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General information

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Journal

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Editorial

The world continues to be dominated by a multiplicity of peace, conflict and security issues. As thinkers and practitiones in this area seek to explain the issues, the prominence of terrorism vieolent extremism and countering violent extremism take precedence. In search of explanations, focus has fallen on social causality, emanating from the human environments, economic, political and religious. Some of the explanations have deep religious roots from which extreme ideologies stem. The impacts of these ideologies are not only felt in social confines, but also extend to settings as far as maritime domains.

The consequences of phenomena such as violent extremism has resulted in what seems to be mass migrations of humans, related to insecurity, more than any other time in history. This has lead nation states to take a closer look at their own security and also attempted to reform their security structures to face the contemporary security challenges.

The current journal takes a look at the challenges of maritime security and how these could be confronted with effectiveness and finality. In light of the challenges posed by such entities as the Boko Haram, the authors take a look at the challenges of ethno-religious conflicts in a Nigerian seeting. They also review at the callenges of reforming the security sector in Kenya and the geo-politics of assylum seekers as a consequences of violent exremism. The subjects they deal with will continue to occupy our faculties well into the future. The editor appreciates their keen interest in shedding light on these contemporary securitu challenges of our.

Timothy Henry Gatara, Ph.D
Editor

Foreword

Comtemporary issues in peace and security have currently focused on terrorism, violent extremism and countering the violence. This in light of the enormous impact that these phenomena have had and continue to have in the world today. Researchers in the field of peace and security have invested heavily in attempts to understand the phenomena and to pin down their etiology.

Over the years it has emerged that terrorism and extreme violence ae much more sophisticated than meet the eye. They are driven by ideologues who spare no effort at intellectualism to make terrorism successful. The world has concentrated on fighting the results and symtomps of terrorism with minimal effort on understanding its causation and consequences. The practitioners in peace and security must seek for solutions in better reasoning and knowledge.

The search for solutions will invariably dwell on understanding the socio-political, cultural, and economic environments as sources of terror drivers in society. At the same time there is dire need to develop stronger models to explainstate fragility and how it is linked to emergence of terrorism in society.

As the current century advances, IPSTC will continue to research key peace and security issues and to illuminate on likely solutions to the problems challenges of terrorism and violent extremism among other challenges. I welcome all to not only the readership of the Journal, but also contributions in the form ideas, suggestions and articles. The current Journal carries insights into the growing challenge of migrations and refugees in the world, dynamics of terrorism, maritime security and reformation of security sectors. I acknowledge the continued support from The Government of Japan through The United Nations Development Programme (UNDP). In addition, my acknowledgement goes to other partners supporting the Centre.

Brigadier Patrick Nderitu
Director,
IPSTC

Ethno-Religious Conflicts and Democratization in Nigeria

Gowal Beji Bekuma

Andrew Elias Bogoro

Abstract

Since the returned of civil rule in 29 May 1999, Nigeria has witnessed increasing incidences of ethno-religious and communal conflicts resulting in the destruction of lives and properties. Ethnicity and Religion have been manipulated by political entrepreneurs to gain power and control resources. Additionally, the conflicts constitute one of the fundamental threats to institutional cohesion. This paper looks at Government responses to tackle ethno-religious conflicts. It analyses the peaceful outcome of the 2015 general elections that was evidence of harmonious relationship among ethnic groups and religion that contributed to the deepening of democracy in Nigeria.

Introduction

The wave of democratization, popularly referred to as the 'Third wave' (Huntington, 1991), swept across Africa in the 1980s and 1990s. Nigeria was not exempt from this wave and it adopted a national multi-party political structure however, a de facto one party rule persisted in the regions and states (Ukiwo, 2005).

Nigeria is usually characterized as a deeply divided state in which major political issues are vigorously – some would say violently – contested along the lines of complex ethnic, religious, and regional divisions (Osaghae & Suberu, 2005). Carol Lancester, in Ake (1993), has argued that political divisions increasingly fall along ethnic or religious lines heightening tensions and ultimately, threatening national unity. Indeed, despite the democratization process, Nigeria, beginning in 1999, has witnessed Ethno-Religious conflicts that have resulted in loss of lives and property.

It is quite evident that democracy in Nigeria gave rise not only to political structures but also to economic, social and cultural relations among communities which fuel ethno-religious conflicts. The democratic structures of governance in Nigeria were too weak to enforce the principles of checks and balances and institutionalization of democracy giving way to ethno-religious conflict, which inhibited attempts at good governance. The

conflicts includes: Tiv-Jukun conflicts, Hausa-Yoruba clashes, Aguleri-Umuleri crisis, Ife-Modakeke crisis, Kafanchan-Kaduna crisis, Jos crisis, Zango-Kataf, Kano, Illorin (Ojukwu and Onifade, 2010).

The paper is organized into four sections. Section one, Introduction, which has been addressed in the preceding discussion. Section two delves into theoretical clarifications, trying to define the key concepts. Section three addresses the role of elections. Section four discusses ethno-Religious conflicts, highlighting and analyzing some of the causes while section five examines Government response to ethno-religious conflicts and conclusion.

Conceptual clarification: Conflict

Conflicts are inevitable and inherent in all interdependent relationships. Conflicts usually reflect the diversity and complexity of human societies and are not necessarily a dysfunctional experience. Conflicts can be defined as a situation involving people or social groups with different interests and mutually antagonist tendencies and opposing influences competing for the use of limited resources to ensure or enhance their livelihoods (Ojukwu & Onifade, 2010). As people live together in close proximity, conflict is bound to occur. Conflict is a critical mechanism by which goals and aspirations of individuals and groups are articulated; it is a channel for the definition of creative solutions to human problems and a means to the development of a collective identity (Lamle, 2015).

Ethno-Religious conflicts have been recognized and rated as one of the most fundamental threats to institutional cohesion in a multi-ethnic society like Nigeria. The uncertainties, political exclusion and pervasive fear of domination breed desperation and inform the organizing principle of identity mobilization. The uncertainties generate and escalate tension thus igniting an upsurge for the struggle for rights and autonomy. Democracy has pushed the claims of ethnic boundaries and belonging further. According to Nnoli (2005), ethnic conflict is understandable because African countries are experiencing the two most stressful transformations in human history. These are: state-building and rapid development. Nnoli notes that of the two,

> state building is better known, for its violence. The state-building process in Africa, which started in colonial times and is still going on, seeks to centralize power within the state. In the process it has spread fear and terror in the subject population by its autocratic and violent methods, forcing many people to take refuge in primary identity and solidarity groups or to undertake armed resistance and confrontation.

The conflictual nature of development paradigms is significant in the explanation of ethnic conflicts. Like the state-building processes, it destabilizes status and power hierarchies. It concentrates efforts on changes in production and distribution, which

intensify the struggle for wealth and power. Ojukwu and Onifade (2010), sees ethnic conflict as 'the struggle for preeminence'.

