirical evidence suggesting between the late 1980s and the early 2000s the number of migrants intentionally or involuntarily undermining the security and economic performance of the host states increased at all In proportion to the total number of international migrants around the world.

Leiken concludes that neither bottom-up sociological perspectives nor top-down international relations perspectives have provided a comprehensive conceptual assessment of the relationship between migration and national

⁶⁰See Europe's Mujahedeen: Where Mass Immigration Meets Global Terrorism, April 2005 Pg 12

security.

Another scholar Harlan Koff argues that immigration should not be perceived as a narrow national security issue, but should as an economic question should be addressed in terms of markets⁶¹. According to the scholar migration is a market based issue more than it is a security based issue. It can therefore be deduced that Koff does not see immigration as having a convergence with national security.

Tomas Faist notes that links between international migration and security threats are inconclusive. According to him migration and security only share the fact that border crossing are involved. The link between the two he concludes is overly overstated.

Faist further argues that with the stepping up of migration control, states have to justify that their control efforts are workable. This in turn creates incentives for 'meta-politics' which he refers to as instances when social, economic and security concerns are connected with fears around international migration. Politicians will in these incidences refer to immigration to attempt to explain social and economic problems like lack of housing, raising crime and unemployment without providing any significant evidence.

⁶¹ See Harlan Koff; E.U Enlargement and Immigration: The need to Expand More than just External Borders, Center for Comparative Immigration Studies, University of San Diego

Through meta-politics low-level threats which would not necessarily be significant are upgraded leading to policy-makers and decision makers to engage in symbolic efforts instead of offering substantive policy solutions.

Various security scholars and policymakers around the world are of the opinion that the securitization of immigration has led to enactment of various immigration laws and policies that are not beneficial to the overall enhancement of national security. In America for example, one member of the Congress intimates that , the pursuit of national security has led to enactment of unrelated and radical changes in immigration laws that have not strengthened the US national security nor protected the US from terrorists⁶².

It was however felt by other scholars that these measures were not helpful in making America safer but tended to alienate the United States from other countries. As Kevin Johnson aptly notes,

Little can be gained in terms of security, however, through restrictionist laws and policies that cannot effectively be enforced at the ground level and, to make matters worse, are arbitrary, overbroad, and unfair, thereby alienating immigrant communities and foreign governments whose

⁶² US Representative Zoe Lofgren, A Decade of Radical Change in Immigration Law: An Inside Perspective, 16 Stan L. & Pol Rev 349, 377-78 (2005).

assistance is much-needed by the U.S. government in its fight against global terrorism.⁶³

Bishop Nicholas DiMarzio of Catholic Legal Immigration Network in the US though acknowledging the nexus between immigration and national security is of the opinion that policy makers ought not to overemphasize this relationship but should strive to strike a balance between the two. He posits thus,

Policymakers should not automatically assume that protecting national security requires heavily restricting immigration or attempting to seal off our borders with walls... A holistic approach to national security would recognize the importance of immigration to our nation's vitality. Restricting immigration too narrowly...would hurt national security. To think of immigration and national security in either/or terms is incorrect and short-sighted. The challenge is to implement pro-immigrant, pro-security policies.⁶⁴

As earlier noted Kenya's immigration practitioners as well as most scholars were of the opinion that due to the linkages between immigration and national security, there is a need to further enhance immigration management in all our entry points on the border as well as sea and airports. However Donald

⁶³ See Johnson, Kevin R., Protecting National Security Through Liberal Admission of Immigrants, University of California, Davis Legal Studies Research Paper 106,2007

⁶⁴ See Dimarzio Nicholas, Immigration Law Should Enhance National Security, Catholic Legal Immigration Network, Inc. <http://www.cliniclegal.org/>.

Kipkorir a lawyer and social commentator holds contrary views. Writing on the Saturday Nation of 14th June 2008 on how Kenya can achieve Vision 2030, the scholar advises the government to "pull down immigration walls".⁶⁵

Kipkorir argues that by having tough rules on immigration Kenya is "hypocritical and empty". He posits that Kenya has nothing to fear from or lose to immigrants, but everything to gain. According to him Kenya should allow all foreigners who want to settle or work here to come in. While drawing lessons from the US, the writer argues that America is built on the backs of immigrants both legal and illegal. He therefore opines that in allowing unhindered access to foreigners, Kenya will be the beneficiary just like America is.

