



***A Clash of Civilisations in Kenya:
National Security and the Somali Question***

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List of Acronyms

AI	Amnesty International
AMISOM	African Union Mission to Somalia
AP	Administration Police
ATU	Anti Terrorism Unit
AU	African Union
DRA	Department of Refugee Affairs
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GoK	Government of Kenya
GSU	General Service Unit (Kenya)
HRW	Human Rights Watch
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
IOM	International Organisation for Migration
IRC	International Rescue Committee
ISS	Institute of Social Studies
JRS	Jesuit Refugee Services
KDF	Kenya Defence Forces
MIRP	Ministry of State and Immigration of Persons
NCTC	National Counter Terrorism Centre
NGO	Non-Governmental Organisation
RCK	Refugee Consortium of Kenya
RI	Refugee International
TFG	Transitional Federal Government
UN	United Nations
UNHCR	United Nations High Commission for Refugees

Abstract

This study focuses on the Government of Kenya's treatment of members of the Somali community within the country's borders, particularly spotlighting the years 2010-2014. Whilst many Somali refugees routinely cross the Kenya-Somalia border to seek out sanctuary in the Dadaab and Kakuma camps to the north and north east, the Kenyan capital Nairobi still plays host to the largest Somali migrant community in the country. A change in policy can be linked with the war in Somalia, and the Kenya Defence Forces' 'Operation Linda Nchi' military intervention in the neighbouring country. Recent terror attacks in Nairobi and other urban spaces in Kenya have contributed to a changing political climate and different media perceptions of Somalis, now widely and openly blamed for terror attacks on civilians in Kenya and for general insecurity. This study will focus on creating an understanding of why this change in approach and policy towards Somalis, whether Kenyan Somalis or refugees, has taken place since around 2010. I will focus on the Government of Kenya and the manner in which Uhuru Kenyatta's government continues to effectively wipe out a long-standing national model of migrant assimilation and integration, effectively contributing to the negative social image of the Somali individual to the general Kenyan public and the growing climate of intolerance and suspicion in the state. This study also considers the work of local and international NGOs and institutions that try to defend Somali human rights, whether as 'foreign' migrants or as state citizens. The study concludes that the Government of Kenya has started to integrate a dominant Western 'clash of civilisations' perspective into its policy view. This perspective holds that Islam is ultimately unavoidably hostile to the Western world and to democratic political norms. I conclude by suggesting ways out of this conflictual situation.

Relevance to Development Studies

This research paper focuses on Kenyan Somalis and Somali refugees, now a particularly vulnerable group in Kenyan society. The paper looks to provide insights on the discrimination these two groups face (primarily from the Government of Kenya) from a human rights perspective, and focus on Huntington's 'Clash of Civilisations' approach as a dominant perspective taken up by governments towards minority groups within their borders.

Taking the example of Kenya and the Somali minority, and focusing on the recent change in policies, I hope to not only cast light on the abuse of human rights, but also on the myriad difficulties minorities face in fully integrating into the host society. The paper will provide information on civil society efforts to handle the oppressive government policies and further map out durable solutions. Taking these matters into account, and coupling them with issues of citizenship, cross-border migration, state power and militarisation, this study seeks to be resourceful in delving beyond a humanitarian lens - to evaluate the situation in Kenya as is through more of a human rights and human security approach. In contribution to the world of development studies, this research will be relevant in the spotlighting of the gap created between the rights of Kenyan nationals and those of 'foreign' Somali refugees or Kenyans

of Somali origin. As such, by problematising this gap as an area to be further studied and improved upon, this paper hopes to contribute towards the Government of Kenya's being held accountable to its people and to its legal commitments, primarily to its own Refugee Act of 2012, and to the UN's Universal Declaration of Human Rights of 1948 and the Convention relating to the Status of Refugees of 1951.

Keywords

Kenya, Government, Nairobi, Eastleigh, Somali refugees, Kenyan Somalis, Dadaab, Kakuma, refugee camps, military intervention, detention, human rights, refugee rights, racism, anti-Islamism, refoulement, xenophobia, citizenship, civil society, 'clash of civilisations'.

Chapter 1

Introduction

Every immigrant who comes here should be required within five years to learn English or leave the country.

- Theodore Roosevelt, Letter to the president of the American Defense Society; January 3 1919

1.1 Introduction: The Problem of Explaining Xenophobic Policies

This study's focus is on how the Government of Kenya has treated Kenyan Somalis and Somali migrants in recent years, particularly in the context of what is seen as a 'war on terror' or 'clash of civilisations', since around 2010. The refugee camps along the Kenya-Somalia border, especially Dadaab and Kakuma camps, are among the largest in the region and indeed in the world. In addition, Kenya's capital Nairobi still hosts more Somalis than the camps, including settled urban migrants who form one of the world's largest Somali communities outside of Somalia (KNBS 2009).

This study seeks to not only understand, but also explain a particularly dramatic change in national policy that has steadily been taking place in Kenya following the period after the Al Shabaab-linked tourist kidnappings of 2010. The study links these changes in policy with the war in Somalia, and with the Kenyan government's decision to send Kenya Defence Forces (KDF) peace-keeping troops to its neighbour. Amidst recent attacks on public buildings and transport systems in Nairobi, the political climate has become tense, with negative media portrayals of Somalis, who find themselves increasingly openly blamed for terror attacks on civilians in the country, and for rising insecurity. This study is motivated by the question of why such a change in approach and policy towards Somalis has taken place in the past few years. I focus on the actions and approaches of the Government of Kenya, and seek to show how the current administration's policies have effectively removed many rights from one of the longest-standing national minorities, whether as migrants or as Kenyan citizens. A number of former policies based on assimilation and inte-

gration have been reversed and a highly negative social image of Somalis has replaced the previous view of their collective qualities. Things which previously were seen as positive (strong family bonds, astute business sense and work ethic) have come to be seen as threatening to Kenya and to Kenyans, and it is this changing perception that I want to explore.

Further, what kind of resistance is there to this growing climate of intolerance and suspicion in the country as explained? This study considers not only the actions and statements of government and to a lesser extent media and the local population, but also to the work of local NGOs and other institutions, for example Muslims for Human Rights and Fahamu Networks for Social Justice, all which try to defend Somalis' and Kenyan Somalis' human rights. Other regional and international actors such as IOM (International Organisation for Migration) and UNHCR (United Nations High Commission for Refugees) also seek to defend Somalis, both as migrants and as Kenyan citizens. The study concludes that the Government of Kenya has started to integrate a dominant Western 'clash of civilisations' perspective – as first elaborated by political scientist Samuel Huntington - into its policy view (Huntington 1993). This perspective holds that Islam as a way of life is unavoidably hostile to the Western world and to the accepted democratic political norms. I conclude by suggesting ways out of this conflictual situation. The core focus of this study is on the Kenyan government's official growing hostility – physical and structural - towards Somalis living in Kenya, both Somali migrants and Kenyan Somalis born and raised in Kenya.

Where once the Somali presence in Nairobi early on led to the coining of 'Mogadishu Ndogo' (Little Mogadishu) as a term of endearment to the popular shopping area beloved by many Kenyans for its low, competitive prices on a vast range of goods, from havaianas to jiggery, Eastleigh today is much feared and anything but beloved. The area is routinely touted in the media and in official police statements as a crime and terrorist hotspot. As a target urban space, Eastleigh is also hounded by journalists, police and military alike as they look to 'fish out' terrorist groups like Al Shabaab, purported to have recruitment bases here as multiple media sources have reported:

From refugees trying to build new lives, graduates in search of affordable housing, small-scale shop owners and entrepreneurs who contribute to an important segment of Nairobi's economy and job market, Somalis are indiscriminately affected both by the Al Shabaab-linked terrorist attacks, and by the reprisals and roundups they provoke.¹ It is important to note that it is not only the migrant Somali community that is at the receiving end of this harsh judgements: for instance, Somali Kenyans are often the target of increased xenophobic sentiment in the city, and have even in some cases been deprived of citizenship, or been threatened with removal of Kenyan identity papers and residency rights.

1.2 Context of the Study and Justification

While current local debate rages over how to best secure the country's borders and curb increasing terror attacks by the Al Shabaab militant group on Kenyan soil, surprisingly little research is available on the Government of Kenya's current changing national policy towards Somalis and Kenyan Somalis suspected of terror activities within the country. This paper traces this current phenomenon of excessive government force and extrajudicial detainment of terror suspects, majority of whom are Somalis, and the effects of such government policy on national and human security. Amnesty International and Human Rights Watch are one of the relatively few organisations that continue to study these issues in detail. This study therefore draws quite heavily on a number of such reports (for example HRW, 2014, 2013).

There are over one million registered Somali refugees in East Africa, with over 50 percent of these residing in Kenya (Jones et al 2013). As per the 1989 national census, Kenya housed about one million ethnic Somalis; 20 years later, the 2009 national census reported this figure to have risen to about 2.3 million Somali residents (KNBS 2012). This figure includes both Somali refugees and

¹ 'Africa-News and Analysis' blog at: <http://africajournalismtheworld.com/tag/kenya-and-al-shabaab/> [accessed 13 November 2014].

Kenyan Somalis, but was later so widely disputed that the number was nullified for an official recount due to discrepancies in collected data in Lagdera, Mandera East, Mandera West, Turkana Central, Turkana North and Turkana South (all areas with significant Kenyan Somali populations). The government later officially cancelled the result for these eight districts citing the irregularities.

Though a repeat census was officially ordered, the process was never carried out, with complex logistics planning largely blamed for the delay as revealed by then assistant minister Peter Kenneth in the Ministry of State for Planning, National Development and Vision 2030 (Hansard 2011). However it is important to note that the High Court of Kenya eventually ruled in February 2012 that the cancellation of results for these eight districts was “not based on any statute and as such exceeded the limited confines of the law”, thus effectively overruling the previous ministerial decision to have a recount in these areas (Hansard 2012).

Prior to October 2011, the Kenya Defence Forces (KDF) had never been sent abroad for peace keeping or combative efforts. Active military duty had not been seen since World War II when Kenyan soldiers fought alongside British troops to repel the Japanese in Burma. The military intervention in Somalia involved a decision “to deploy thousands of troops to Somalia’s Juba Valley to wage war on Al-Shabaab” (ICG 2012). The intervention was “...the biggest security gamble Kenya has taken since independence” and a “radical departure” for a country that has not been keen on military intervention.² Thus, for instance, it was Tanzanian troops, and not Kenyan soldiers who intervened in Uganda to overthrow Obote II’s regime during Daniel arap Moi’s 1980s regime.

The initial military intervention into Somalia in 2011 was named ‘Operation Linda Nchi’, meaning ‘protect the country’ in Kiswahili. This name helped

² The Kenyan Military Intervention in Somalia *Africa Report* N°18415 Feb 2012 at: <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/kenya/184-the-kenyan-military-intervention-in-somalia.aspx> [accessed 10.12.2014].

give the impression to the general public that the initiative was in the best interests for Kenya and for Kenyans, yet the operation remained unsupported by the United Nations. Some evidence suggests the go-ahead for *Linda Nchi* was given without adequate political, diplomatic and military preparation (ICG, 2012). Less than a year into the operation, the Kenyan military force was joined in Somalia by a wider African Union regional peace-keeping military force under the African Union Mission in Somalia (AMISOM), suggesting the “potential for getting bogged down” in Somalia was quite high.³ The risks of Al-Shabaab retaliatory terror campaign for civilians in Kenya’s cities and towns have remained high since, with a slew of tit-for-tat attacks witnessed on civilians, particularly in Nairobi - including Eastleigh - and other attacks along the coast, and most recently in 2014 in the North East, where Al Shabaab appeared to claim responsibility for killings of non-Muslim bus passengers and mine workers in November 2014. At present, there is a general feeling that the Government of Kenya ‘needs to do more’ to combat the problem of terror attacks and insurgency. As one BBC journalist puts it: “The Kenyan government is being blamed for failing to secure the nation, and this attack will put more pressure on President Uhuru Kenyatta to step up efforts to end the insurgency”.⁴

The problem is that three years down the line, pulling out of Somalia looks less likely than ever, with President Uhuru Kenyatta and his government allies – this including Deputy President William Ruto – routinely make public statements on the all-important need to continue to intervene militarily in Somalia, especially following worsening attacks in Kenya, as attributed to or claimed by the Al Shabaab terror network.