According to Rupesinghe and Anderlini (1998) cited in (Ojukwu & Onifade, 2010), ethnic conflicts are cause by:

i)   resource-based conflict, where competition for economic power and access to natural resources are given more attention.

ii)   Conflicts over governance and authority, based on competition for political power and participation in political processes. As Ronen (1975) puts it: not to be in power means not only to be out of power but also to be ruled by another region or regions which are in power. It means not only to be 'out' but also to be 'under', to be politically overpowered by others.

iii)   Ideological conflicts based on completion between rival ideologies and value systems.

iv)   Identity conflicts based on competition between rival ethnic, political and economic power and social justice.

Democratization

Samarasinghe (1994) sees democratization as a process of political change that means the political system of any given society towards a system of government that ensures peaceful competitive political participation in an environment that guarantees political and civil liberties. Rummel (n.d.), defines democratization as a process through which a political system becomes democratic. He further states that democratization refers to the transformation process from a non-democratic regime to a procedural democracy and subsequently to a substantive democracy, either as the first government in a newly independent country or by replacing an authoritarian system in an older one. Huntington (1991) defines a wave of democratization as a group of transitions from non-democratic to democratic regimes that occur within a specific period of time and that significantly outnumber transitions in the opposition direction during that period.

Boutros Ghali (1996), defined democratization as a process, which leads to a more open, more participatory, less authoritarian society. This is not to say that democracy is without its detractors. In some quarters, the charge is made that there can be no democracy in times of trouble or war, that democracy violates minority and community rights, and that democracy must wait until development is fully achieved. However, whatever evidence critics of democracy can find in support of these claims must not be allowed to conceal a deeper truth: democracy contributes to preserving peace and security, securing justice and human rights, and promoting economic and social development. Ake (2000) cited in Ukiwo (2005) notes,

> *…far from being prone to generating ethnic conflict, democratization is actually an antidote to those things, which promote ethnic identity and what passes for ethnic conflicts in Africa. What are these causes? The most important is the character of the post-colonial state in Africa… its power over economy and society is enormous, arbitrary and it is largely privatized for all but a few of its citizens, it is alien and remote, uncaring and oppressive… many of them have turned away from the state and given their loyalty to sub-national formations.*

As Ake argued most of the conflicts that erupted in post-military period in Nigeria have been linked to the state in one form or the other (Ukiwo, 2005). Since the state is regarded as an obstacle to democracy and ethnic harmony it has become expedient for scholars to advocate significant state retrenchment. Nnoli (1995), has advocated the devolution of state power from the centre to regions and divesting the state of its economic enterprises and holdings, and their privatization and/or commercialization. A great deal of ethnic conflict has emanated from the struggle over the location of these enterprises, recruitment of their personnel and the use of their resources thus, divestment would allow impersonal market forces to assume control of the allocation of resources of these enterprises. It is clear from the Nigerian situation that whenever such market forces are in control, the distribution of the national cake follows the lines of relations of production (class) rather than ethnic lines.

Berman (2010) assert that the decay of the state and resulting intensified struggle for control of resources and accumulation of wealth in circumstances of growing poverty and uncertainty for the mass of the population has increased both the horizontal and vertical inequalities between and within ethnic communities and the conflicts of moral ethnicity and political tribalism. There are strong indications that perceptions of horizontal inequality and the resultant ethnic rivalry have centered on contestations over control of resources and power.

Elections

Omotola (2014), define election as 'primarily a contest among groups mainly political parties'. Nelson (n.d.) states that election is an enduring democratic practice, which allows people to make choices about who will govern them. It facilitates leadership succession, promotes accountability in politics and guarantees the participation of the citizenry in the political process. This is one of the reasons why some theorists regarded elections as an essential part of the process of consolidating democracy. Huntington (1991) has posited a 'two turn-over test for measuring democratic consolidation in electoral systems. A democracy is said to have been consolidated if there is at least two succession turn-over of power from one political party to another via elections. For the first time, this happened in Nigeria in the 2015 general election, where the People's Democratic Party (PDP) in power lost to the opposition, All Progressive Congress (APC) party.

The conceptual anchorage of elections on popular choice generally gives an impression of equity in the electoral process. It is on this note that this paper argues for the 2015 general election as a consolidation of the deepening of democracy in Nigeria. Boutros-Ghali (1996) noted that democratic institutions and processes channel competing interests into arenas of discourse and provide means of compromise which can be respected by all participants in debates, thereby minimizing the risk that differences or disputes will erupt into armed conflict or confrontation. Given that democratic governments are freely chosen by their citizens and held accountable through periodic and genuine elections and other mechanisms, they are more likely to promote and respect the rule of law, respect individual and minority rights, cope effectively with social conflict, absorb migrant populations and respond to the needs of marginalized groups. Indeed, such governments are less likely to abuse their power against their people. Democracy within states fosters the evolution of the social contract upon which lasting peace can be built. In this way, a culture of democracy is fundamentally a culture of peace. There are strong indications that the peaceful post election outcome from the 2015 general election will minimize or tackle ethno-religious conflicts in Nigeria.

Ethno-religious conflict

Since the return of civil rule in May 1999, Nigeria has witnessed increasing incidences of ethno-religious and communal conflicts. These conflicts are attributed to ethnic grievances with people believing that democratic dispensations can listen to their grievances. According to Kalejaiye and Alliyu (2013), the proliferation of communal associations, which attracted a large proportion of urban dwellers triggered intra-class and inter-individual socio-economic competition especially among various town unions. The ethno-religious conflicts are what Blagojevic (2009), refers to as the presence of historical memories of inter-ethnic grievances; manipulation of historical memories by political entrepreneurs to evoke emotions such as fear, resentment, and hate towards the "other"; and an inter-ethnic competition over resources and rights. Nnoli (2003) points out that ethnic conflict is the product of political or administrative policy of divide-and-rule that mobilizes and manipulates ethnic consciousness. Aduba (n.d.) has identified other causes of what we now refer to as ethno-religious conflicts in Nigeria including: accusation and allegations of neglect, oppression, domination, exploitation, victimization, discrimination, marginalization, nepotism and bigotry.

Stavenhagen cited in Ukiwo (2003) notes that:

> Conflicts between ethnic groups are not inevitable nor are they eternal. They arise out of specific historical situations, are molded by particular and unique circumstances, and they are constructed to serve certain interests by idealists and ideologies, visionaries and opportunists, political leaders and ethnic power brokers of various kinds.