However, Kipkorir places a caveat as to who he refers to when he talks about all foreigners. He advises that all should be let into Kenya except criminals fleeing an offence that carries a death penalty and terrorists. The writer however fails to indicate how the criminals and terrorists will be kept out while at the same time maintaining a liberalized form of immigration management.

Kipkorir's argument is however not isolated since there are other commentators who hold similar and equally radical views. Teresa Hayter⁶⁶ for example advocates not just the reforming of immigration controls but for their

⁶⁵ See Kipkorir Donald, "For Vision 2030 to succeed, coalition should pull down all immigration walls" *Daily Nation* 14 June 2008, 15

⁶⁶ See Teresa Hayter, "The New Common Sense: Immigration Controls are Unsustainable," *New Internationalist*, October 2002.

total abolition altogether. According to Hayter immigration controls are a cruel 20th century aberration. The author posits that immigration controls are less than 100 years whereas international migration has always existed. Freedom of movement should therefore be the new common sense as opposed to immigration controls which only serve to satisfy government's sense of being in control even when the nation-state is in rapid decline.

Hayter further argues that immigration boosts wealth since, evidence shows that immigrants actually make big contributions to the wealth and prosperity of the countries they settle. The author adds that studies in the United States of America have shown that immigrants contribute more in taxes than they receive in public services. The same is also true in Britain where the Home Office estimates that immigrants make a net contribution of \$3.75 billion a year to public coffers. Immigration controls on the other hand consumes about \$1.5 billion a year and has been on the rise.

Even as the Department of immigration links Immigration and national security there are incidences where the legislature has passed laws which give the impression that some government agencies as well as legislators do not fully appreciate the nexus between immigration and national security. A case in point is the enactment into law of the Refugee Act of 2006 which has section which suggest that the drafters of the Act did not consider that the mandate of the Department of immigration includes intercepting foreigners who might be a threat

to Kenya's national security. Section 11(1) of the Act states thus

"Any person who has entered Kenya, whether lawfully or otherwise and wishes to remain within Kenya as a refugee in terms of this Act shall make his intentions known by appearing in person before the Commissioner immediately upon his entry or in case , within thirty days after his entry into Kenya"

This section of the law not only gives foreigners the express permission to enter Kenya illegally but also allows them stay for up to thirty days without reporting their presence to any authority in the land. The law can be exploited by any foreigner who might want to enter Kenya and commit crime.

Section 11 (3) of the same Act further states that no person claiming to be a refugee shall by reason of illegal entry be declared a prohibited immigrant, detained or penalized in any way. This section thus hinders immigration officers from taking action against any illegal immigrant who declares himself a refugee. This is in contravention of the Immigration Act Cap 172 which mandates Immigration to safeguard the country by removing unwanted persons in the country.

4.1 Securitization of Immigration and human rights

Ever since the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948, the concept of Human rights has gained prominence and continued to dictate debate on every cultural, economic and political undertaking.

Human rights have been defined as fundamental rights which any person must enjoy by virtue of being human. It therefore follows that human rights cannot be abrogated by any individual or institution including the state. Human rights are also not alienable. Human rights activists acknowledge right to life, liberty, association, free speech, religion, movement and nationality as fundamental to every man and woman. Moreover these rights are supported by international conventions and treaties.

It can be observed that Human rights have been transformed from the abstract principles embodied in the UDHR to become legal entitlements for individuals and legal duties for state⁶⁷. Through the making of treaties governments have identified rights which should be protected and also set up structures to ensure that these rights are domesticated through national laws.

It therefore follows that any attempt to discuss the securitization of

⁶⁷ See Stefanie Grant in *International Migration and Human Rights*, Global Commission on International Migration, 2005 p 5

migration has to be done with the human rights in perspective. In the immediate aftermath of 9/11 there was an unprecedented onslaught on civil rights in western-liberal democracies. The same also happened in developing countries like Kenya which felt that they were soft targets to those who were determined to attack western interests all over the world.