³ E.J. Hogendoorn, “Kenya: Risks and Opportunities in Kenya's Intervention in Somalia”, Daily Nation, 19 Nov 2011, at: <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/kenya/op-eds/oped-kenya-19nov.aspx> [accessed 10.12.2014].

⁴ Comment by Abdullahi Abdi, BBC Africa, Nairobi in relation to Article entitled: “Al-Shabab massacres non-Muslims at Kenya quarry”, 2 December 2014 at: <http://www.bbc.com/news/world-africa-30288137> [accessed 9.12.2014].

1.3 Historical Origins of the ‘Somali question’ in Kenya

As per the 1989 national census, Kenya housed about one million ethnic Somalis (KNBS 2013). 20 years later, the 2009 national census reported this figure to have risen to well over 2.5 million Somali residents in Kenya (KNBS 2009), a figure representing about 6% of the greater Kenyan population, but which was so highly disputed that it was nullified for an official recount – this population recount would, however, never come to be (Hansard 2011).

In pre-independence Kenya, the country’s North Eastern Province (now subdivided into ten different districts) belonged to the larger Northern Frontier District, a region then under British colonial administration. The area had long been ruled by the Sultan of Zanzibar whose administration at the time was based in, and controlled many, of the East African coastal cities (ICG 2012). The 1884-1885 Berlin Conference granted Britain a ‘sphere of influence’ over the Kenyan coast and inland, and over parts of southern Somalia as well. This effectively diminished the sultan’s reach and power in East Africa (Were and Wilson 1984). The British East Africa Company would later transfer the region, which they considered unprofitable, to Italy-controlled Somalia as acknowledgement of Italy’s collaborative efforts with Britain in the First World War (ICG 2012). Conflicts between the largely pastoral Somalis and Kenya’s nomads existed along the Kenya-Somalia border, but were intermittent and largely based on survival tactics and the quest for pasture and water (Lewis 2002). Migratory routes were thus determined mainly by livestock-owning communities moving further and further south to seek water and grazing lands.

Similarly, across the border since the 1990s, tensions and clan rivalries have remained high in the Republic of Somalia, with regular violent inter-clan altercations over land and livestock pasture. These tensions have culminated in civil strife and drawn-out conflict, markedly the destruction of Mogadishu and much of southern Somalia (Lochery 2012).

The nomadic Somali tribe in Kenya has nonetheless maintained strong historical ties with their kin in Somaliland. In Kenya, this tribe has historically inhabited North Eastern Province (colonially the Northern Frontier District,

NFD) carved out of Jubaland in present-day southern Somalia by the British colonial administration in 1925. The region remains almost exclusively inhabited by ethnic Somalis. Upon Kenya's gaining of independence in 1963, Somalis in the region sought to join their tribesmen in the then newly-formed Somali Republic. The Kenyan government resorted to brute force and repression to quell the uprising, resulting in the infamous 1963-1967 Shifita War. Nonetheless, while North Eastern Province remains Kenyan territory, Somalis here still identify with and maintain close ties to their kin in Somalia – including intermarriage (Lochery 2012).

Following the outbreak of civil war in Somalia in 1991, many Somalis sought asylum in Somali-inhabited enclaves in Kenya. An entrepreneurial community, the Somali invested in the business sector, investing over USD1.5 billion in Eastleigh alone. Since 2010, however, it is important to note that reports show a mass exodus of Somali residents back to Somalia following prolonged harassment by the Kenya Police and the general public. Hundreds of Somali entrepreneurs have withdrawn between KSh10-40 billion from local banks (Abdulsamed 2011).

Following the independence of Somalia in 1960 and of Kenya in 1963, clashes emerged between Somalis who wished to be part of the Somali state, and the Kenyan government, in the now-infamous so-called 'shifita wars', or rebel wars of 1963-67. Irredentist movements of Somalis continued into the 1980s, and under President Moi's regime the infamous Wagalla massacre occurred in Wajir county on 10 February 1984, a mass massacre of about 5,000 ethnic Somali men by Kenyan security forces. The Government of Kenya would go on to deny any involvement in the Wagalla airstrip massacre for the next one and a half decades, stating only that 57 people had been killed in the area during an official disarmament exercise. Despite this, questions on the full citizenship status of Somalis in Kenya were not yet in play in the country, and Kenyan Somalis were still considered 'Kenyan' enough to receive relatively equal formal citizenship as enjoyed by 'native' Kenyan persons. However in 1989 the Government of Kenya came up with a different policy initiative: under the new way of doing things, Kenyan Somalis were issued with so-called

‘Screening Cards’, already at this time identifying them as a removed and significant ‘other’ from the rest of the population (Lochery 2012). Later, in 1991, the country witnessed the construction of the region’s first ever large-scale refugee camps in North Eastern Province. These were intended to house about 90,000 refugees and included Dadaab, about 100km from the Kenya-Somalia border and today reputed to be the largest refugee camp in the world (Jones et al, 2013). Recent research places Dadaab’s current population at about half a million refugees – well over the planned 90,000 capacity, housing Congolese, Ethiopian, Eritrean and South Sudanese refugees, though Somalis consistently remain the predominant population here (Jones et al 2013). It is worthy of note as well, that despite these camps having been constructed with the aim of contributing towards the eventual refugee repatriation, and despite regular refugee flow to and fro the country, majority of the initial refugee population in the camps remains within these encampments, a trend strongly influenced by current conflict in Somalia (Abdi 2008). In 1991, Somali military dictator Siad Barre was overthrown in a coup, thrusting the country into a tumultuous turmoil that has lasted over two decades (Jones et al 2013). In September 2012 Mr Hassan Sheikh Mohamud was elected President of Somalia, bringing hopes of stability and peace in the region. The AMISOM troops have thus far achieved success in driving out Al Shabaab militants from the Somali capital Mogadishu and a number of other areas of the country, although the terror group remains impactful and continues to pose a threat in the region as evidenced by the 2013 Westgate attack in Nairobi (Jones et al 2013).

1.4 Answering the Key Research Questions

In this section, the main questions that this study seeks to answer are first outlined, and the research methodology is then briefly presented. Following from a hypothesis that is widespread in the Kenyan and international media, this study explores the view that: “Al-Shabaab is waging a war against the Kenyan government in revenge for the presence of Kenyan troops in neighbouring

Somalia, and the perceived ill treatment of Muslims in the capital Nairobi.”⁵ In other words, the key question is:

How can recent changes in the Government of Kenya’s approach towards Somali citizens and migrants, and responses to these changes, best be understood?

Several sub-questions have been formulated that can help to address the main question, primarily:

- What kinds of theories can help to understand the ‘national security’ approach adopted by the Kenyan government towards the Somali question since 2010?
- What is the background of Kenyan immigration policies prior to 1998/2010?
- At what point do Somali immigrants start to be distinguished as *Somali* others and stop being integrated into society as ‘Kenyans’ or simply as immigrants?
- What models are being applied today as regards dealing with migration compared with those applied in the past?

These questions will help to guide the discussion in Chapters 2, 3 and 4 where each question shall tentatively be addressed. In Chapter 5 the key findings are summarised and some ways forward are laid out. These guidelines will be laid out based on the preceding background information as provided in Chapters 2-4 and the final conclusion will be provided in Chapter 5.

How (and why) specific scientific tools are deployed is a significant part of every academic paper, including this thesis. Especially in social sciences, data collection can be approached in many different ways, and defining one’s methodology is part of reinforcing the overall scientific value of the adopted approach. In many studies on the subject of migration, the treatment of minori-

⁵ Jack Moore, ”Kenya President Uhuru Kenyatta pledges to 'intensify' war on terror after al-Shabaab massacre”, *International Business Times*, 2 December 2014: <http://www.ibtimes.co.uk/kenya-president-uhuru-kenyatta-pledges-intensify-war-terror-after-al-shabaab-massacre-1477684> [accessed 10.12.2014].

ties by governments (especially in the political science faculties) concentrates on survey data and numeric indices, or on the interpretation of legal instruments and procedures. I have found that many such studies too often lack a security-related and political perspective on how migration comes to be framed as a national security issue in the first place. This study thus concentrates on a group of mainly Muslim people – those of Somali origin, whether Somali nationals or Kenyan, but will not present quantitative findings about their habits or customs. It is not an ethnography either, rather the aim is to consider how government policies have influenced both Kenyan Somalis and Somali migrants and refugees, and perhaps those with Islamic beliefs, potentially depriving them of many basic human rights including their rights to citizenship and nationality.

As such, as previously mentioned, key sources in this study will be from human rights reports by local and international entities such as MUHURI, AI, ICG, IOM and UNHCR, all which carry out researching on the ground on the ‘Somali situation’ in Kenya. These reports proved especially valuable and informative, and were corroborated where possible with other academic sources. Media sources like newspapers and on-line news websites, will also be referred to, especially the Kenyan press, to reflect how changes in policy are presented and communicated. The study is desk-based and thus draws heavily on literature in refugee-related and human rights journals, as well as debates among scholars about issues of anti-Islamism, racism and the defence of minority rights.

Not being based on fieldwork, no interviews were conducted for this study. This was a personal choice based on monetary limitations centred around air fare costs for travel to Kenya as a self-sponsored student, and on security concerns amid heightened terror attacks in areas that I felt would have been the most conducive for interviewing Kenyan Somalis and Somali refugees within Kenya. As such, sources were accessed from The Netherlands; primarily materials from other academics, the media and NGOs . Although there is little academic material on what is taking place in Kenya, there is a great deal of me-

dia attention, confined to examples of killings of civilians in Kenya and Kenyan army engagements within Somalia.

1.5 Structure of the Study

This master's thesis is divided into five chapters, each serving a different role in the study. The second chapter provides the reader with the necessary theoretical background of key concepts used, including xenophobia and racism, anti-Islamism and the 'clash of civilisations'. Chapter 3 deals with Kenyan government security policies and considers how they have been transformed by the 'war on terror'. Chapter 4 presents some signs of basic human rights abuses against Somalis, both Kenyan Somalis and migrant and refugee Somalis, in recent years. It returns to the key concepts in seeking to understand the reasons for changing policies on the part of the Kenyan government towards Somalis, both national and especially migrants, since independence. Chapter 5 is the conclusion, and tentatively proposes some ways forward.

Chapter 2

Theories in their Socio-Political Context

All good people agree, And all good people say, 'All nice people, like Us, are We, And every one else is They...

- Rudyard Kipling, We and They; 1919-1923

2.1 Introduction

This chapter will introduce some theoretical debates around xenophobia and racism, violation of human rights of minority, and the notion of anti-Islamism as related to the 'clash of civilisations' thesis of Huntington. These theory debates are then related directly to the historical context of Kenya and the changing policies and position of Somalis – both nationals and migrants – in the country within the recent few years. The shift in Kenyan government policies from broadly assimilationist and integrationist approaches to policies heavily oriented towards national security, is traced in this chapter, and the conflicting outcome for Somalis, caught between rising anti-Islamism and a human rights framework, is outlined in the conclusion.

2.2 Explaining Xenophobia: Between Integration and a Human Rights Model

By use of the 'Minorities at Risk' and 'Militarised Interstate Disputes' datasets, Caprioli and Trumbore (2003) reveal that discrimination within local boundaries is ultimately indeed a trigger to a state's negative behaviour across international borders, and that such states are in fact much more likely to use force as a first resort in solving international disputes. It also increasingly emerges that the 'militarised refugee' image of asylum seekers as portrayed by host countries is evident in Kenya as well. Muggah (2006) puts forth that the militarisation of refugees has grossly increased within Africa, resulting in refugees often being blamed for the instability and security issues faced within their host countries.

Following the outbreak of civil war in Somalia in 1991, many Somalis sought asylum in Somali-inhabited enclaves in Kenya. Though accepting of refugees

within its borders, the Government of Kenya in 1991 insisted these groups be contained within the refugee camps away from the country's urban spaces (Hyndman and Nylund 1998). Where Kenya's single-party government had been relatively hospitable towards refugees, President Moi's multi-party government formed after the 1992 election proved decidedly inhospitable and plagued by xenophobic policies (Verdirame 1999).