The contingent nature of ethnicity is what Sylvester (n.d.) observes constitute such conflicts as; Shari'a and insecurity in the North; ethnic and communal conflicts in the Niger-Delta area, where armed community gangs terrorize and abduct personnel working for foreign oil companies; South-West; Odua Peoples' Congress (OPC), an armed Kombi group campaigning violently for the restructuring of Nigeria, and for a Sovereign National Conference (SNC); Middle-Belt, conflicts between Fulani herdsmen and Farmers; and, the Tiv-Jukun crises. Osaghae and Suberu (2005) notes that Ethno-Religious clashes have proved to be the most violent instances of inter-group crisis in Nigeria. They have occurred mainly in the middle-Belt and cultural borderline state of the Muslim north, where the Muslim Hausa-Fulani groups are pitted against non-Muslim ethnic groups in a "dangerous convergence of religious and ethnic fears and animosities... in which it is often difficult to differentiate between religious and ethnic conflicts as the dividing line between the two is very thin".

From the incidences of ethno-religious conflicts cited above there is a thin line between ethnic conflict and religious conflict due to the fact that these conflicts are often manipulated and what begins as ethnic conflict ends up as religious conflict and vice-versa.

Two trends are discernible from the discourse on ethno-religious conflicts and democratization. Ukiwo (2003) provides a lens to look at the two trends. First, he emphasizes the contribution of ethnicity; second, he focuses on the nature of democratization. Ethnicity, whether seen from the primordialist, instrumentalist or constructivist perspective is perceived as inherently conflict prone. It has been argued that ethnic groups are supposed to be evidence of harmonious relationship. This is evidenced by some ethnic groups like Pyem ethnic group in Gindiri in Mangu Local Government Area and Chalya ethnic group in Bokkos Local Government Area all in Plateau State who live in harmony. Further evidence id given by the Ngas ethnic group found in Pankshin and Kanke Local Government Areas and Bokwom ethnic group found in Kanem (Dengi) Local Government Area of Plateau State who equally live in harmonious coexistence.

The second perspective is on democratization, which is viewed as inherently conflictual because it entails a radical redistribution of power as well as the acceptance of a political culture of equality. Ukiwo (2003) observes that in cases where there is no such redistribution of power or equalization of opportunities to hold offices, as some African examples poignantly show, the limitation of democratic transition could also ignite violent conflicts as the already sensitized public realizes that no changes are forthcoming. As already pointed out, the 2015 general elections is a framework of democratic consolidation where the post-election was peaceful and did not ignite any violent conflicts as was had been the case in the past. As noted, Ethnicity and Religion were not used, and nor should they be used, in the acquisition of power and the electoral

body has been institutionalized. In sum, incidences of conflicts were avoided in the 2015 general elections a factor that contributes to the deepening of democratization.

From the foregoing, this article holds to the analytical framework that the Nexus between Ethnicity, Religion and Democratization is the absence of the manipulation of ethno-religious conflicts in the democratic consolidation of the 2015 general elections in Nigeria. The discussion focuses on ethno-religious axis because some of the violent conflicts in the past were as a result of manipulation by elite to acquire power and/or solve other grievances. The succeeding section examines the Government response to ethno-religious conflicts in its quest to consolidate democratization in the country.

Government response to ethno-religious conflicts

There are three main ethnic groups that historically dominate politics in Nigeria: the northern Hausa-Fulani, who are mainly Muslim; the Yoruba in the West, who are Christian and Muslim; and, the Igbos in the East, who are largely Christian. There are pockets of other population who belongs to other minority groupings. According to Ukiwo (2003), these groupings have resulted in unbridled competition for political relevance and spheres of interests among politicians, especially in the context of the division of the country into geopolitical zones, states and local governments and the fact that distribution of benefits among the political class depends on the ability of each member of the ruling class to deliver his constituency. Ukiwo goes further to say that in such circumstances; ethnicity, religion and other sectarian identities are exploited, resulting in avoidable violent conflicts among component units of the country. Osaghae and Suberu (2005) point out that the colonial tripartite Federal legacy also exacerbated ethno-regional conflicts paving the way for ethno-military infighting and secessionist warfare in Nigeria.

The government has undertaken some measures to strengthen Federalism, encourage unity, and promote political inclusion of ethnic, religious and regional groupings. It is hoped that these measures will also help in consolidating democratic institutions and mechanisms in order to promote peace in the country.

The federal character and indigene principle

The Constitution of Federal Republic of Nigeria (1999), chapter II section 14, subsection 3 and 4, state clearly that the composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance

of persons from a few states or from a few ethnic or other sectional groups in that Government or in any of its agencies. Subsection 4 follows that, the composition of the Government of a state, Local government Council, or any of the agencies of such Government or council, and the conduct of the affairs of the Government or council or such agencies shall be carried out in such a manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the peoples of the Federation.

Chapter VI, part 1B, Section 153 of the constitution of the Federal Republic of Nigeria (1999), states that there shall be established for the Federation the federal character commission. The third Schedule Part 1C 8(b) underlines the need to promote, monitor and enforce compliance with the principles of proportional sharing of all bureaucratic, economic, media and political posts at all levels of government. Chapter VI, Part 1A Section 147(3), states clearly that the President shall appoint at least one Minister from each state, who shall be an indigene of such state.

Despite these noble measures, there is no doubt that there are grievances that occasionally exacerbate violence however, the focus of this paper is to look at those measures that bind and unite Nigerians.

States creation

Nigeria is comprised of thirty Six independent states and a Federal Capital Territory - Abuja. Baker (2012), has opined that if more states were created by the Federal Government by subdividing existing states, there would be more than one state per ethnic group. This would mean that for revenue allocation, Federal elections, government appointments, employment, contracts, and other Federal benefits, Igbos would compete with other Igbos, Yoruba with other Yoruba's, and so on. This would make it difficult for any ethnic group to consolidate secessionist sentiment within one territorial area, government agency, or base of political power. Such a sub-division would enable resources to reach states and Local governments for development. In addition, the sub-division would, probably, enhance transparency and accountability.

Presidential election requirement

Baker (2012), states that another measure to discouraged ethnic voting, prevent secessionist tendencies and avert violence is a constitutional formula for declaring a Presidential Candidate a winner. Chapter VI Part 1A Section 133(b) of the Constitution of the Federal Republic of Nigeria (1999), states that to declare a Presidential Candidate a winner, he/she should have not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the states in the Federation and Federal Capital Territory,

Abuja. This provision enables the election of the President to be based on National Unity and Mandate devoid of any ethno-religious influence.

Religious institutions

Aduba (n.d.), observes that government should leave the religious space to religious institutions. The question of government sponsoring religious bodies, for example, to go for pilgrimage should not be allowed but rather left solely to the religious institutions. This principle was demonstrated by the administration of Governor Ahmed EL-Rufai of Kaduna state that withdrew government sponsorship for pilgrimage in 2015.