Kevin and Trujillo writing on the reaction of the American government after the horrible events of September 11, indicate that the Immigration law almost immediately became ground zero in the "war on terror," and immigrants suffered the consequences. In the name of national security the U.S. government took a variety of immigration-related measures. According to these scholars this overreaction directed at immigrants in many respects overvalued security, undervalued the rights of immigrants, and appears to have done little to in fact make the nation much safer.⁶⁸As a result of panic, fear and anger expressed by the American people, the government took measures that led to open hostility against Arabs and Muslims and few American citizens came out to defend the foreigners.

Kenya too continues to witness incidences of crackdowns against Muslims and Arabs after the 1998 bombing of the American Embassy in downtown Nairobi as well as the bombing of the Israel owned hotel in Kikambala

⁶⁸ Johnson Kevin R. & Trujillo ,Bernard, Immigration reform National security After September 11 and the Future of North American Integration, UC Davis Legal Studies Research Paper Series, Research Paper No. 101,2007

on the Kenyan coast. In the name of national security, Arab and Muslims non-citizens have complained of constant harassments by the anti-terror units as well as arbitrary arrests and deportations.

Subsequently laws and policies that were enacted as a response to the securitization of immigration encroached on human rights particularly of those deemed to be security risks. Muslim and Arab immigrants in the US were for example targets for "special" registration requirements, detentions, and removals. The U.S. government was of the view that it was necessary to sacrifice civil rights, especially those of immigrants, to protect the security of the nation.⁶⁹

While discussing the increasing incidences of how securitization of immigration has led to massive illegal removals of immigrants in the US particularly after September 11 2001, Jennifer M. Chacón argues that law enforcers have used this speech act to deny immigrants their civil rights with the express connivance of the executive. Removal of non-citizens on grounds of criminal violations can be, and frequently are, depicted as national security policy. These confluences of immigration enforcement, crime control initiatives and a security measure argues Chacon, "pose an even greater threat to our

⁶⁹ See David Cole, Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism 4-5 (2003)

constitutional order and to human rights".⁷⁰ This despite the fact that few benefits seem to have been realized.

Since 1994 researchers have confirmed the nexus between migration and human rights violation more so in areas of conflict⁷¹. As states attempt to deter people from moving from one country and region to another they are normally accused of violating human rights principles which many have sworn to protect by signing international conventions and treaties.

Kenya has for example been accused by the international community of violating the human rights of Somalis who are running away from the protracted battles engulfing Somali currently. Kenyan police and soldiers have been reported brutalizing asylum seekers trying to access refugee camps in Kenya. The Kenya Government which has declared their porous border with Somali officially closed as a way of stopping would be terrorist from infiltrating the country, has also been accused of renegeing on its obligation of opening its doors to all those fleeing persecution from their home countries. In its effort to combat terrorism Kenya has placed state security at the forefront at the detriment of migrants' rights which are ultimately human rights.

⁷⁰ See Chacon Jennifer, M. Unsecured Borders: Immigration Restrictions, Crime Control and National Security, University of California, Legal Studies Research Paper No. 123, 2007

⁷¹ See Stefanie Grant in *International Migration and Human Rights*, Global Commission on International Migration, 2005, p. 8

Even as the Kenya Immigration department attempts to write its first national immigration policy, it is worth noting that there is no mention of human rights in the various drafts in circulation. This is a further indication that the department does not link securitization of immigration and human rights. Whereas the draft policy states that the migration system must be viewed almost exclusively through the lens of security and economic development, it fails to balance this assertion with the need to ensure that this agenda as in all government agendas must have a human rights perspective for it to be successfully enforced.

The proposed Kenya national immigration policy further asserts that it is founded on various international legal instruments including the Universal Declaration on Human Rights of 1948. However there is no indication in the draft that the policy seeks to find a balance between a framework of securitization and an approach to migration management in which human rights are a fundamental component.

4.2 Conclusion

This chapter set out to critically analyze the relationship between Kenya's migration management and national security. The chapter also sought to link securitization of immigration and human rights. The review established that the idea of securitizing migration though appealing can also be a risky proposition.