IOM's definition of a migrant "applies to persons, and family members, moving to another country or region to better their material or social conditions and improve the prospect for themselves or their family" (IOM 2004). As per UNESCO, a *migrant* is any individual "who lives temporarily or permanently in a country where he or she was not born, and has acquired some significant social ties to this country." (UNESCO 2013). This may however be too narrow of a definition considering that in some states a person can be considered a migrant even if they were necessarily born in the country. This seems to be the case now in Kenya where second or even third generation Somalis born in Kenya are being routinely touted as foreign Muslim extremists and denied citizenship rights based solely on their ethnicity.

Prior to 2012, citizenship in Kenya could lawfully be claimed in three primary ways (Constitution of the Republic of Kenya, 1963): by birth, by descent and by naturalisation through long-term residency, marriage or migration. This previous constitution, overlooking gender equality and children's rights, explicitly stated that to be Kenyan, citizenship would be acquired only if one's father was Kenyan – it was simply not enough to have been born in Kenya. Additionally, any and all citizenship seekers had to forfeit their previous nationality in order to be considered for naturalisation. Naturally, these stipulations were particularly disadvantageous to children born in Kenya of Somali migrants, and to Somali migrants seeking to be naturalised in Kenya. This constitution thus effectively rendered a large population of the nation stateless, and systematically worked to discriminate ethnic minorities, many of whom had resided in the country for generations prior (OSJI 2009).

The current constitution of Kenya, as ratified in 2012, legally provides that immigrants that undergo naturalisation shall no longer be perceived as mi-

grants. However just like its 1963 predecessor, this same constitution fails to provide for citizenship by birth if neither of the parents are Kenyan nationals. Specifically, for a child born in Kenya to gain citizenship, they must be born of a Kenyan mother or father. So the - technically - citizen born in a post-migration family may still legally be perceived as a foreigner because of their cultural background. This phenomena is strongly at play where Somalis in Kenya, due to their distinguishing cultural and physical appearance, are often – and sometimes mistakenly – classed as simply ‘Muslims’. Cultural and social aspects as described in this paper are mostly to do with public perception, nationality and self-identification. For example, Kenyan Somalis and Somali migrants in Kenya need not be religious persons, nevertheless they find themselves consistently and sometimes wrongly categorised as part of the foreign Islamic community.

2.3 Anti-Islamism, National Security and the ‘Clash of Civilisations’ Approach

Africa's, and indeed Kenya's refugee and IDP camps are a cause of major concern to the international community, and insecurity in camps continues to be the focus of numerous studies on the area of migration (Muggah, 2006). Millions of asylum seekers and local IDPs endure situations of protracted displacement in less-than-fit conditions, often falling prey to armed groups and military forces. Muggah (2006) puts forth that in such an absence of long-term durable solutions, refugees are exceptionally susceptible to oppression. As in the Kenyan case, persons who have fled violence in their home countries find themselves routinely confronted with both structural and physical violence upon arrival in the country of asylum. This rings particularly true for refugees living in camps (or ‘prima facie’ refugees in protracted refugee situations), who are confronted on a daily basis with a vast range of security threats, both from within and without the camps. Such oppression routinely undermines asylum and protection of migrants and refugees alike (Halperin 2003). The situation in Kenya's refugee camps, of Somali refugees and migrants, unfortunately fits in with this analysis of dilemmas of refugee protection in camps:

“In fact, when we were interviewing them they were telling us that they faced torture, rape and looting in Dadaab, especially Ifo 2, and that forced them to leave the camps,” said Mohammed. “I remember a mother told us she came to refugee camps to get protection, not to get raped and all these sorts of inhumanities.”⁶

In this light, Huntington’s ‘Clash of Civilisations’ model seeks to assert that differences between such groups of people in civilisations significantly increase the chances of escalated conflict, especially along religious lines (Huntington, 1993; Cox et al 2000). More specifically, Huntington envisaged that: “The modernisation of Africa and the spread of Christianity are likely to enhance the probability of violence along this fault line”, namely the fault-line of religion, opposing Christianity and Islam (Huntington, 1993). Thus, the clash of civilisations thesis is that in the post-cold war era, ideological conflicts along political lines would be replaced with religious and other inter-civilisational schisms. Religion, Huntington predicted, would become the basis for violent conflicts in many regions of the world. He asserted that contacts between civilisations within states were more likely than were contacts that do not cross linguistic or religious lines to escalate to more intense conflicts (Huntington 1993).

This merging of intercultural development and security concerns has proven to be an integral part of global policies today as regards the ‘war on terror’, particularly pitting dominant Western policies against the ‘deficient’ inferior policies of states within the Developing South (Bachmann and Hönke 2009). This merging operates in Kenya as well, with counter terrorism policies in the country particularly influenced by Western ‘security’ thinking – so much more so following the US embassy bombing of 1998 and the Westgate mall attack of 2013 which saw multiple international intelligence agencies arrive in Nairobi to ‘aid’ with investigations and military advice. Bachmann and Hönke (2009) put forth that the quadruple 9/11 terror attacks in New York and Washington

⁶ Former Dadaab refugee and current journalist Abdirisack Mohammed, Voice of America, January 10 2013, Refugees Fear Insecurity in Kenya, Return to Somalia at: http://www.voanews.com/content/refugees_fear_insecurity_in_kenya_return_to_somalia/1581256.htm [accessed 12.11.2014].

reignited particular interest in Western countries to create and maintain structures in developing countries (such as Kenya) for the sake of their national security. This, they say, resulted in donor countries placing particular focus on:

“...security sector reform, including training of the police and armed forces in security-centred operations, sometimes in collaboration with private sector actors and foreign military advisors,” (Bachmann and Hönke 2009).

Nevertheless, contrary to Huntington’s thesis, Cox et al (2000) put forth that the increase in inter-civilisational conflict experienced in the 1990s was in fact not a singular event, but rather ‘part of an escalation in all types of cross-cultural conflict’ – that is to say, such conflict did not/does not portend a rise in the clash of civilisations (Cox et al 2000). However, as terrorist activities continue to play out globally, and now increasingly in Africa, a shift in security operations can be seen on the continent, with anti-terrorism drives now presented to African states by the West as part of a larger security agenda where projects privilege “homeland protection over civil rights in the recipient country,” (Bachmann and Hönke 2009).

Whilst a minority (ten percent of the population⁷), Muslims in Kenya have long lived until recent times as part of a mutually tolerant society, with people of all religious backgrounds enriching the multicultural Kenyan society. In discussing and defining the connections and divisions of Somalis in Kenyan society, it is valuable to look at the role of Islamic customs and practices on the attitudes of fear and xenophobia that Kenyans and the Government of Kenya have taken towards Somalis and Kenyan Somalis. For instance, in a December 2014 attack, Somali-based Al Shabaab gunmen pulled non-Muslim passengers from a bus en route to Nairobi from Mandera, killing 28 of them. Witnesses present described how passengers were asked to recite passages from the Koran, with those who failed to do so made to lie on the ground before being

⁷ The Republic of Kenya, Religion, 2010, at: <http://republicofkenya.org/culture/religion/> [accessed 12.12.2014]

shot in the head. This came barely a month after 36 quarry workers were killed in November 2014 after being unable to recite the Shahada, a tenet of Islam.⁸

In August 1998, a bomb attack on the US embassy in Nairobi killed 213 people (201 of these Kenyan), followed four years later in November 2002 by a car bomb attack on Kikambala, an Israeli-owned holiday resort along the coast killed. This attack killed 12 Kenyans and three Israelis, and was followed shortly that same day by a missile attack attempt at downing a plane owned by Israeli company Arkia. All these attacks would later be linked to Osama bin Laden's extremist Al Qaeda terror network as a direct revolt against Zionism and growing American presence in East Africa (AI 2005). Following these attacks many Western countries issued travel advisories to their citizens against travelling to Kenya, and many international flights were suspended for weeks (AI 2005). In a bid to counter further acts of terrorism in the country and preserve national security, in addition to restoring Kenya's appeal as an ideal tourist destination, the Government of Kenya set up a number of anti-terrorism operations. These included, but are not limited to: setting up of the Anti Terrorism Unit (ATU) of the Kenya Police and the National Counter Terrorism Centre (NCTC) of the National Security and Intelligence Service, suspending flights between Kenya and Somalia for three weeks in 2003, improved security measures in public spaces and airports, and creation of the Suppression of Terrorism Bill of 2003.

Kenya is a predominantly Christian state, and today such terror occurrences serve only to contribute greatly to tensions between Muslims and non-Muslims in the country, ranging from the misinterpretation of religious principles, to lack of trust and façade identification. Popular narratives of Muslims within popular media is now as critical as ever, with mainstream and Muslim-owned media both playing to large and eager audiences that form their own

⁸ Marcy Kreiter, 'Al Shabaab Executes 28 Who Can't Recite Quran; Kenyan President Says Somali Militants Attempting to Start Religious War', International Business Times, at: <http://www.ibtimes.com/al-shabaab-executes-28-who-cant-recite-quran-kenyan-president-says-somali-militants-1728042> [accessed 15.21.2014].

repository of Islam from the local and international media presentation of the Muslim individual and culture. Previously, Muslims in Kenya were seldom shown as a separate entity; but today with anti-Islamic sentiment and widespread fear of Muslim extremists fast taking root, Somalis are for now being increasingly depicted as simply ‘Muslims’ rather than as Kenyan Somalis or Somali migrants. Local media plays a particularly influential role in depicting all Muslims (and effectively Somalis) as a uniform entity, seldom as individuals, and largely as foreign immigrants. It is not uncommon, for instance, to hear Kenyan Somalis and Somali refugees accused of being Al Shabaab sympathisers and supporters.

2.4 Moving Beyond Consensus Politics: Government Policies since 2010

In 2012, the Government of Kenya created a new policy requiring all refugees in urban spaces, particularly Nairobi, to report to Dadaab in the north (Jones et al 2013: Daily Nation 2012). Many Somalis in Kenya now have identity cards, secured unlawfully, and have moved from the camps to create more permanent living in Nairobi (Jones et al 2013: Menkhus 2012). Unfortunately, many of these Somalis are reportedly Al Shabaab militants infiltrating the country, and now the Government has resorted to drastic measures of refoulement despite international human rights groups decrying this move (Jones et al 2013).

However, an entrepreneurial community, the Somali have prospered in the Nairobi business sector, with over \$1.5 billion worth of investments in Eastleigh (Abdulsamed 2011). He states, “Growing Somali investment in Nairobi has attracted banks and other service-providers, demonstrating that urban refugees are not necessarily a burden on the state and can be an economic asset.” Since 2012, however, figures show an exodus of Somali residents back to Somalia following prolonged harassment by the Kenya Police and discrimination by the general public. The research shows the departing Somali entrepreneurs have withdrawn between KSh10-40 billion from local banks (Abdulsamed 2011).

Additionally, use of extra-judicial security powers in Kenya has been a core feature of all four government regimes, from Uhuru Kenyatta's current government, dating back to Mwai Kibaki's presidential term (2002-2013), the Moi era (1978-2002) and all the way back to the twilight years of the first founding father Jomo Kenyatta (1964-1978). Such 'national security' operations consistently stir up resistance to a government perceived as an unaccountable rogue by its people. Bachmann and Hönke (2009) state that repression by the Government of Kenya (against Muslims and persons of Somali origin) has arguably preceded Al Shabaab threats and attacks on Kenyan soil. They add further that, motivated by the infamous 2007/2008 post election violence in Kenya, many influential international agencies now include the mitigation of inter-tribal tensions within their larger anti-terror strategies (Bachmann and Hönke 2009). Additionally, foreign donors today complement their security assistance efforts with grass-roots interventions on conflict prevention and community development.

Since 2010, however, inter-party rivalries appear less prominent as a concern, and there has been a more general shift in security interventions in Kenya. These are aimed towards countering terrorism, which is now viewed as central to the war on terror and the 'peace and security' agenda. But despite using new methods to engage with so-called crucial parts of the population, this repositioning is not a paradigm shift; the different approaches and objectives, and the various state projects have ambiguous effects and donors have not abandoned the traditional rationality, which routinely privilege homeland protection over civil rights in the recipient country.