Concluson

The paper has focused on the general election of 2015 in Nigeria. The election was peaceful and saw the change of government from the ruling to the opposition party. The transition of power minimized and tackled potential ethno-religious conflicts in the country. There were measures being undertaken by Government to respond to ethno-religious conflicts, which if adhered to will deepen democracy and mitigate the manipulation of religion and ethnicity in the quest to capture power.

It is time to have the electorate choose credible leaders that will not undermine national unity. The government responses to the ethno-religious conflicts suggested in this paper, once adopted and operationalized, can contribute significantly not only in mitigating ethno-religious conflicts but also in deepening democratization in Nigeria

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Contemporary Challenges for Maritime Security in the West Indian Ocean – A Kenyan Perspective on Maritime Piracy

Benedict Kioko Mwololo

Abstract

Security threats in the West Indian Ocean pose a serious danger to Kenya's security and interests, and a comprehensive strategy is required for addressing them. The Indian Ocean is very important to Kenya and the international community in terms of trade, food and energy security. The West Indian Ocean region has increasingly become the centre stage for geopolitical interests, geostrategic posturing and competition as well as heightened security concerns.

The region faces many traditional and non-traditional security challenges that include terrorism, poaching, illegal fishing, human trafficking, drug smuggling, trafficking of weapons, maritime pollution and climate change. These security threats impact negatively on international trade and economic activities of the people in the region. The region and its ocean are vast and no country can approach and stem the threats on its own.

Maritime piracy is a profitable venture and there is evidence that influential entrepreneurs undertake it. These entrepreneurs exploit the underprivileged youth to prosecute the crime either for financial gain and/or to strengthen clan fiefdoms for example, in countries like Somalia. This is what may be termed as the entrepreneurial motive of maritime piracy. The solution to this problem may lie, fro example in the case of Somalia, stabilizing the country in order to economically empower the vulnerable groups recruited into the vice. Indeed, the rule of law and strengthening of law enforcement apparatus on shore are critical pillars in the foundation of building a firm civil society in the Somalia hinterland.

The littoral states with extensive coastlines along the east coast of Africa are Somalia, Kenya, Tanzania, Mozambique and South Africa. Among these states, only South Africa and Kenya have naval capability to patrol their maritime areas of responsibility, however, none of them has a navy possessing maritime expeditionary capabilities that is, what can be termed as a blue-water navy.

The appreciation of the role of a capable naval force is the beginning of blue economy wisdom. Naval forces within the region should be strengthened through training and equipping with modern seagoing vessels, both large and small, supported by aerial surveillance and patrol craft. The success in tapping into the blue economy and improvement of elements of maritime governance of the littoral states cannot be realized

without collaborative, concerted, cooperative, coordinated, and coherent efforts of all stakeholders in the region in undermining the root causes of piracy.

Introduction

The West Indian Ocean Region (WIOR) is of great geostrategic importance to the global community. The region has however been plagued by a combination of a plethora of factors and problems which have negatively affected security and economic development of states in the region as well as distorted the prices of goods traded internationally. The factors that have impacted negatively on security and development in the region are many and varied. The region is faced with serious insecurity if one considers challenges such as weak and failed states, governance problems, political instability, terrorism, ethnic conflict; bureaucratic corruption, maritime insecurity, soaring crime and unemployment; increasing poverty, environmental degradation and changing weather patterns; declining food production, famine and malnutrition, rapid population growth, soaring gap between the rich and the poor, and disease, among others.

These factors do not act in isolation but indeed through complex interrelationships, which at times result in a vicious cycle of worsening consequences. Unfortunately, there is at present no concrete and effective mechanism for multinational cooperation on security in the region. The region under discussion is depicted in the graphic below.

Figure 1

Area of Discussion: Somalia, Kenya, Tanzania, and the western Indian Ocean.
(U.S. Central Intelligence Agency map)

Kenya sits in the middle of the region and is impacted negatively by both internal challenges and neighbourhood problems. The failed state that is Somalia and the wars in Yemen and the Middle East all contribute to the problems Kenya faces in surmounting insecurity. These wars have released into the hands of criminal gangs, pirates and terrorists, weapons that are used to perpetuate crime on land and in the seas. Those selling the weapons see it as a lucrative commercial venture and are neither interested in the personalities to whom they sell the weapons nor who the weapons will be used against.

Theoretical framework and methodology

The United Nations Convention on the Law of the Sea (UNCLOS) defines piracy thus:

"Piracy consists of any of the following acts:

(a)   any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

   i)   on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

   ii)   against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b)   any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c)   any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b)."

Piracy is considered to occur in international waters while Armed Robbery at Sea occurs in territorial waters or in port. Scholars and other observers address piracy from very different viewpoints, some of which are briefly stated here subsequently. Piracy has been addressed by some as a problem of global governance and international cooperation. This viewpoint is related to the international relations theory of a lack of a world government, chaotic inter-state relations and competition between states. Thus piracy is seen thriving as a result of uncoordinated, incoherent, uncooperative, and weak international efforts in policing the seas and prosecution of pirates.

Some scholars interrogate the practices and structures of counter-piracy policies in the context of the global governance discourse, including the question of whether the piracy threat leads to a common (global) identity among actors and whether cooperation follows classical inter-governmental alliance pattern or of a more integrated security community (Piracy Studies portal). Indeed, international cooperation is hailed as having succeeded in reducing attacks by Somali pirates considerably after 2012.

Piracy is also seen as a legal problem and a question of how modern, universal international law is developing. The legal aspect of coping with piracy remains a critical and certainly a dominant issue. This approach is mainly concerned with the international conventions on the law of the sea and national statues domesticating international law. A great deal of the literature has concentrated on the legal apparatus necessary for prosecuting pirates.

Piracy as an operational problem, of military coordination, surveillance and deterrence is yet another approach to the study of piracy. The operational approach looks at how piracy networks can be dismantled successfully and how such operations can involve and be coordinated between the various military legal actors. Justin Hastings, for example, in a paper on "*Targeting and Networks in Maritime Pirate Syndicates*" analyses piracy from the operational problem angle. His research sheds light on how certain types of attacks such as hijackings track with transnational social and production networks that are embedded in the geography of certain regions and that respond to specific political and economic incentives and disincentives. Hastings analyses piracy using a principal-agent model to assess the weak links within piracy networks as well as in relation to their onshore support structures (Hastings, 2011).