Securitizing migration can lead to a conflict of interest with the states' other functions of ensuring economic growth, equitable distribution of resources and guaranteeing individual rights of its citizenry. Securitizing migration can also lead to issues of non-delivery of promises as well as make the state lose credibility in the eyes of its supporters.

This analysis brought the realization that not all security scholars support the argument that there exists a definitive nexus between migration and national security. Others even contend that there is no empirical evidence suggesting that migration has undermined national security.

The chapter also established that since the September 2001 terrorist attack on the United States, the world has witnessed the infringement of human rights in the guise of securing countries from further attacks. This has also been true in Kenya which has also witnessed incidences of Kenyans of Arabic extraction and Muslims suffer human rights abuses on the hands of state security agents.

In its efforts to also keep would be terrorists at bay the Kenyan Government has also closed its borders with Somalia thus making it hard for genuine Somalis to enter the country and seek asylum. This also left vulnerable

migrants susceptible to human rights abuses by state agents as well as human traffickers.

The chapter also established that the department has failed to take into consideration human rights principles while writing Kenya's first ever national immigration policy.

CHAPTER FIVE

5.0 SUMMARY, FINDINGS AND RECOMMENDATIONS

5.1 Introduction

According to the 2002 International migration Report by the UN there are about 175 million people residing outside their country of birth. One basic characteristic about people is that they move from place to place. The right to move was recognized globally over a half century ago with the adoption of the Universal Declaration of Human Rights. The Declaration states in Article 13 that "Everyone has the right to freedom of movement and residence within the borders of each state" and "Everyone has the right to leave any country, including his own, and to return to his country."

In the last couple of years though, immigration as an important component of national security has become an issue of concern around the world more so after the events of September 2001 in the US. Countries have either tightened or are in the process of tightening their policies towards immigrants, refugees and asylum seekers. Kenya which has been a target of two attacks has also had a lackluster debate on immigration and national security. It is in view of this that this study was undertaken.

5.2 SUMMARY

Chapter one covers the general introduction, statement of the problem, study, literature Review, Theoretical framework, Hypothesis, Definition of terms and the research methodology

Chapter two examines the history and development of Kenya's Immigration Department and bearing on National Security.

Chapter three is the core of this study. It assesses what national security is as well as its influence on immigration. The chapter also explores how Kenya's Immigration department views the relationship between immigration policies and national security. Kenyans' National Immigration policy document is also discussed.

Chapter 4 critically analyzes the relationship between Kenya's Immigration and management and national security. The chapter explores the argument against securitizing migration and its aftermath. The chapter also links securitization of immigration and the human rights principles.

Chapter 5 is the overall summary encompassing the findings and recommendations to academicians and policy makers.

5.3 FINDINGS

The findings of this study are hinged on the objectives set out in chapter one. These are:

1. To determine if a symbiotic relationship exists between Kenya's Immigration management and national security.
2. To examine how Kenya's Immigration management contributes to the enhancement of National Security
3. To assess whether Kenya's Immigration officers correlate National Security issues and Immigration policies and practices.

5.3.1 The Symbiotic Relationship between National Security and Immigration Management

To study this objective it was hypothesized that a symbiotic relationship exists between national security and immigration Management in Kenya. This hypothesis was tested by exploring how Immigration practitioners, academics and security studies scholars view the role Immigration plays in safeguarding national security.

The study found out that there indeed exist a symbiotic relationship between immigration and National Security. Scholars as well as Immigration

practitioners were emphatic on the importance of efficient migration management in the Kenya national security regime.

The study also revealed that the Immigration Department realized the existing nexus between National Security and Migration management and has started to put in place measures which ensure that Kenya's National Security is safeguarded. This is evidenced by the department push to enact a new Kenya Nationality and migration bill as well as the ongoing discussion of the Kenya National Immigration Policy.

5.3.2 Kenya's Immigration Management and its contribution to enhancement of national security

It was the objective of this study to examine what Kenya's Immigration Management plays in safeguarding National Security. It was found out that the Kenya Immigration Department plays a crucial role in ensuring that the country is not infiltrated by individuals who might want to harm its interests.