2.5 Conclusion

This chapter has provided a glimpse of the historical context of the 'Somali question' in Kenya, and has shown that official attitudes towards Somalis centre as well around exclusionary principles as backed by the Government of Kenya. The chapter has also outlined theories utilised to understand the phenomenon of anti-Somali xenophobia in Nairobi and the greater Kenya. This

overview has been done in an effort to better understand the question of xenophobia, anti-Islamism and the clash of civilisations in the Kenyan context.

Chapter 3

The Impact of Changing Government of Kenya Policies on Somalis since 2010

Collective fear stimulates herd instinct, and tends to produce ferocity toward those who are not regarded as members of the herd.

- Bertrand Russell, *An Outline of Intellectual Rubbish*; 1943

3.1 Introduction

Studies show that ethnic discrimination sometimes leads to ethno-political rebellion which in turn manifests as interstate conflict (Caprioli and Trumbore 2003). A popular argument put forth in this discourse is that local inequality and discrimination lead to increased chances of a state engaging in acts of international hostility. Big power politics typically take advantage of such situations to gain political standing locally and regionally, often at the expense of humanitarian ideals. Despite their well-wishing efforts, the work of humanitarian organisations trying to protect human rights is curtailed by the deep-rooted political and economic interests of both the host countries and their donors. This chapter will show how, with a new security agenda centred on ‘terror’ and the ‘war against terror’, human rights abuses against Somalis, whether migrants and refugees, or Kenyan citizens, have become more commonplace. The chapter tries to explain this, through the lens of anti-Islamism coupled with the ‘clash of civilisations’ thesis. In addition, some responses from civil society organisations and other actors, both within Kenya and outside, are considered.

3.2 Somalis in Kenya since 2010

While terming Kenya a generous host to refugees for the last few decades, a 2010 Refugees International report nonetheless states, ‘humanitarian assistance alone cannot meet the needs of three generations of Somali refugees (Campbell and Michel 2010). The same report however states that despite less-than-adequate systems in place in Kenya, only two Somali refugees have requested repatriation back to Somalia since 2006 (Campbell and Michel 2010). With the

passing times, and as conflict in Somalia persists, Kenya continues to witness large refugee inflow into the country even as the Government of Kenya's support for humanitarian and development activities for refugees wavers. The United Nations Development Assistance Network (UNDAF), as late as 2013, did not serve refugees in Kenya and thus many were forced to survive by their own means rather than rely on humanitarian assistance or government support (Campbell and Michel 2010).

As such, a vast majority of Somali refugees in Kenya are categorised as urban poor, finding livelihood opportunities only in the highly competitive informal sector. Limited access by most to the country's institutionalised business support system, coupled by inferior local infrastructure and regulation in the business sector means that even in the informal sector the odds are hugely against Somali refugees as compared to Kenyan nationals in the same field of work (UNHCR 2012). A select minority with special skills are accepted into the community and may acquire fixed assets, and qualify for loans to invest in their own entrepreneurial ventures. However most asylum seekers struggle to find business owners willing to hire them, and without the protection and support of local authorities, they resort to underpaid casual labour to stay alive.

Nonetheless, despite government attempts to maintain refugees within the established refugee camps, and despite the bleak chances of success for them in Kenya's urban spaces, many asylum seekers in fact choose to leave or altogether avoid the camps, heading to urban towns and cities in search for better lives. Most Somali refugees who head to Nairobi end up setting root in the Eastleigh suburb, renown within the country for its thriving Somali businesses (Lindley 2007). Campbell (2005) refers to Eastleigh as the 'heart of the African immigrant community', where some enterprising refugees have been successful in integrating into Nairobi life and culture, and some have achieved levels of success establishing successful lucrative hotels, shopping malls and transport companies. All this as Campbell (2005) puts it, in quite stark contrast to the widespread stereotype that refugees only serve to overwhelm their host countries' resources and make life more difficult for the indigenous local population.

In 1998 the U.S. embassy in Nairobi fell victim to a bombing attack widely attributed to the Al-Qaeda terror group, and four years later the group carried out another bombing attack on a hotel along the country's coast prior to then attempting to shoot down an Israeli passenger plane that had just departed from the Moi International Airport in Mombasa (Horowitz 2013). Following these attacks, the Government of Kenya formed the country's first ever Anti-Terrorism Police Unit (ATPU) to counter terrorist activity within the country. The ATPU has since however been repeatedly accused of gross human rights abuses on numerous different occasions as they carry out a sweeping counter-terrorism strategy that includes house raids, detention, arrest, refoulement, torture and killing of suspects (Horowitz 2013). At the heart of this persistent condition is a fear and despondency that has gripped Kenya particularly because of the collapse in security in a country that had always prided herself as a bastion of peace and stability in a troubled region. Such state policy has resulted in inequitable access and representation of Somalis in Kenya's socio-cultural, political and economic scene. Many Somali refugees and Kenyan Somalis are rounded up, often extra-judicially, and transferred to refugee camps in the arid north, or entirely deported back to Somali under the pretext of eliminating terror threats and securing national security. These growing tensions surrounding Muslims and Somalis are further heightened on a daily basis by local portrayals of the 'security agenda' and the representation of Islam and refugees as threats to national stability and the local, regional and indeed global war on terror (Foulds 2013).

For instance, in the 2014 Nairobi 'Operation Usalama Watch' security crackdown (first conducted in Eastleigh and thereafter in other areas of Kasarani, Kawangware and South C), the Government of Kenya through its widely-feared GSU security forces carried out night-time raids on resident homes, targeting the houses of persons with Somali heritage and arresting those without identification cards on their person. Interviews in the area and testimonials provided by witnesses suggest that as many as 6,000 security

forces, including the state's official paramilitary wing descended on 'Little Mogadishu' during a single night's raid on the area.⁹

3.3 The Kenyan Decision to Intervene in Somalia in 2011

As of October 31, 2012, there were 630,926 registered refugees residing in Kenya; a figure that has steadily been on the rise in recent years, catalysed not only by biting drought and hunger in Somalia, but also by Kenya's 'Linda Nchi' military assault on the Somali towns of Qoqani, Afmadow, Kismayo, Jilib, Busar, Modaale, Busar, Kulbio, Hola Wajeer, Tabto, Doble and Beledweyne following the forces' first entry into Somalia on 16 October 2011 (Millo 2013).

Because the military intervention in Somalia was organised in response to a perceived emergency in domestic Kenyan politics, arguably, this took place "...without sufficient consideration of the consequences, at home as well as in Somalia"¹⁰. 'Operation Linda Nchi', as the coordinated military operation came to be called, proved not to be a quick campaign after all. Al Shabaab militants quickly resorted to unconventional guerrilla warfare against the KDF and later AMISOM troops, leading to a long drawn-out war in Somalia as the terror group avoids a mass-scale all-out direct confrontation with AU troops and instead strike intermittently. The 2011 KDF entry into Somalia also coincided with a number of other domestic conflicts:

“...[the invasion] coincided with rear-guard contestation of the new Constitution, agitation in labour markets, dramatic demolitions of rich and poor citizen's homes, and a secessionist movement at the Coast.”¹¹

⁹ Anna Bruzzone, 'Kenya's security crackdown and the politics of fear', Focus on the Horn, April 23 2014 at: <https://focusonthehorn.wordpress.com/2014/04/23/kenyas-security-crackdown-and-the-politics-of-fear/> [accessed 21.12.2014]

¹⁰ International Crisis Group: The Kenyan Military Intervention in Somalia Executive Summary and Notes at: <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/kenya/184-the-kenyan-military-intervention-in-somalia.aspx> [accessed 15.11.2014]

¹¹ Paul Goldsmith, "In a context of late capitalism, what to make of Kenya's confusing adventure in Somalia?", The East African, 1 January 2012, at: <http://www.theeastafrican.co.ke/OpEd/comment/What+to+make+of+Kenya+s+c>

Kenya has long been an active player in the Somali political scene through the years, sponsoring the 2002-2004 peace talks that led to the formation of Somalia's Transitional Federal Government (TFG). Menkhaus (2012) suggests that while Kenya may not be the core area of focus for the Al Shabaab network, the country's support for the TFG was/remains a likely contributor to Al Shabaab's current targeting of its terror activities within Kenya disproportionate to attacks on other Eastern Africa countries which have their troops in Somalia under AMISOM as well.

Importantly, even as the AMISOM presence in Somalia continues, Al Shabaab continues to grow, recruiting new members regularly and particularly targeting Kenyan Somali youth in North Eastern Province and Somali refugees in camps and in the Eastleigh suburb. With no other means of livelihood, many of these young youth are impressionable and easily radicalised with the promise of honour, wealth and fortune (Menkhaus 2012). It is becoming increasingly clear that while AMISOM presence in Somalia remains necessary to counter Al Shabaab influence in the area, that the KDF intervention in Somalia may after all not yield the intended results of peace in the region, particularly in Kenya. For instance, Mann (2013) suggests that the AMISOM operation is 'geographically limited' and cannot be considered a permanent solution to the security risks in the Horn of Africa region. He further cautions that such military interventions run the real risk of driving ordinary Somali citizens who would otherwise ideally oppose Al Shabaab, towards supporting their own (Al Shabaab) rather than a foreign military excursion invading their country. While Kenya may seek to devastate al-Shabaab through a targeted military offensive, Mann (2013) points out that this strategy may instead play the counter-productive role of strengthening al-Shabaab by driving more Somali nationals to offer support to the group.

onfusing+adventure+in+Somalia/-/434750/1298434/-/y3i5apz/-/index.html [accessed 21.11.2014]

Today, in late 2014, the Government of Kenya, the KDF information officer Colonel Cyrus Oguna and KDF spokesperson major Emmanuel Chirchir no longer provide regular updates to the general public on the status of the war. Three years into the first incursion into Somalia, the war still lacks clear definition and is yet to be well understood by the general public. Earlier in 2014 the KDF Twitter social media pages was sensationally hacked by the international group of hacktivists, Anonymous, who criticised the government for their focus on guns and war rather than their commitment to ending poverty. However, with the protracted violence in the country, particularly the terrorist attacks within the capital Nairobi, government focus continues to be steadfastly on fighting the ‘war on terror’.

Meanwhile Al Shabaab, considered even more dangerous today since its merger with Al Qaeda in 2012, continues to inspire fear and apprehension within many Kenyans. The group routinely claims responsibility for multiple attacks on Kenyan soil, and where they were once considered a Somali problem, the Al Shabaab terror network has now successfully broadened its horizon and established itself as a Kenyan problem. The GoK policies thus far continue to focus on the forceful elimination of the group, with little focus on the nature of Kenya-Somalia interaction, and with little room now left for the possibility of peaceful negotiations.

3.4 Moving from Discrimination to Expulsion of Somalis

Lochery (2012) argues that the precarious citizenship status of Kenyan Somalis is rooted in the “institutionalisation of state power in Kenya and the ways in which social relations have mediated that power.” She adds that the discrimination directed towards Somalis can be traced back to the Daniel Moi regime era in 1989 when the government initiated the infamous screening practice where Kenyan Somalis were issued pink ‘certificates of verification’, while those considered ‘Somali-Somali’ were deported. The exercise was framed as a response to disorder and insecurity in northern Kenya, largely blamed on the increased presence of Somali aliens in the area (Lochery 2012).

Just as this exercise was at the time defended as a means to restore order and security in a tumultuous Northern Kenya, a similar exercise has now taken root in present-day Kenya: Uhuru Kenyatta's government continues to pass similar legislative action against Somali refugees and Kenyan Somalis who are routinely arbitrarily arrested and deported. His government continues to steadfastly defend this exercise as a necessary tool in response to rising terrorist activities in Kenya¹².

Since the 1990s, tensions and clan rivalries have remained high in Somalia, with regular violent inter-clan altercations persisting over land and livestock pasture. These tensions have culminated in never-ending civil strife and drawn-out conflict, markedly the destruction of Mogadishu and much of southern Somalia. This has seen growth of the Somali tribe in Kenya, historically inhabiting North Eastern Province (colonially the Northern Frontier District, NFD) carved out of Jubaland by the 1925 British colonial administration. Today this region remains almost exclusively inhabited by the ethnic Somali community. Upon Kenya's independence in 1963, the region sought to rejoin their tribesmen in the newly-formed Somali Republic, but the Government of Kenya resorted to brute force and repression to quell this exodus movement to Somalia, resulting in the infamous Shifta War of 1953-1967.