There abounds theory and literature on the causes of piracy in the West Indian Ocean. However, no consensus exists on the principal causes of maritime piracy. Some scholars deal with the question of piracy as a problem of failed states and the relation between civil war and transnational threat. For example, Daxecker and Prins, state that economic motivations, favorable geography, and international trade patterns (among others) affect piracy (Daxecker & Prins, 2011). State failure, civil war and chaos have long been linked with non-traditional security threats, including terrorism, transitional organized crime, and, currently, piracy. Piracy, as researchers have found out, is an offshore phenomenon of an onshore problem. Thus Daxecker and Prins conceptualize maritime piracy as a land-based activity implemented at sea (Daxecker & Prins, 2011).

Illegal, Unreported and Unregulated (IUU) fishing, has been cited as a reason for the upsurge of piracy in the Indian Ocean by Somali pirates. Illegal fishing takes place when vessels or harvesters operate in violation of the laws of a fishery. This can apply to fisheries that are under the jurisdiction of a coastal state or to high seas fisheries regulated by regional fisheries management organizations (RFMO). Some scholars are of the opinion that, Somali fishermen, unable to compete with large trawlers from developed countries, coupled with dwindling fish catches as a result of overfishing by illegal means in Somali waters, resorted to piracy and taking hostage of ships as a more lucrative job (Kerins, 2016). Other writers blame poverty and unemployment among the Somali youth and able-bodied men as a result of decades of conflict and instability (Ratisukpimol, 2011). Ratisukpimol presents a theoretical model of extralegal appropriation and production applied to maritime piracy. The model shows that (1)

the lack of economic opportunities stimulates piracy by lowering its opportunity cost; (2) weak states raise the return to piracy due to a lack of protection of property rights in those states; and, (3) the existence of piracy and its effectiveness impact the maritime trade (Ratisukpimol, 2011).

Oceans Beyond Piracy, a program of the One Earth Future Foundation, realized that the discussion on causes of piracy has generally not included the perspective of Somalis themselves. Thus, the organization commissioned a research and some of the key findings from interviews with Somalis living near the coast were as follows:

Lack of economic opportunity was identified as the principal driver of pirate recruitment;

Illegal fishing by foreign vessels was characterized as the fundamental grievance that sparked   piracy and provides ongoing justification for it;

Locals resent the international navies, believing they are in Somali waters specifically to protect illegal foreign fishing;

Attitudes towards naval forces are much more positive in areas where they have established direct, cooperative relationships with coastal communities;

There is widespread agreement that without changes to the underlying conditions, piracy will return (Kerins, 2016).

The "greed versus grievance" theory has also been fronted albeit in different perspectives by some authors. Alpers, for example, is of the opinion that the "economic vulnerability of Somalia and Puntland caused by the collapse of the Somali state, combined with the disabuse of Somali national fishing grounds by foreign commercial fishing vessels and the dumping of toxic waste have pushed many Somali fishermen into piracy as their only viable means of survival". He proposes grievance over illegal fishing and the dumping of toxic waste as primary causes of maritime piracy (Alpers, 2011). However, others suggest that piracy is a typical case of a shift in the motives of an armed group from grievance to greed (Menkhaus, 2009). However, according to Schbley and Rosenau, Somali narratives about the origins and development of piracy that depict pirates as aggrieved former fishermen defending Somalia against the depredations of foreign vessels fishing illegally in the country's waters are not supported by the evidence. They argue that while some pirates fitted this model in the past, they are relatively few in number and that most Somali pirates have never lived as fishermen given the marginal role of fishing in Somali culture and in the Somali economy (Schbley & Rosenau, 2013).

Maritime piracy in the Indian Ocean is not a recent phenomenon but was there in 1st century CE and in the late 13th century CE during the days of Ibn Battuta the great Moroccan world traveller (Alpers, 2011). Alpers asserts that piracy was a well known

economic activity that was regarded as a serious threat to the dominant trading powers in the wider Indian Ocean World in the olden days (Alpers, 2011). It can be argued that maritime piracy in Somalia is a profitable venture undertaken by influential entrepreneurs who exploit the underprivileged youth for financial gain and strengthening of their clan fiefdoms. This is what may be termed as the entrepreneurial motive of piracy. Ransom money paid for the release of vessels and crew is laundered by buying properties within the region or abroad; it is also used to buy more attack skiffs, weapons and pay the pirates who do the actual hijacking of marine vessels. As Middleton neatly puts it, "If Somalia provides the perfect environment for piracy, it is the payment of massive ransoms that provides the motivation" (Middleton 2008: 5). Even Alpers in the conclusion of his 2011 seminal paper stated, "the success of piracy has created an investment opportunity for organized crime and has transformed the centers of Somali piracy into boom towns that remind one of earlier pirates' coves on Soqotra and Ile Sainte Marie".

Maritime security is a fast growing field of study and research by academia and think tanks since the turn of the 21st century. The maritime domain and many of the maritime security challenges therein remain poorly understood. In 2014, *The Maritime Executive* called for a "new generation of scholarship, one that takes the linkages between seapower, marine safety, the blue economy and the resilience of coastal populations as a starting point" (The Maritime Executive, 2014). This paper attempts to analyze the security challenges that Kenya faces in the West Indian Ocean and efforts that can be made to surmount these threats. The paper, being limited in scope, cannot cover all security threats in depth and hence the insecurity issues dealt with herein are limited to maritime piracy and attacks at sea as well as their impact on the economy and security of Kenya. It should stimulate thinking and act as a primer for further research on how to tackle the security challenges currently facing the nation. The paper relied on secondary sources of information and data complemented by views from exchanges with various key actors in the Kenya maritime domain, scholars researching specifically on maritime security and Kenya's military officers with naval experience.

Effects of piracy on the Kenyan blue economy

During the 12th meeting of the United Nations Open-ended Informal consultative Process on Oceans and the Law of the Sea, 20-24 June 2011, the relationship between the oceans and the Three Pillars of Sustainable Development was examined. The three main pillars of sustainable development are: economic, environmental and social. These three pillars are informally referred to as people, planet and profits. The meeting declared that "the ocean is not only the source of life and its prime modulator and regulator, but also a primary provider of economic and social services to humankind" (Cherdsak Virapat).

The Economist magazine states that "a sustainable ocean economy emerges when economic activity is in balance with the long-term capacity of ocean ecosystems to support this activity and remain resilient and healthy" (The Economist, 2015). The ocean has therefore become a central point in the discourse on economic growth and sustainable development, both at national and international levels. Kenya and other African states have not been left behind and are in many ways at a defining era in setting their economic priorities in the ocean. The country has taken initial steps in setting its economic priorities in the ocean. How this is done in the next few years and decades depends on government commitment to harnessing the resources at sea viably and in cooperation with other states for security, safety and sustainability.