The department with its administrative mandate to issue travel documents vets all nationals who apply for passports which is a mandatory document for all foreign travels. The Department also liaises with other security agencies like the National Security Intelligence Service, the Kenya Police, the

National Counter-Terrorism Center and the Provincial Administration to ensure that only bonafide citizens are in possession of a Kenya Passport.

Variously, the department has a legal mandate to regulate exit and entry of persons through all border control points and thus ensures that only those people who qualify to visit, Kenya are allowed in. The department also is mandated to permit only those whose interests are not inimical to national stability are permitted to reside and work in Kenya.

In liaison with foreign agencies and government the Immigration Department also plays an important role in ensuring that its fugitives do not find refuge in Kenya nor transit through Kenya. As a result of this cooperation the department is also able to receive crucial intelligence from other countries regarding foreigners living in Kenya who might want to do the country harm.

5.3.3 The correlation of national security issues and immigration practice by Immigration officers

The study of this objective has revealed that Kenya Immigration officers see a definite correlation between Immigration and National Security. It was established that Immigration officers view their function as imperative in the safeguarding of National Security. It further emerges that Immigration officers view the Immigration Department as a law enforcing agency and part of other security agencies.

Senior Immigration officers interviewed linked the proliferation of illegal migrants to insecurity which means that they view their responsibilities of allowing entry and exit into the country as being directly linked to Nationals security.

The Senior Immigration officer's Department commitment to ensuring that the Department operates under a new legislative regime further proves that the officers view their mandate as an important component in National Security. Moreover the ongoing endeavor to develop an Immigration Policy which puts emphasis on the importance of Immigration in issues pertaining to National Security is further proof that the officers view the nexus between Immigration and National Security as being real.

5.4 RECOMMENDATIONS

Based on our findings the following recommendations are made to academic research, policy makers and implementers.

5.4.1 To academic researchers

We acknowledge that there are many areas of this work which our study could not comprehensively explore due to the limited timeframe and material resource allocated to it. The study did not for example explore whether the rank and file officers in the Immigration Department are fully cognizant of the

relationship between immigration and national security as they perform their daily work. This study therefore recommends further research in this crucial area.

This study was also not in a position to determine whether other security agencies tasked with safeguarding national security correlate national security with immigration management. There is therefore need for further research to establish this

5.4.2 To policy makers and implementers

Having critically reviewed the relationship between immigration policy and national security compels this to study offers various policy recommendations.

It is the recommendation of this study that Kenya's immigration department develops a comprehensive national migration policy to guide it in execution of its mandate and enhance national security. Whereas there has been talk of a draft immigration policy under review, this has taken too long to realize and there is need to hasten the process. The draft policy should without delay be discussed with stakeholders and taken to cabinet for adoption.

Of equal importance is the enactment of the draft Kenya National Immigration and Nationality Bill. Though the draft has been in existence for a couple of years, it is yet to see the light of day. It is the recommendation of this

study that the enactment of the bill be fast tracked to ensure that the Immigration Department operates under an updated and comprehensive legal regime. Also to be considered should be the pending anti-terrorism bill which would also have implications on immigration management.

Apart from the draft policy, there is need to undertake the development of a comprehensive national security and immigration framework that would help cement the symbiotic relationship between the two. This would go a long way in helping avoid panic implementation of immigration policies that discriminate non citizens living in Kenya.

This study further recommends the immediate repeal of sections in the Refugee Act 2006 which are in direct contravention of Immigration Act Cap 172 and which seems to negate the role the department plays in the maintenance of national security.

Though senior immigration officers understand the relationship between immigration management and safeguarding national security the same might not be said of the rank and file officers. I therefore recommend that a deliberate effort be made to sensitize all officers in the department on this very crucial relationship.