Nonetheless, while North Eastern Province remains Kenyan territory, Somalis here identify with and maintain close relations to their kin in Somalia – including frequently intermarrying. The sustained influx of refugees from Somalia into North Eastern Kenya since the 1990s, has strained resources not only in the arid and semi-arid region where the camp is located (but also in Kenya more generally), some would argue. Land must be shared between local residents and the refugees, and to manage this requires constant mediation between the chiefs of the host community and the representatives of the migrant community to avoid conflict (Jones et al 2013). Kiragu et al (2011) suggest that

¹² “New anti-terror laws passed in Kenya despite opposition”, Deutsche Welle, 18 Dec 2014 at: www.dw.de/new-anti-terror-laws-passed-in-kenya-despite-opposition/a-18140230 [accessed 10.12.2014].

the porousness of the Kenya-Somalia border makes for easy passage across the two territorial borders, for instance between 2006-2007, the number of Somali refugees in Dadaab and Kakuma camps trippled to about 300,000 - 80 percent comprising women and children (Kiragu et al 2011).

However, as drought, famine and violence have persisted in Somalia, Dadaab camp has been expanded, and is now made up of five different camps: Daghaley, Hagadera, Ifo, Ifo-2 and Kambioos, where humanitarian aid is steadily provided by a number of local and international NGOs and governmental organisations such as IOM and UNHCR (Jones et al 2013). Since at least 2006, security has been stepped up in the Kenya refugee camps, with the refugee issue becoming notably politicised as a security matter, both within the political arena and in social circles. For instance, the Government of Kenya has since progressively increased the number of police and military in the border areas (AI 2012).

A 2009 Human Rights Watch report however reveals that asylum seekers persist in crossing the border, or at least trying to, with about 150,000 Somalis crossing the porous Kenya-Somalia border and registering in the camps, with a similar number instead fleeing to the capital Nairobi and other urban spaces (HRW 2009). The report states that though such numbers suggest border closure has not affected Somali ability to seek refuge within Kenyan borders, that this is in fact not the case: asylum seekers now face even more difficulties, with inter-clan clashes, smugglers and corrupt Kenya Police personnel making the transition out of Somalia even more difficult for refugees and asylum seekers (HRW 2009).

Human Rights Watch has documented how in December 2006, it was announced that Kenya's border with Somalia would close on 3 January the following year. The Kenyan authorities claimed that fighters from the Union of Islamic Courts and possibly from Al Qaeda would enter Kenya and endanger national security, echoing concerns about 'infiltration of operatives', as expressed earlier by the US State Department (HRW, 2010). The then Kenyan Foreign Minister Mr Raphael Tuju justified the decision, stating that since the government was "not able to ascertain whether these people [Somali refugees]

are genuine refugees or fighters... therefore it's best that they remain in Somalia" (HRW 2010). On 3 January 2007, the Kenya Army deported 420 Somalis - mostly women and children - back to Somalia and closed the border; a move that many regional and international organisations condemned at the time (HRW 2009).

Ostensibly the expulsions were carried out in the name of protecting Kenya's security from attacks like the one at the Westgate shopping mall. Yet in the process, the army – and later the police – would commit widespread abuses violating the basic human rights not only of arriving asylum seekers from Somalia, but also of women, children, and even infants already in the country. These groups were accused of being supporters and active agents of Al-Qaeda, Al-Shabaab and other terror groups (Horowitz 2013).

For some time, it appeared that such periodic controls were not hindering continued cross-border movement, but in reality the situation is less rosy: for example, in 2012 a refugee transit center in the border town of Liboi was shut down. This served to create a no man's land along the Kenya-Somalia border, and as one Somali refugee in Liboi explained to a Human Rights Watch researcher,

“Some of the soldiers [who stopped us near the camps] shouted that we were al-Qaeda and terrorists,” (Human Rights Watch, 2010, interview with a 40-year-old Somali refugee in March 2010).

A Kenyan official at the same Liboi transit centre informed the same 2010 HRW team that,

“As Kenya, we have not benefitted from the border closure because these people are still coming and it's a game of hide and seek” (HRW, 2010, interview with Principal Police Officer for North Eastern Province, March 2010).

The closure of the refugee transit center in Liboi greatly increased the vulnerability of asylum seekers travelling from the Somali border to camps like Dadaab. They could no longer rely on “safe passage to the camps, as previously guaranteed by UNHCR's presence in Liboi. Instead, they have been forced to use smugglers to dodge corrupt and abusive Kenyan police officers between the border at HarHar and the refugee camps” (HRW, 2010). Long (2011) states that as many refugee-hosting countries increasingly choose to

close off their borders globally, that such actions are increasingly being received with little to no condemnation from the international community. In her study, Long is sure to point out that whilst these border closures may indeed carry with them a minimal amount of security assurance for a nation's borders, such efforts are a non-durable solution and are more likely instead to undermine attempts at refugee protection and enhance persecution and exclusionary policies against refugees and asylum seekers (Long 2011).

Mr Doudou Diene, the former UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance warned of a coming surge worldwide in assaults on Muslims and Arabs, with some of these attacks supported by national legislation that seeks to protect national security and counter terrorism (Diene 2003). He points out the grave situation of Muslims and Arabs in non-Muslim nations is a 'direct, proven and recognised consequence of the events of 11 September' and may in fact be a 'sign of the beginnings and dangers of a conflict between civilisations'.

Satisfying such stereotypes, Kenya is today subject to Diene's stated ideological dimension where anti-Arab and anti-Muslim sentiment is embodied in equating Islam with violence and social backwardness, with routine public defamation of the religion by the political elite (Diene 2003). The country's current policies on Somalis portray the 'hallmarks' of a conflict of civilisations case as spotlighted by Diene (2003): discriminatory rules and regulations, systematic violence against people and their property, ideologies justifying the violence and discrimination, overdetermination in domestic policies to combat terrorism, public expressions of hatred, stereotyping, hostile interpretation of diversity as an inovercomable difference, culture of violence, detriment of international lawfulness and respect for human rights and humanitarian law, and ultimately the reemergence of the concept of the foreigner as an alien.

In April 2014, following the commencement of the now infamous Operation *Usalama* Watch, Government of Kenya authorities (often fronted by the feared paramilitary GSU unit) started mass round-ups of Somalis following deadly terror attacks in Nairobi by the Al Shabaab terror network. Lack of transparen-

cy and accountability by the government to the general public means the operation remains clouded in mystery, with precise figures on the number of arrests and detentions by the state still unknown (AI 2014). While reporting that they remain unaware of any terrorism charges leveled against any Somali refugee or Kenyan Somalis, Amnesty International points out that then-Cabinet Secretary for Interior, Security and Coordination of National Government Mr Joseph Ole Lenku stated that over 4,000 people had been arrested within the span of seven days (AI 2014). AI reports that detainees of these security crackdowns are often held on questionable charges for days on end in crowded and unsanitary conditions with no food or access to legal counsel, and are routinely subjected to intimidation and corporal punishment by police officers and wardens. Since the start of the crackdown, thousands of Kenyan Somalis and Somali refugees have been forced to vacate their homes in the dead of night and been forcibly relocated to camps in northern Kenya; others have become the unfortunate victims of refoulement, with hundreds of Somalis (including those lawfully registered) being deported back to Somalia despite the low level of security in that country (AI 2014). Such a breach in a primal cornerstone of refugee protection has led AI's Deputy Regional Director for Eastern Africa, Ms Michelle Kagari, to state,

“Kenya is violating its own constitution and international law by subjecting the Somali community to unlawful expulsions and cruel, inhuman and degrading treatment under the guise of its counter-terror operation, ‘Usalama Watch’,” (AI 2014).

While there have indeed been Kenyan nationals arrested, a disproportionate number of Kenyan Somalis and Somali refugees has been targeted for arrest and detention.

What this illustrates is a significant shift from the previous logic of inclusion/integration by Kenya towards refugees, to a more exclusionary approach that seeks to contain foreigners (in this case primarily foreigners of Somali origin) as threats to peace and national security. In variance with the version propagated by the Government of Kenya (that is, one of refugee inclusion and protection), majority of Somalis and Somali refugees in Kenya have faced and

continue to face discrimination and oppression at the hands of multiple government agencies. Rather than the widespread realisation of peace and acceptance, these Government of Kenya actions have resulted in a negative transformation at the grassroots, where increased ethnic hatred sees Somalis now increasingly seen as a security threat to be firmly dealt with. The militarisation of security measures against Kenyan-Somalis and Somali refugees in Nairobi and elsewhere in the country has imposed the views of the government on a scared public and caused many Somalis to flee the country as they start to be persecuted by the state and by the people. Whereas no deaths have thus far been reported at the hands of the Government of Kenya in Nairobi, many Kenyan Somalis and Somali refugees regularly report facing pressure on multiple fronts (RI 2014).

3.5 Conclusion: Between a Rock and a Hard Place?

The 1989 screening mechanism as described by Lochery (2012) is a useful lens for understanding the manner in which the Government of Kenya handles citizenship matters in the greater thematic area of national security. Lochery points out that such screening procedures to identify Kenyan Somalis versus those ‘aliens’ in Kenya illegally merely resulted in the growth and spread of ‘inter- and intra-ethnic competition’, which in turn inadvertently affects the manner of people’s social relations and the rights and resources available to them as citizens of the state (Lochery 2012). Additionally, Lochery emphasises that such screening, as used both in 1989 and in present-day Kenya,

“Reveals that public debates about citizenship in Kenya have not just been about drawing lines between insiders and outsiders, but about which insiders belong to which territorial spaces,” (Lochery 2012).

In response to a rising tendency to define conflicts in cultural and religious terms, according to the logic of the ‘clash of civilisations’, Cox et al (2000) state that Samuel Huntington’s approach challenges readers to consider that civilisations may play a powerful role in global international relations. Yet Cox also points out that Huntington provides very little evidence to support his proposition that the ‘clash of civilisations’ defines and is the key influence on conflict

both internationally and within specific countries, like Kenya. Roeder (2003) also states that the apparent conflict witnessed across civilisations in the 1990s (the post Cold War decade) was simply influenced by escalation in a variety of cross-cultural conflict situations that need not foreshadow a singular escalated clash of civilisations as put forth by Huntington.

The evidence in Kenya today is that many local groups do not believe that violent conflict between Muslims, including Somalis, and other Kenyans is inevitable, or unavoidable. Local NGOs exist, as well as regional and international actors, which seek to defend Kenyan Somalis and Somali refugees' human rights. The next chapter considers how such supportive work is trying to redefine the problem of national security and insecurity in the Kenyan context. How different institutions have tried to protect Somalis' basic rights, for both Kenyan nationals and others, will be the main focus.

Mann (2013) suggests that the current attacks on Kenyan soil by Al Shabaab may simply be radical attempts to instigate violent reactions from the Kenya Army and effectively recruit sympathetic youth placed in harm's way by a Kenya military incursion into Somalia. As such, Kenya must "...find viable, trustworthy allies within Somalia," in order to cancel out the Al Shabaab threat rather than add to it (Mann 2013). It is imperative in seeking to realise regional stability that Kenya create dialogue spaces where its own religious and ethnic minorities are given a voice and a platform free from discrimination and xenophobic sentiment; this is essential in amassing Somali support for the peace missions in Somalia, both for Kenyan troops and for regional AU missions.

Chapter 4

Somalis and Somali Kenyans: Between a Human Rights-based Perspective and the ‘Clash of Civilisations’ Approach

One cannot fail to notice the inconsistency of those rejecting human rights: their rejection takes place in the public square created by human rights. It is difficult to reject human rights without using them.

- Filip Spagnoli, Making Human Rights Real; 2007

4.1 Introduction

Foulds (2103) states, “It is widely accepted that Muslim-dominated regions of Kenya are socially and economically underdeveloped relative to the rest of the country.” Similarly, Somalis in Kenya, most of them Muslims, have long had a precarious citizenship status, enforced throughout the country’s history by the government’s steady institutionalisation of Somali marginalisation (Lochery 2012). This inability by the Government to address what Foulds (2013) refers to as a decades-old ‘Somali question’ has resulted in ever-increasing Kenya-Somalia tensions, animosity towards Muslims and resentment of Somali migrants and Kenyan Somalis following heightened attacks on Kenyan soil by the Somali al Shabaab militant group.