The oceans surrounding Africa and the littoral states are endowed with many resources, which remain untapped, and those accessible are exploited by foreigners. In October 2016, Togo hosted the African Union Extraordinary Summit of Heads of State and Government on Maritime Security and Development in Africa. The aim of the summit was to produce a roadmap with workable policy recommendations to encourage the emergence of a blue economy in Africa. The Heads of State and Government adopted the African Union Charter on Maritime Security, Safety and Development during the Summit. The charter proposes coordinated action between the countries of Africa to combat piracy and trafficking in drugs, arms and human beings on the continent's shores. The document will be incorporated into the 2050 Africa's Integrated Maritime Strategy, which was adopted in 2012. During the Summit, it was stated that Africa has a total of 13 million square kilometers of maritime economic zones and 17% of global freshwater resources. This wealth must be seen as an opportunity for sustainable development and harnessed. Of the 54 countries in Africa, 38 are littoral states. 90% of imports and exports are carried by sea and a significant number of the most strategic commercial shipping lanes lie within African maritime space (African Union).

The idea of the "blue economy" or "blue growth" goes hand in hand with the "greening" of the ocean economy, and a "sustainable ocean economy" - that is to say reaping resources in the ocean for a country's economic growth while maintaining the health of the ocean. Overexploitation of the resources in an environment of insecurity and poor policing of the oceans clearly goes against this virtue. Insecurity posed by pirates and other sea marauders creates a fertile ground for illegal fishing by those who can afford protection and denies the local fishermen with meager resources and equipment a source of livelihood.

As a maritime nation, Kenya has faced major security challenges from its geographical proximity to Somalia, a country in turmoil for close to three decades. Maritime piracy affects the economy of states of Africa, Kenya included. The menace represents a serious and sustained threat to economic security. Undeniably, from an economic point of view, pirates affect international trade through increased insecurity related to the

prompt delivery of the goods transported by sea. Ratisukpimol in his research found that piracy incidents affect the regional maritime trade volume (Ratisukpimol, 2011). Prior to the lull after 2012 in ship hijackings, the economic cost of piracy threat, not only from ransoms but also from skyrocketing insurance fees and spending on preventive measures, was estimated to have reached as high as $16 billion per year (Stratfor, 2017).

According to Middleton and other observers, piracy presents a real risk of an environmental catastrophe. The rocket-propelled grenades used by some pirates are capable of puncturing the hulls of oil tankers causing serious environmental pollution. Pirates have become audacious and use ever more powerful weapons which could set a tanker on fire, sink it or force the vessel ashore, any of which could result in an environmental catastrophe that would destroy marine and bird life for years to come (Middleton, 2008: 9).

The littoral states with long coastlines along the east coast of Africa from north to south are Somalia, Kenya, Tanzania, Mozambique and South Africa. Remarkably, among these states, it is only South Africa and Kenya, which have navies capable of deep-sea surveillance and patrolling their maritime areas of responsibility, and none has a navy possessing maritime expeditionary capabilities or what can be termed as a blue-water navy. The economic capabilities of most of these nations render them impotent and reduce them to sea blind spectators (an inability to appreciate the central role the oceans and naval power can play). There is a compelling necessity to initiate IOR-wide security cooperation, beyond the West Indian Ocean region to include all littoral states of the Indian Ocean, given the depth of the challenges and lack of institutionalized cooperation.

Progress in addressing security challenges

International cooperation and deployment of maritime patrol assets by an amalgamation of international naval forces is hailed as having succeeded in reducing attacks by Somali pirates considerably after 2012. However, *Oceans Beyond Piracy* found that the presence of coalition and independent deployers engaged in counter-piracy activities decreased by 15% in 2015 (Oceans Beyond Piracy, 2015). Even though much progress has been made in maritime security of the region over the past few years, there are still worrying incidents of piracy and other security threats and this trend is likely to continue. In Somalia, as a result of decades of political instability, weak governance, economic decline, high unemployment, continued inter-clan violence, and (potentially) foreign investment, piracy in the Indian Ocean may be on the resurgence.

In first four months of 2017, a number of attacks on ships in the West Indian Ocean by Somali pirates took place, after a noticeably calm five-year period in the region. So

far, many of the attacks have been restricted to small dhows, and Stratfor believes that dedicated naval patrols and maritime security contractors, which currently include, among others, assets from China, India, Iran and Spain, will help to keep down the incidence of pirate attacks on merchant ships (Stratfor, 2017).

Security research company Strategic Forecasting, Inc. (Stratfor), reports that Yemeni arms dealers are channeling arms and funds to Somali pirates; the kind of backing which clans can use to send their youth out to sea for piracy. Stratfor further claims that "Yemeni criminal investors are taking advantage of the chaos in their own country to provide financing to Somali pirates for vessels, weapons, ammunition, GPS devices, fuel and engines" (Stratfor, 2017). The prospects of resurgence of piracy in the West Indian Ocean are real and worrying if Yemeni financiers are backing piracy networks and providing access to equipment and other resources.

The graphic below, adopted from *International Journal of Security and Its Application*, show piracy trends in the African region 2005-2014. From 2010 to 2011 the number of attacks in Somalia waters reached a peak, so did it in the Gulf of Aden waters from 2008 to 2009. This graph clearly shows that piracy was on a decline after 2012.

Figure 2
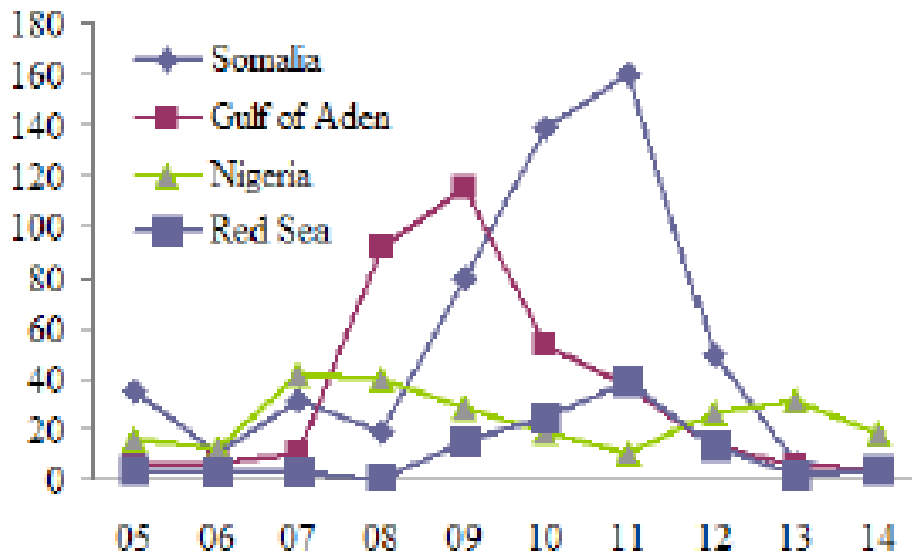
Data from *Oceans Beyond Piracy* for the period 2010 to 2015 for the Western Indian Ocean Region shows a decline in the economic costs of piracy. The costs came down from $ 7 billion in 2010 to approximately $ 1.3 billion in 2015 as depicted in Figure 3 below.