This study acknowledges that the immigration department has good working relations with other security organs. Inter agencies co-operation is said

to be excellent among the middle and upper level managers but the same cannot be said at the lower levels. Incidentally this is where most work is done. It is also widely acknowledged that some security agencies do not appreciate the nexus between immigration and national security. It is therefore the recommendation of this study that the immigration system be integrated into the national security apparatus. The national Security Intelligence Service, The Anti-Terrorism Police Unit and National Counter terrorism outfits must incorporate the immigration department in their systems if the department is to play its rightful role in enhancing national security.

In order to play its role of determining who enters and exits the country the immigration department needs to be fully equipped to meet this challenge. There is need for the automation of all entry points in the country to adequately capture the data of those exiting and entering with a view of stopping those who might pose a security risk or might be on the watch list. The department also needs to invest in more patrol vehicles and speedboats to adequately monitor its borders.

Kenya borders are said to be porous and almost unmanageable. This study therefore recommends that more border control points be opened in areas that are unmanned and porous. The government should embark on operationalizing the proposed border control points including Todenyang and Kibish, and Banya Fort along the Kenyan border with Ethiopia, Daresalam along

the Kenyan coast, Lokiriama, Nadapal along the Kenya-Uganda and Sudan border. Also to be considered should be the Kolbio, Dif, Elwak Rahmu and Malka Mari along the volatile Kenya- Somalia border.

REFERENCE LIST

Agostinho Zacarias, (2003). Redefining security In Baregu M. and Linderberg C. (Eds.), *From cape to Congo: Southern Africa's Evolving Security challenges* (pp. 32-40). Colorado, Lynne Rienner Publications Incorporate

Al-Mashal A. (1985), *National Security in the Third World* London: Westview Press

Baylis. J. (2005). International and Global Security in the Post-cold War Era. In J. Baylis and S. Smith (Eds.), *The Globalization of World Politics: An Introduction to International Relations* (pp. 300-305). 3rd Edition Oxford: Oxford University Press.

Bell J.B. (1988). *A time of Terror: How Democrat Governments Respond to Revolutionary Violence*. Basic Books Incorporated: New York

Boswell, Christina, (2007) *The Securitisation of Migration: A Risky Strategy for European States*,

Brimelow, Peter. (1997). Time to Rethink Immigration? In Nicholas Capaldi (Ed), *Immigration: Debating the Issues* (pp. 24-28). New York: Prometheus Books

Buzan, B. Weaver and Wilde J. (1998) *Security: A New Framework for Analysis*. Boulder, CO: Lynne Rienner

Buzan, B. (1991) *People, States and Fear: An Agenda for International Security Studies in the Post Cold War Era*. Harvester: Wheatsheaf.

Buzan, B. (1991). The Idea of the State and National security. In R. Little and M Smith (Eds), *Perspectives on World Politics* (pp.87-93). 2nd Edition London, Routledge.

Chacon, Jennifer, M. (2007) *Unsecured Borders: Immigration Restrictions, Crime Control and National Security*, University of California, Legal Studies Research Paper No. 123

David W. Clinton. (1991) *The National Interest: Normative Foundations* In Richard Little and Michael Smith (Eds). *Perspectives on World Politics*. (pp.47-50) 2nd Edition London Routledge,

Department of Immigration. (2006). *Immigration Reform Report*, Nairobi: Department of immigration.

Department of Immigration. (2008) *Inter-state and Intra-regional Cooperation on Migration Management in the IGAD region*. Nairobi: Department of immigration.

Department of Immigration. (2008). *Draft National Immigration Policy*. Nairobi: Department of immigration.

Desbarats J. (2001). Institution and Policy Interactions among Countries and Refugee Flows. In M. Katz et al *Global Interactions* (pp.279-281)??

Deutsch, K.W. (1988). *The Analysis of International Relations*. New Jersey: Prentice Hall.

Dewitt D. et al, (1993) *Building a New Global Order Emerging Trends In International Security*. New York: Oxford University Press

Dimarzio, Nicholas (2001). *Immigration Law Should Enhance National Security*, Catholic Legal Immigration Network Inc.