4.2 Refugee Militarisation: On to the Security Agenda

A 2014 Amnesty International report¹³ reveals that Kenya’s Somali community is routinely scape-goated for recent terror attacks within the country, consequentially facing persistent harassment, forced relocation and unlawful detention in country-wide counter-terror drives by the Government of Kenya. In their 2014 briefing paper, AI documents the effects of ‘Operation Usalama Watch’ (the government’s official security crackdown operation), citing vast human rights abuses since its commencement in

¹³ Amnesty International, Kenya: Somalis scapegoated in counter-terror crackdown, 27 May 2014 at: <http://www.amnesty.org/en/news/kenya-somalis-scapegoated-counter-terror-crackdown-2014-05-26> [accessed 27.11.2014]

April 2014. As the operation has drawn out to the end of the year, many now fear that the operation was/is simply a pretext to ‘root out’ Kenyan Somalis and Somali refugees considered in some quarters to be a threat to national security. The AI Deputy Regional Director for Eastern Africa, Ms Michelle Kagari, states,

“It appears that ‘Operation Usalama Watch’ is being used as a pretext for the blanket punishment of the Somali community in Kenya... Whilst Kenya has legitimate national security concerns, the wholesale targeting of an already marginalised and vulnerable community is an appalling breach of national and international law,” (AI 2014).

Historically, urban refugees who escape the insecurity and lack of basic rights in a country’s refugee camps often form their own close-knit informal migrant settlements elsewhere. This is no different in Nairobi: informal Somali migrant settlements have long existed in the city, particularly in Eastleigh, in full view of local and international governments and NGOs. Despite the significant Somali presence in Eastleigh and other parts of the capital, it is only in the relatively recent past that national security operations by the Government of Kenya have started to specifically target Nairobi’s urban refugee population (and particularly those of Somali heritage) as a significant threat to national security:

“On 4 April, security forces locked down Eastleigh and began indiscriminately rounding up thousands of people. The operation initially focused on the Somali community, including refugees and asylum-seekers. Whilst there have been arrests of Kenyan nationals, refugees of other nationalities, undocumented foreigner nationals and NGO workers, the operation has disproportionately focused on the Somalis.”¹⁴

As one review of Muggah’s (2006) edited study on the crisis of refugee militarisation in Africa commented on the situation in Eastern Africa:

“...refugee militarisation has increased in recent years. Small arms are more widely available, and refugee camps are routinely used (or misused) by liberation movements, host countries seeking political advantage in neighbouring countries, and big power politics. These are not uniquely [East]

¹⁴ Ibidem.

African problems—after all, refugee militarisation was a major issue for Afghan refugees” (Waters 2007).

Dix (2006) states that the refugees’ ‘invisibility factor’ makes it easier to ignore them and that much harder to notice their adversity. Government and NGO knowledge of refugee populations within Kenya’s urban spaces unfortunately does not easily translate to public awareness of the same, or to formal action towards their protection. Dix (2006) explains this as arising from the fact that these people are widely accepted as ‘illegitimate’ and ‘illegal’ before the law. Additionally, the Government of Kenya’s strict encampment policy towards national security has meant that most of these refugees are forcefully contained within the remote refugee camps where NGOs focus majority of their budget and attentions, and neglect those refugees who choose to eke out a living within the country’s urban spaces. This, despite a majority of these urban refugees remaining as part of the urban poor and being in need of external assistance themselves. Dix adds that similar to other independent refugees the world over, refugees in Kenya both live and work within their host community, and though disadvantaged, ‘...many are mobile, moving between the city, camps and even their country of origin.’ (Dix 2006).

4.3 Protective Provisions in Place for Refugees and Preventing *Refoulement*

Violations of rights of different groups of Somalis, including asylum seekers, and also Kenyan Somalis rights of Somalis are being affected by the exclusionary policies of the Government of Kenya. Underlying the recently implemented policy changes is the “realisation over time by all parties that the protracted refugee situation in Kenya is not going to resolve itself quickly,” (Dix 2006).

Kenya has been home to a multitude of refugees, dating as far back as the 1970s, with reported migration en masse since the 1990s.¹⁵ With today's protracted nature of the refugee crisis in East and Eastern Africa, it is particularly challenging to enforce a strict encampment or repatriation policy within Kenya's refugee camps and urban poor spaces. As such, government policies should target an integrationist approach where refugees are incorporated into all aspects of Kenyan society in a structure that will benefit not only the refugees, but Kenyan citizens as well, for example through culture exchange and improved business markets.

As refugees increasingly migrate to Kenya's capital and other urban spaces, they look to refugee organisations and advocacy groups such as IOM, IRC, GTZ, RCK and UNHCR. These NGOs advise the refugees on their rights, various refugee protocols, how to acquire legal documentation, and how to go about establishing themselves in the city and even gaining employment. As such, the Government of Kenya has now taken/increasingly continues to take somewhat of a backseat in refugee matters through the years, and has been largely lethargic in its efforts to document migrants as urban residents rather than as camp refugees (Dix 2006). All this despite the great potential benefits of welcoming urban refugees, for instance in small and medium enterprise business opportunities which would lead to potentially robust national economic growth and a marked increase in the national tax base.

The government does however allow refugee groups to register an entity as part of a collective effort (Kenya Refugee Act 2006). For instance, through multiple concerted efforts, bringing together NGOs and the Government of Kenya, somewhat of a milestone has been achieved by Kenyan refugees: where just a few years ago a Somali refugee group, for instance, would be denied the chance to register their own cooperative, refugee groups can today write up an official 'cooperative constitution' and be legally registered and recognised as a self-help group under Kenyan law (Dix 2006).

¹⁵ The Real Truth: "Somalia's Deadly Cycle", 2011, at: <http://realtruth.org/articles/110819-001.html> [accessed 12.12.2014]

As party to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, under Article 2 Kenya is obliged to uphold the fundamental principle of refugee protection (AI 2007). Additionally, the African Charter on Human and People's Rights provides for 'the right, when persecuted, to seek and obtain asylum.'

Kenya's 2006 Refugees Act provides under Section 18 that, 'No person shall be refused entry into Kenya, or expelled, extradited from Kenya or returned to any other country or to be subjected to any similar measure if, as a result of such refusal, expulsion, return or other measure, such person is compelled to return to or remain in a country where the person may be subject to persecution...' (Refugee Act 2006: Act No. 13).

The Universal Declaration of Human Rights explicitly provides that 'Everyone has the right to seek and to enjoy in other countries asylum from persecution'. A 2007 Amnesty International report on the closure of the Kenya-Somalia border emphasises that a fundamental principle of this right involves access to said territory to seek protection (AI 2007). Additionally, the UN Convention relating to the Status of Refugees provides for non-refoulement, where 'No contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion' (UN Convention on Status of Refugees 1951). Similarly, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides in Article 3 that an asylum seeker not be sent back to a country where they would be at risk of torture (UNCT 1987).

Long (2012) states that freedom of movement is an integral part of internal refugee protection, in order that refugees may cross international territory borders safely and access protection from their new host country. A 2007 Amnesty International report on the Kenya-Somalia border closure states:

'The principle of *non-refoulement* is the cornerstone of the protection of refugees and asylum-seekers under international law. It is so widely accepted as a principle of customary international law that it is generally regarded as binding on all states, whether or not they have signed the international

refugee treaties... The Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) has repeatedly stated that in all cases, the “fundamental principle of *non-refoulement* including non-rejection at the frontier” must be ensured.’ (AI 2007).

4.4 Protecting Socio-Economic and Civil Rights: National and International NGO Responses

The oppression of Somali persons in Kenya and the denial of their human rights is increasingly causing alarm within the human rights and development sectors. The planned and systemic deprivation of refugee socio-political, economic and even cultural rights threatens their protection and their ability to seek and access asylum. Many NGOs now look to trace the experience of Somalis in Kenya at the hands of the Government, the effects that the brutal government policies have on national and human security, and ultimately on the response of local and international humanitarian organisations towards this phenomenon as created by the Kenyan state.

Mwangi states that socio-economic situations ‘tend to create a wider range of difficulties in refugee life,’ (Mwangi 2012: Horn 2010a: 20). Deep-rooted poverty and a depleted sense of sense easily contribute to complex frustrations and violent behaviours. In the Kenyan context, local refugee-founded CBOs (sometimes in collaboration with other local and international NGOs) play an integral supportive role within the refugee community, for instance through provision of accommodation and food (UNHCR 2012). Some CBOs with a larger financial kitty are even able to cater to the non-refugee urban poor (UNHCR 2012). For instance, the UNHCR in collaboration with the Urban Refugees’ Livelihoods Working Group implements a variety of refugee livelihood projects in a bid to promote income generation and independence amongst refugees. The UNHCR strategy involves capacity building drives and the promotion of “policies that recognise the rights of asylum seekers and refugees to reside and be economically productive in Nairobi with the protection and support of the Government of Kenya and the international community,” (UNHCR 2012). The inclusion of the local Kenyan host community and their concerns within the UNHCR’s strategies is particularly important for the long-term success factor of the projects, as it garners local public support for

these projects and lends to successfully combating xenophobia and discrimination against refugees locally.

Under the human rights rubric, it is every human's right to seek and receive asylum. Kenya's 2006 Refugee Act, despite the new (2012) constitution, retains major gaps, particularly in policy as regards human rights violations and human insecurity (Mwangi 2012). In her study, Mwangi states, "...it is critical to note that human [and refugee] rights cannot be encompassed in humanitarianism." As party to several international conventions including the UN Convention Relating to the Status of Refugees (1951), and the AU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), Kenya is obliged and mandated to take international conventions into account during the creation and implementation of local policies as regards refugees in Kenya. Regionally, the AU and the Protocol to the African Charter on Human and People's Rights (Maputo Protocol 2003) provide that the integrity and security of all persons be respected, whether citizens of a state or otherwise. Additionally, all forms of cruel, degrading, exploitative and inhuman treatment are prohibited. States party to AU protocols are expected to ensure appropriate preventive measures that ensure protection and the full benefits of international refugee law to refugees in Africa.

One of the grounding theories of this chapter, and indeed this research paper, is human security – classified under human rights as provided for in the Universal Declaration of Human Rights (UDHR 1948). The United Nations Commission on Security identifies human security as the 'state of complete physical, mental and social well-being,' (UNCHS 2003). It is essential that the Government of Kenya consider its state obligations to both its own constitution and to international instruments that lay out refugee rights. To gain greater insight on the experiences of Kenyan Somalis and Somali refugees in Kenya, Crenshaw's 1970 theory of intersectionality may be applied. Intersectionality is the 'concurrent analyses of multiple, intersecting sources of subordination/oppression, and is based on the premise that the impact of a particular source of subordination may vary, depending on its combination with other potential sources of subordination,' (Mwangi 2012: Denis 2008:677). For the

sake of this paper, intersectionality largely involves the analyses of local power dynamics and structured ‘Kenya vs Somali’ relations, within both a cultural and political context. For instance, in determining and analysing the agency (or, specifically, lack thereof) of Kenyan Somalis and Somali refugees in resisting state discrimination and xenophobic sentiment from the public. It is essential that the idea of refugee agency continue to be kept alive amidst the normalisation of refugee abuse as a national guise to spearheading the ‘war on terror’. The International Convention for the Protection of All Persons from Enforced Disappearance (2006), states under Article 1 that,

“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance,” (ICPPED 2006).

An agency-based human rights approach, as coupled with a human security approach is upheld by the United Nations Common Understanding of a Rights-based Approach to Development (UNCURAD 2013). UNCURAD states refugees are ‘active subjects and rights-holders, thus establishing the duties and obligations of those against whom a claim can be brought to ensure that rights are fulfilled’ (Mwangi 2012: Ho and Pavlish 2011:90).