Figure 3: Economic costs of piracy
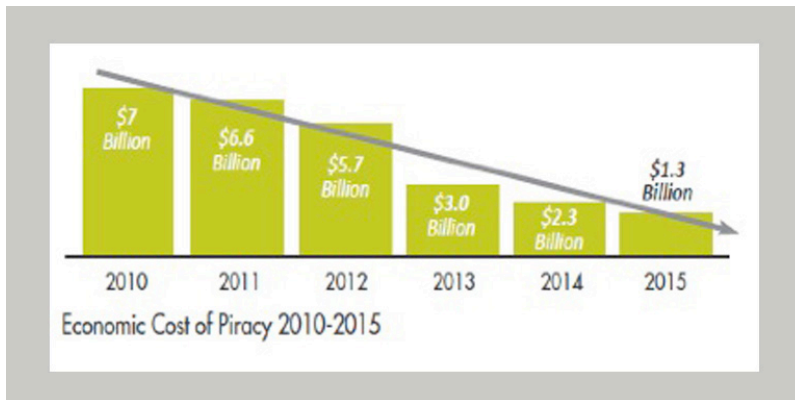
Source: Oceans Beyond Piracy

Oceans Beyond Piracy also found out that fuel costs decreased by nearly 50%, resulting in significant cost savings related to naval deployments and increased speeds. The number of seafarers taken hostage during the same period in the region also declined from 1,090 to 108 as shown in Figure 4 below.

Figure 4: Number of Seafarers taken hostage
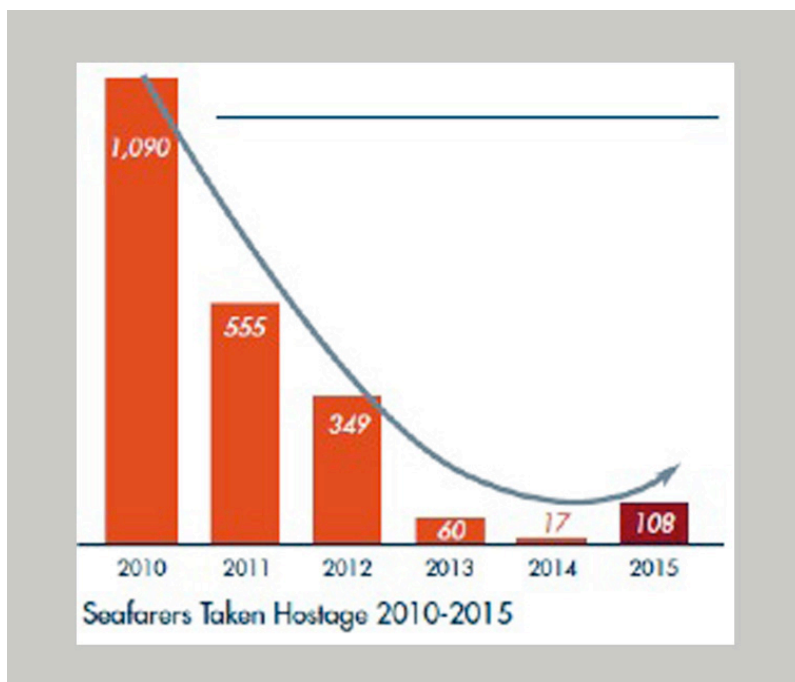
Source: Oceans Beyond Piracy

Potential areas of Inter-State cooperation

It is encouraging that in Africa, security matters in the maritime domain are being given regional and continental importance. The October 2016 African Union Extraordinary Summit of Heads of State and Government on Maritime Security and Development in Africa held in Togo was an important milestone towards the adoption of the 2050 Africa's Integrated Maritime Strategy (AIM). At this summit, the speakers focused on the blue economy and how combating issues of maritime security, organized crime, Illegal, Unreported and Unregulated (IUU) fishing, marine conservation and development planning can enable the maritime space to play a part in Africa's economic development. Noteworthy is that at the end of the Summit, the charter signed aims to prevent national and transnational crimes, including terrorism, piracy, armed robbery, drug trafficking, human trafficking, and illegal and unregulated fishing. African states should put into practice the idea of a blue economy by adopting a cooperative strategy geared at integrated policies on management and sustainable exploitation of marine resources.

The 2050 AIM Strategy provides a broad framework for the protection and sustainable exploitation of Africa's Maritime Domain (AMD) for wealth creation. It was realized that the rise in intensity of activities at sea was taking place against a backdrop of insecurity, various forms of illegal trafficking, degradation of the marine environment, falling biodiversity and aggravated effects of climate change (African Union). Recognizing that Africa's inland waters, oceans and seas are under pressure, African states adopted the above-mentioned 2050 Africa's Integrated Maritime Strategy in 2012. The Strategy integrates an annexed Plan of Action for its operationalization with a clearly defined vision with achievable goals, including specific desirable objectives, activities and milestones towards attaining the Strategic End State of increased wealth creation in a stable and secured AMD. The overarching vision of the 2050 AIM Strategy is "to foster increased wealth creation from Africa's oceans and seas by developing a sustainable thriving blue economy in a secure and environmentally sustainable manner" (African Union).

As stated earlier, one of the key strategic objectives of the 2050 AIM Strategy is the prevention of hostile and criminal acts at sea, and to coordinate/harmonize the prosecution of the offenders. This area requires harmonization of state laws so that justice is served equally across state boundaries. Structures should also be put in place for proper rehabilitation of convicted pirates and their re-integration back into society. Failure to do this will result in pirates who have been released from incarceration relapsing into their old habits and becoming instructors of potential recruits.

Kenya and her neighbours need to seek a unified approach to the management of resources in the West Indian Ocean guided by the 2050 AIM Strategy. Any country

bearing a do-it-alone attitude will surely fail; each country has something to offer no matter how poor. In line with the 2050 AIM Strategic End State, Kenya should seek increased wealth creation from her maritime domain that positively contributes to socio-economic development, increased national, regional and continental stability.

The Fisheries Management and Development Act 2016 established the Kenya Fisheries Services and the Kenya Fisheries Advisory Council and provides for the conservation, management and development of fisheries and other aquatic resources to enhance the livelihood of communities that depend on fishing. Functions of the Kenya Fisheries Services include, among others, ensuring the proper conservation, development of standards on management, sustainable use and protection of the country's fisheries resources. With this law in place, it is expected that Kenya will be able to protect her marine resources from exploitation by foreigners at the expense of her citizenry. Such laws should however be harmonized across the states in the region to be of mutual benefit to all since marine life travels across boundaries and Exclusive Economic Zones.