Holland, K. M. (2002) Immigration and National Security: A Comprehensive Look at the Connections and Policies *Diplomacy and World Affairs*

International Organization for Migration (2004). *Essentials of Migration Management* vol.1. International Organization for Migration Geneva: IOM

International Organization for Migration (2005). *International Agenda for Migration Management*. Geneva: IOM

International Organization for Migration. (August 2005). *Capacity Building in Migration Management Programme for East Africa: A survey of East Africa Departments of Immigration*. Nairobi: IOM

Johnson, Kevin R. (2007) *Protecting National Security Through Liberal Admission of Immigrants*. University of California, Davis Legal Studies Research Paper 106.

Johnson R. Kevin & Trujillo, Bernard, (2007) *Immigration reform, National security After September 11, and the Future of North American Integration*, UC Davis Legal Studies Research Paper Series, Research Paper No. 101

Kamath, P. M., (1995). Human Rights and National Security In Macharia Munene, J.D Olewe Nyunya et al, (Eds), *The United States and Africa*. (pp.51-52) Nairobi, East Africa Educational Publishers.

Kicinger, Anna. (2004) *International Migration as a Non-Traditional Security Threat and The E.U Responses to this Phenomenon ??*

Kiras , D. John. (2003) Terrorism and Globalization In John Baylis and Steve Smith (Eds) *The Globalization of World Politics* pp 489-494.

Kritz, M. Mary and Hania, Zlotnik. (1992) Global Interactions: Migration Systems Process and Policies In Mary M. Krita et al (Eds.), *International Migration Systems*. (pp. 1-10) Oxford: Clarendon Press.

Leiken, R.S. (2005). Europe's Mujahideen: Where Mass Immigration Meets Global Terrorism

Ludeki, Chweya. (2004). Emerging Dimensions of Security in the IGAD Region In Makumi Mwangi (Ed) *African Regional security in the Age of Globalization* (pp. 31-34) Nairobi: Heinrich Boll Foundation.

Malmö University. (2004). The Migration-Security Nexus. International Migration and Security Before and After 9/11. Malmö

Nedzel, N. (2002). Immigration Law: A Bird's Eye View In N. Capaldi (Ed) *Immigration* (pp. 149-156). London, Routledge.

Ofuho, H. C. (2004). Security in Africa In M. Mwangi, (Ed), *African Regional Concerns in the age of Globalization* (pp. 8-14). Nairobi, Heinrich Boll foundation.

Snow D.M and Eugene Brown, (1996) *The Contours of Power: An Introduction to Contemporary International Relations*. New York: St Martin's Press.

Snow, D.M (1998). *National Security Defense Policy in a Changed World Order* New York: St Martin's Press.

Snow, D.M. (1998). *National Security Defense Policy in a Changed World Order*. New York : St Martin's Press.

The National Commission on Terrorist Attacks Upon the United States, The 9/11 Commission Report. W.W.Norton and Company, Inc 2004 pg 38

University of San Diego. Center for Comparative Immigration Studies (2004). *E.U Enlargement and Immigration: The need to Expand More than just External Borders*, San Diego, CA: Center for Comparative Immigration Studies

Weaver, Ole. (1995) *Securitization and Desecuritization*. New York: Columbia UP.

Zacarias, A. (2003). Redefining security In M. Baregu and C. Linderberg (Eds.), *From cape to Congo: Southern Africa's Evolving Security challenges* (p.32-37). Colorado: Lynne Rienner Publications Incorporated.

http://en.wikipedia.org/wiki/National_interest"

<http://www.cliniclegal.org/>

APPENDIX

INTERVIEW SCHEDULE

The Symbiotic Relationship Between Immigration and National Security

1. What is your definition of national security?
2. Is there a symbiotic relationship between the concepts national security and immigration?
3. How does immigration as a regime inform Kenya's security challenges?
4. Are immigration policies beneficial to the enhancement of Kenya's national security?
5. How can the immigration department respond to the emerging challenges to Kenya's national security? E.g. terrorism, refugee flow, human trafficking.
6. Is the current immigration regime sensitive to Kenya's security needs?
7. Immigration officers should relate immigration policies and practices towards the overall welfare of the state. What is your opinion?
8. What is your observation of Kenya's border control measures?
9. Is there any security lapse (that you know of) in the past that caught the immigration department or Kenya's security forces off balance/unprepared