Ultimately, as focused as they are on the mundane day-to-day tasks involving refugees, social workers organising refugee communities on the ground sometimes forget that the context of regional political interests makes refugees particularly vulnerable to political manipulation - both by fellow refugees as witnessed in inter-clan disagreements, and by forces outside the refugee community. Refugee studies in Kenya tend to follow the symptomatic problems of refugees, often ignoring the role NGOs and state authorities play in contributing to change, or otherwise the normalisation of oppression, as it were. While these measures are helpful, they are particularly limited in their long term approach and blind to intersecting structural causes of refugee discrimination, including the vicious cycle of violence against Somalis by the state and its people. This, in addition to the insecurity already associated with a refugee’s protracted nature. According to Mwangi (2012), for example, many Somali women in Kenya’s Kakuma camp would rather relay cases of abuse to ‘one of their

own' rather than approach an NGO worker or make a report to the police, "I know human rights exist but since I went report my case to the police no-one has come to my aid, which means I have no rights as a refugee". There remains a particular disenchantment and detachment between refugees in Kenya and the actors that purport to work on their behalf, coupled with a significant apathy rift. The distance from the reality of refugee daily life vis-a-vis that planned for them by various refugee advocates' visions results not only in government failure to carry out its roles as mandated by the law , but also in many human rights organisations failing in their obligation as refugee rights bearers (Mwangi 2012).

4.5 Conclusion

This chapter deals with the exclusionary principles as supported by the Government of Kenya against its Somali citizens and residents. While encompassed in the 2012 Refugee Bill, refugee rights nonetheless remain unprotected by the law and are often overlooked and routinely abused by the state through denial of entrance at the Kenya-Somalia border, impromptu arrests, lengthy detentions and *refoulement*. In their dedication to the realisation of the 'proper' approach to pursue in framing refugee rights in Kenya, an analysis of conventional NGO frameworks however reveals that these frameworks are inadequate in securing refugee rights in a country where a rogue government has run amok and few other players are willing to listen to the cry of the refugee.

Particularly, the experiences of NGOs catering to Nairobi's urban refugee are relatively new. It is clear that some areas require urgent consideration: First, the urban context demands that different NGOs coordinate with each other in a fluid manner to attain an agreeable level of success. As in the country's remote refugee camps, agencies in the city should coordinate their activities and ensure that the tasks of each agency are clearly defined and outlined in written agreements that detail their jurisdiction and responsibilities (Dix 2006). For instance, the UNHCR offices in Nairobi now employ the use of an 'open coordination forum' to enable communication, information exchange and acceptable collaborative policy advice between organisations locally and interna-

tionally. Second, as in Kakuma and Dadaab, attention must be paid to the refugee's target community rather than the singular refugee individual – this not only avoids problematic resentment by the refugee's host community, but also provides for the amassing of local support, and the creation of healthy social bonds between the refugees and their community (Dix 2006).

Previously, cultural differences have been viewed as significant barriers to multicultural integration and the realisation of human rights. It is essential however, in a multicultural setting like Kenya (and indeed Nairobi, and Eastleigh), that cultural differences be celebrated and utilised as part of the solution to xenophobia and discrimination, rather than being posed as an inovercomable barrier. Not only would such a strategy create a positive synergy and a respectable level of accountability, but it would also nurture a cultural sensitivity that would go a long way in ensuring justice is accessible to all persons in the society regardless of their cultural heritage (Mwangi 2012).

Finally, this chapter puts forth that issues of human insecurity may significantly undermine the realisation of human rights, where the personal agency of refugees in Nairobi and in the greater Kenya is limited not only by their protracted nature, but as well by invasive state policies and repellent local attitudes. For instance, President Uhuru Kenyatta is quoted as saying,

“No freedoms are being curtailed unless you are a terrorist yourself... No part of our constitution has been violated.” (President Uhuru Kenyatta, 2014)¹⁶

In defending a bill described in some quarters as draconian and retrogressive, President Kenyatta supports the ‘greater good’ of the Kenyan state over the protection of human rights, emphasising the importance of such legislation in protecting peace and Kenya's national security interests. The Security Laws (Amendment) Bill as signed in 2014 seeks to, amongst other things: introduce

¹⁶ BBC News Africa: “Kenyan MPs back security law after heated debate”, 12 December 2014, at: <http://www.bbc.com/news/world-africa-30447088> [accessed 12.12.2014]

and legitimise the right for security forces to lawfully detain terror suspects for up to one year, to enable the country's intelligence agency tap private communication without consent, to require journalists receive police permission prior to reporting news on terror attacks and national security, and to imprison journalists whose news reports are deemed to jeopardise the state's prosecution of terror suspects.

By pointing out such gaps in the human security of Kenyan Somalis and Somali refugees, the central role of the government in maintaining security within its borders is called into question, and it is hoped that this results in local debate and a restructuring of government policies and structures towards refugee rights and refugee protection; a policy environment where the Government of Kenya, refugees, NGOs and CBOs come together in good faith and positive synergy to work towards the empowerment of the refugee individual and community. Importantly, matters of repatriation and *refoulement* should come into question only where a lasting peace has been realised in the refugee's country of origin, and where their return will not prove a danger to the refugee's physical, emotional or social wellbeing.

Chapter 5

Key Findings and Concluding Thoughts

Within a system which denies the existence of basic human rights, fear tends to be the order of the day. Fear of imprisonment, fear of torture, fear of death, fear of losing friends, family, property or means of livelihood, fear of poverty, fear of isolation, fear of failure. A most insidious form of fear...

- Aung San Suu Kyi, Freedom from Fear; 1990

5.1 Key Findings

The key points in this study include that there is a great deal of xenophobia in Kenya towards persons of Somali origin, be they Kenyan Somalis or Somali refugees. Given the difficulties I faced in accessing current academic research material on anti-Somali sentiment in Kenya as regards national security, this is a relatively new phenomenon in Kenya. However, news documentaries, opinion pieces and blog posts encountered during the course of my ISS study testify to the widespread racism and xenophobia, coupled with a vast inequality that is now steadily blooming. This inequality stems mainly from the Government of Kenya's state policies and actions as enforced by the Kenya Police and the Kenya Army, though xenophobic policies seem to have fast taken root amongst a large portion of the local Kenyan population.

As put forth by Muggah (2006), I have found that Africa's refugee and IDP camps do indeed remain a major cause of concern, not only regionally, but also to the international community. Millions of men, women, and children are forced to endure situations of protracted displacement in deplorable conditions, and in the absence of other durable solutions these refugees and IDPs often become prone to militarisation (Muggah 2006). The process and phenomenon of refugee militarisation is a significant threat to refugee rights and safety as a whole, including their access to asylum and protection.

During fieldwork for my ISS research paper, I came across a fellow researcher focused on xenophobic attitudes. Pawel is from Poland, and for his Master thesis he studied Muslims in the EU, specifically in urban towns in

France and the UK, and their successes (or lack thereof) in integrating into the society. Through the synergising of ideas, our discussions revealed that based on his study he whole-heartedly believed the issue of xenophobia will likely get worse before it gets better. And this was an unfortunate belief shared by many of those he interviewed locally. Similarly in Kenya, many locals believe as I do that terror attacks will continue. Negative perceptions of Somalis will undoubtedly persist as well - especially given the Al Shabaab terror network's frequent claiming of responsibility for attacks on Kenyan soil. It is important that I point out, however, that there are those in Kenya who believe that Kenyan politicians, whether part of the government or as part of the opposition have much to gain from planning and carrying out terror attacks in the country. Surprisingly, this is quite a common belief, and is gaining more ground as 'conspiracy theorists' turn to personal blog-writing to air their views. Naturally, many such writers find themselves on the wrong side of the law, arrested and charged with upsetting the natural order of things as is. One such case is the frequent detention of Robert Alai, a gung-ho cyber activist and political blogger.¹⁷ Political blogs and 'conspiracy theories' on such issues however continue to grow and become increasingly popular with a people often disillusioned with their government. Kenyans and critics of the government now more openly discuss political events and question the intentions of their political leaders.

While this appears particularly contradictory to the rise of xenophobia as outlined in this study, and Kenyans seem to be creating more spaces today for public dialogue and critical debate around issues of racism and xenophobia, I have found that hateful comments in the social media arena nevertheless persist, both as commentary critical of the government, and as racist remarks against Muslims and persons of Somali origin.

¹⁷ BBC News Africa: "Robert Alai: Kenyan blogger charged over Uhuru Kenyatta slur", 17 December 2014, at <http://www.bbc.com/news/world-africa-30522356> [accessed 17.12.2014]

Importantly, in the course of my literature review and research I found that many of the problems posed to and faced by urban refugees in Kenya appear to be present in other areas of Africa as well. As such, regional and continental responses to these problems by governments and NGOs should inform similar efforts elsewhere. For instance, the realisation by the Government of Kenya that forced refugee encampment is not a viable long-term solution prompted the government to provide room for refugee cooperatives to ‘set up shop’ in Nairobi and elsewhere in Kenya. This in turn provides for Nairobi-based activities by local and international organisations that support urban refugees. As Dix (2006) proposes, an important part of refugee protection and integration is the building up of their capacity and teaching them to be independent as their own material providers and rights advocates. Nonetheless, urban refugees in particular will likely continue to face difficulties from suspicious government authorities and resentful neighbours and acquaintances. To ‘smoothen’ their integration journey, these refugees in urban spaces as in Nairobi should be encouraged to join associations where they can contribute to intercultural exchange and appreciation, while at the same time working on their own social life in a new country.

5.2 Ways Forward

As writer of this paper, I make the following recommendations intended as a resourceful read for donors, practitioners, policy-makers and academics concerned with strengthening and ameliorating refugee protection:

- The Government of Kenya should place high priority on the issue of dealing with terrorism, while at the same time fully abiding by local and international principles of human rights and humanitarian law.
- This may be done by pursuing simultaneously the realisation of local and international law, and rooting out the current culture of xenophobia and discrimination.
- To this end the Government of Kenya should actively and consistently promote a culture of combating intolerance by promoting dialogue and culture celebration between Kenya’s different religions and civilisations.

- Such a dialogue should focus on: the need to act together for the promotion of peace and democracy, mutual awareness and appreciation of culture, and the respect of diversity through the understanding of shared values between civilisations.
- The Government of Kenya should take preventive measures to guarantee protection of Somalis within the Kenyan border, and protect them from arbitrary imprisonment and deportation as Somali migrants, Kenyan-Somalis and indigenous Kenyans are equal before the law and require the full protection of their personal integrity.
- The government, human rights bodies and commissions should consistently review the status of Somalis in Kenya to avert the all too real risk of human rights abuses and the continued ‘clash of civilisations’.
- The government, in partnership with civil society, should create public awareness on migrant and refugee rights in Kenya to overcome the local barriers these groups face with regard to access to justice and other social services.
- The UNHCR and other organisations working to protect refugee rights should work together to create explicit intervention strategies that help guarantee refugee protection and prevent abuse of their rights.
- These agencies should also work to create public awareness around the human rights violations refugees face, and lobby public, political and private sector support for their advocacy work.
- The Government of Kenya should take adequate action to ensure violators of refugees’ human rights are brought to justice, especially when such perpetrators are found to be government officials.

5.3 Possibilities for Further Research

This paper focuses on and spotlights areas within the Kenyan society that demand further study and research as regards issues on refugees, culture clash, discrimination and human rights. As such, based on my findings during the literature review for this study, I now identify a number of priority information gaps and salient directions that may be followed for future research - particularly

by persons pursuing research in the fields of refugee welfare, forced migration, ethnicity, diasporic studies, human rights, cultural theory, psychology and of course social policy:

- Access to employment, and levels of employment success by refugees.
- Physical health aspects, including the mental and spiritual wellbeing of refugees.
- Effects of trauma and family separation on refugees' integration efforts and their levels of success within their host countries.
- Differences in access to services between established/independent urban refugees and urban poor refugees.
- Differences in access to public services between urban refugees and refugees located outside urban spaces.
- Differences in integration experiences between Kenyan Somalis and Somali refugees.
- Differences in integration experiences between Somali refugees and refugees of different nationalities, such as Sudanese refugees and Congolese refugees.
- Differences in culture between Kenyan Somalis and Somali refugees, and the ways in which the two resist structural violence levelled against them.
- How immigration status (physical, mental, emotional) on arrival impacts refugees and their quest for local employment.
- Level of refugee access to local cultural, socio-economic and political structures once in Kenya.

5.4 Final Conclusion

This study set out to investigate the experiences of the average Kenyan Somali and the average Somali refugee in Kenya. I aimed to describe the manner in which Kenyan Somalis and Somali refugees in Kenya have come to be per-

ceived today as strangers and a danger to the state of security in Kenya. As such my study viewed the discrimination against Kenyan residents of Somali origins through a 'Clash of Civilisations' and human rights approach. I have identified the typical day-to-day situation of these individuals, including but not limited to: discrimination, conflict, racism and emerging forms of xenophobia.

From my study it is explicitly evident that numerous challenges are currently undermining refugee access to social support systems in Kenya, and access to their own human and refugee rights. The local government has failed in its legal obligations to its Kenyan Somali citizens and to the Somali refugees within the country's borders. These wanting obligations are supremely undermined by emerging policies that further exclude and alienate persons of Somali origin, not only from the Kenyan community, but also from the cultural, economic and socio-political support structures that they are lawfully entitled to as legal residents of the republic. Many Somali refugees remain in Kenya, on the run from Somalia due to a well-founded fear of persecution based on their clan heritage, political affiliation, religion or social group standing. As such, most are unwilling and unable to safely present themselves back to Somalia, but find once they have crossed the Kenyan border that they are typically type-cast as 'bad' Somalis or bad 'Muslims'. Coupled with having to learn a new language and understanding the cultural patterns of their new host countries, many refugees thus struggle to integrate into the Kenyan culture, and even if they are successful they find that their physical appearance, religion or cultural differences regularly sets them apart from 'indigenous' Kenyans – not only socially and culturally, but also in terms of the rights accessible to them as residents of Kenya.

A particular lack of political will, coupled with superficial human rights and humanitarian rhetoric, ensures that refugee rights as set out in the Constitution of Kenya and the Refugee Act 2006/2012 continue to be abused and ignored, and that justice remains a far-off mirage for Somali refugees and Kenyan Somalis. My study has found that the Government of Kenya's consistent inability to maintain security within its borders lends greatly to the current wave of fear

successfully depicting Muslims and Somalis as terror groups. Human security particularly continues to be directly linked to negative local attitudes and sentiments against ‘foreigners’, and as such the lack of national security thus poses a barrier to the healthy integration of both Somali refugees and Kenyans of Somali heritage.

Human insecurity continues to be an issue as well, steadfastly obstructing equality and equity across the spectrum of Kenyan citizens, and preventing the empowerment of Somali Kenyans and Somali refugees in Kenya. Casting particular spotlight on the roles played by the Kenya Police and the Kenya Army, a significant gap in human rights and access to services is revealed: a gap that emerged and was made worse by the lack of government action as regards refugee rights and the protracted protection situation of refugees and minorities.

Most NGOs, while contributing to the empowerment of Kenyan Somalis and Somali refugees at the grassroots, lack sufficient public and government support to create and implement tangible long-term changes, and as such are left to play mostly a reporting role on the sidelines. As Mwangi (2012) states, “Ironically, sensitisation by NGOs without real implementation widens the gap between rhetoric and reality of human rights.” To create and enhance the influence of NGOs, both locally and internationally, it is imperative that sound structures be put in place – structures that focus not only on well-being, but that also adequately address the factors in Kenyan society that allow for the widespread growth of anti-Islam and anti-Somali sentiment. Revised refugee policies arising from such structures would and should undoubtedly focus on sustainability rather than catering to a select few. It is only through such national efforts, in addition to the acknowledgement of the failures of the state towards its people, that human rights will be realised in Kenya, over and beyond the superficial humanitarian clamour we now witness.

There is a greater need now more than ever for national policies to (be seen) to serve justice for all. Kenyan Somalis and Somali refugees must be strategically positioned where they will have their rightful access to cultural, economic, political and social support from the state and be treated in a dignified manner as

lawful members of the Kenyan society. Cultural backgrounds and influences should play no role in creating a barrier between refugees and their human rights as either citizens or refugees, but rather create a positive synergistic environment where multi-culturalism is celebrated and not feared as portending an unavoidable and violent 'clash of civilisations'.

Ultimately, to overcome retrogressive policies and government actions, Kenya's vast cultural heritage and race and creed differences should be upheld and celebrated as part of a 'rainbow nation', rather than be perpetually touted as the axes of evil around which the state's security is jeopardised. It is imperative that we question and seek to provide long-term solutions on how to protect and restore the citizenship rights of Kenyan Somalis and Somali refugees in Kenya. This, to prevent a rogue government running amok, and to ensure Kenya's long-standing commitment to the UN Charter of 1945,

"We the Peoples of the United Nations, determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small..."¹⁸

¹⁸ United Nation Charter at: <http://www.unfpa.org/resources/quotes-human-rights#sthash.mtqDDpZc.dpuf> [accessed 20.12.2014]

Bibliography

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[Figure 1.1 Somalis being screened on their 'legal status' in Nairobi](#)**Fout!**
Bladwijzer niet gedefinieerd.¹⁹



[Figure 1.2 Screenshot of a tweet by KDF spokesperson Major Emmanuel Chirchir](#)**Fout!**
Bladwijzer **niet**

¹⁹ BBC News Africa: “Kenya sends back 'illegal' Somalis after Nairobi raids”, 9 April 2014, at: <http://www.bbc.com/news/world-africa-26955803> [accessed 20.11.2014]

gedefinieerd.²⁰



[Figure 1.3 Somali travellers at a routine stop-and-search along the Kenya-Somalia border](#)²¹



²⁰ Tweet by KDF spokesperson Major Emmanuel Chirchir framing Kenya's security issue with the hashtag #Tideofterror, 6 April 2014, at: <http://somalianewsroom.com/2014/04/09/social-media-reactions-to-kenyas-security-crackdown-in-nairobi/> [accessed 23.11.2014]

²¹ BBC News Africa: "Kenyan MPs back security law after heated debate", 12 December 2014, at: <http://www.bbc.com/news/world-africa-30447088> [accessed 12.12.2014]

[Figure 1.3 Al Shabaab militants in Somalia](#) Fout! Bladwijzer niet gedefinieerd.²²



[Figure 1.4 Screenshot of a tweet on the Al Shabaab Twitter page](#)²³

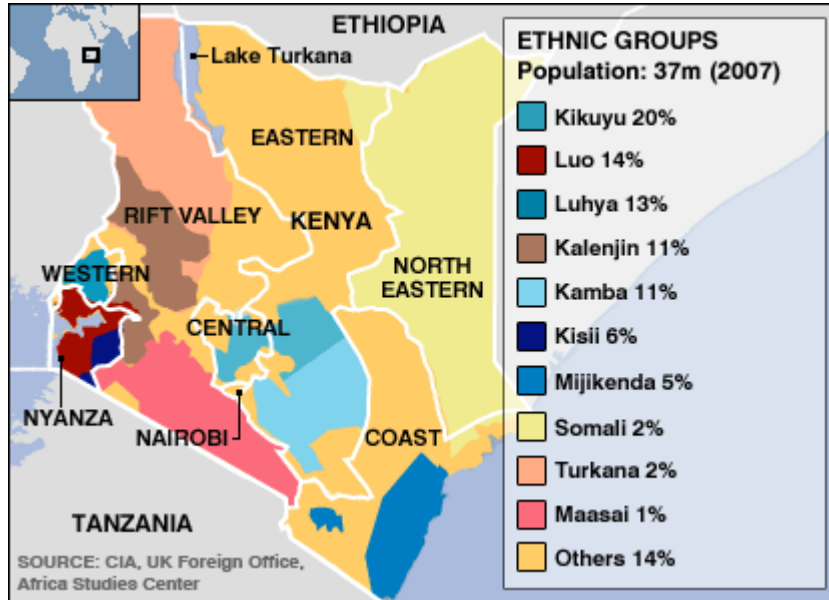


²² Sagal Radio Services, "Al-Shabaab oo dhoolatus milateri oo ku socda Kenya ku soo bandhigay Buulo Burde", October 17 2013, at: <http://www.sagalradio.org/articles/2013/10/17/al-shabaab-oo-dhoolatus-milateri-oo-ku-socda-kenya-ku-soo-bandhigay-buulo-burde#.VI4bXnsUicE> [accessed 23.11.2014]

²³ Tweet on the Al Shabaab Twitter page, detailing activity in the Westgate shopping mall as the terror siege was underway, 21 September 2013, at: <http://www.kismaayo.com/2013/09/al-shabaab-oo-sheegatay-masuuliyadda-weerarkii-westgate/> [accessed 10.12.2014]

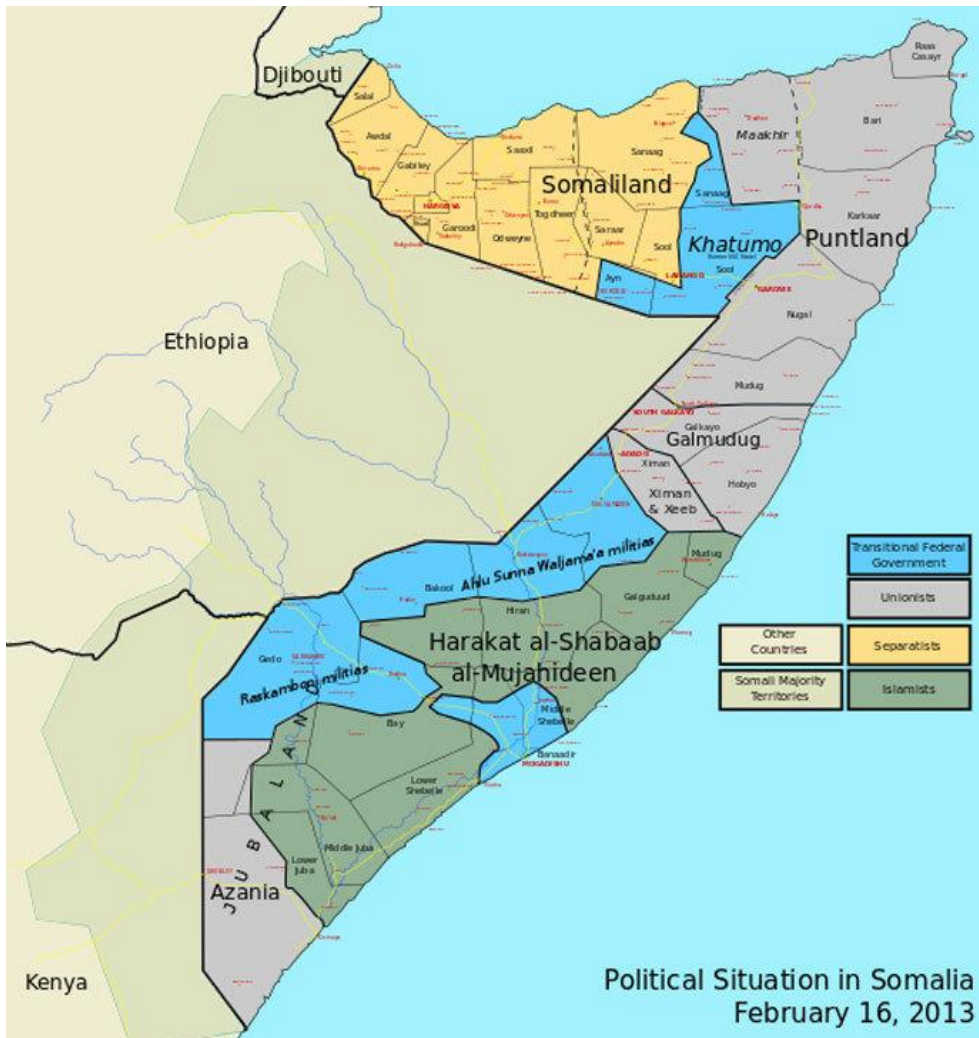
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[Map 1.1 Map showing ethnic groupings in Kenya²⁴](#)



²⁴ Source: CIA, UK Foreign Office, African Studies Centre, at: <http://ericwalterswalkinghome.com/chapter-1-5/chapter-3/> [accessed 20.11.2014]

Map 1.2 Map showing political situation in Somalia Fout! Bladwijzer niet gedefinieerd.²⁵



²⁵ Image by Nicolay Sidorov, February 16 2013, at: <http://rt.com/op-edge/somali-kenya-blowback-jihadis-274/> [accessed 20.11.2014]

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