Kenya and Somalia belong to Southwest Indian Ocean Fisheries Commission (SWIOFC). This is one avenue that Kenya can exploit to front for a solution to maritime resources, especially fisheries, exploitation disputes with her neighbours. The Food and Agriculture Organization (FAO) states that the main objective of SWIOFC is to promote the sustainable utilization of the living marine resources of the Southwest Indian Ocean region by the proper management and development of the living marine resources, and to address common problems of fisheries management and development faced by the Members of SWIOFC, without prejudice to the sovereign rights of coastal States (FAO).

SWIOFC promotes the application of the provisions of the FAO Code of Conduct on Responsible Fisheries, including the precautionary approach and the ecosystem approach to fisheries management. The prolonged instability and state fragility of Somalia has meant that SWIOFC really has no one to discuss with in Somalia for proper management and safeguarding of marine resources in Somalia waters. SWIOFC appears to be dormant and an online search reveals that very few meetings by its members are held and the last report it released was in 2013. The Commission needs to be revamped, strengthened and used by states for the purpose it was created.

The EU Capacity Building Mission in Somalia (EUCAP Somalia) is a civilian EU mission, under the auspices of the Common Security and Defence Policy, which assists Somalia in strengthening its capacity to ensure maritime security. It contributes to the establishment and capacity building of maritime civilian law enforcement capability in Somalia, including Somaliland. Originally established as the EU Maritime Capacity Building Mission to Somalia (EUCAP Nestor), EUCAP Somalia is now under a new, broadened civilian maritime security mandate. With an active presence in Mogadishu,

Hargeisa (Somaliland) and Garowe (Puntland), EUCAP Somalia works to strengthen Somali capacity to ensure maritime security and to carry out fisheries inspection and enforcement, ensure maritime search and rescue, counter smuggling, fight piracy and police the coastal zone on land and at sea (EUCAP Somalia).

EUCAP Somalia needs to be supported by stable nations with a stake in the West Indian Ocean Region in order to gain from its gallant cause. Somali defence forces and civil law enforcement agencies should continue to be trained by peacekeeping forces and neighbouring states until such a time that they can stand on their own. The rule of law and strengthening of law enforcement apparatus on shore are critical pillars in the foundation of building a firm civil society in Somalia hinterland.

Naval forces in the Indian Ocean Region need to continue cooperating under their umbrella Indian Ocean Naval Symposium (IONS). This is a voluntary group that seeks to increase maritime co-operation among navies of the littoral states of the Indian Ocean Region by "providing an open and inclusive forum for discussion of regionally relevant maritime issues" (IONS Web). In the process, it endeavours to generate a flow of information between naval professionals that would lead to common understanding and possibly cooperative solutions to common maritime challenges. East African Littorals who are members of IONS are Comoros, Djibouti, Egypt, Eritrea, France, Kenya, Madagascar, Mauritius, Mozambique, Somalia, South Africa, Sudan and Tanzania. The breadth of member nations, which includes France, is considered a sound representation of Indian Ocean rim maritime agencies, and is a solid reflection on the combined commitment to the forum (IONS Web).

In April 2017, Kenya and Seychelles joined forces to end illegal fishing and combat piracy in the Indian Ocean. The two countries agreed to support best fishing practices as well as share intelligence on maritime security. This is a welcome cooperative agreement for the benefit of the citizens of the two states.

Maritime policing and civilian law enforcement capacity

Maritime patrol should include air surveillance assets for quick reach and reaction, ubiquity and other advantages offered by aerial platforms. These aerial vehicles are not cheap to acquire, operate and maintain and hence resources should be shared by the stakeholders in the maritime sphere of operations. Pooling of resources and sourcing of funding should be critical elements of discussion in coming up with a regional maritime policing strategy. Even if nations in the region boost defence spending astronomically, it is evident from their nature that transnational maritime security threats such as piracy cannot be addressed in isolation by individual states.

Despite the fact that international law is certainly sufficiently developed to cope with

piracy, the issue is how to promote the ratification, domestication and implementation of international legal instruments by member states. National legislations should be adjusted for the prosecution of pirates, while countermeasures and prosecution should be harmonized in the spirit of the objectives of the 2050 AIM Strategy. There is need to ensure security and safety of maritime transportation systems and sea-lanes of communication is coordinated regionally and on a continent-wide basis. Kenya should take immediate and concrete steps towards the domestication and implementation of international maritime law in harmony with the 2050 AIM Strategy.

Conclusion

In the last five years, piracy attacks on merchant shipping in the West Indian Ocean decreased but attacks at the beginning of 2017 show that the risk was still imminent. The international efforts and cooperation that drove down Somali piracy in 2012 should be stepped up once again to nip the resurgence of the phenomenon in the bud. These measures include but are not limited to constant naval patrols and aerial surveillance coupled with preventive and protective measures by shipping companies.

The commitment of diverse stakeholders is required to ensure progress in the establishment of the sea as a key driver of development for the African continent. The long term solution to the menace of Somali piracy lies ashore; the political solution of the country's internal problems, key among them being the removal of marauding clan militia, terrorists and safe havens for pirates. The management of the oceans, seas and waterways within the region so as to ensure sustainable, equitable and beneficial exploration of critical resources cannot happen without peace in Somalia. Piracy, radicalism and terrorism cannot be rooted out by military force alone; there is need to win   the hearts and minds of the vulnerable youth through education, providing income-generating projects, incorporating them into the main stream society and de-radicalizing those who have already been led astray.

There is an abundance of organizations and institutions in the IOR concerned with countering maritime threats including piracy and tapping the resources of the maritime domain. Clearly, it is not the lack of forum for deliberations that impedes tangible steps being taken towards solving the current security problems. Too many summits, conferences, resolutions, pronouncements, and all without linkages lead to confusion and isolated do-it-alone policies and action. The verdict is that many of these organizations do not implement resolutions and are underfunded. Despite some nations in the West Indian region increasing their defence spending, it is evident that transnational maritime security threats cannot be addressed by individual states in isolation. The resources required for policing the waters are enormous and call for concerted and cooperative efforts of all nations with interests in the region.

Kenya, as a key player in the drafting of the 2050 AIM Strategy and its associated charter, should adopt the resolutions of the 2016 Togo Summit and be a pacesetter in West Indian Ocean Region when it comes to implementing the maritime domain strategy. Kenya is economically at the verge of takeoff, has the wherewithal and potential as a regional powerhouse and international peace broker to make a difference. A strategic focus on the development of national ocean resources in a sustainable manner will be an important driver and enabler of the ocean economy for the country.

Recommendations

Efforts to stabilize and build Somali capacity such as EUCAP Somalia, the EU Capacity Building Mission in Somalia, should be encouraged. It is important that Kenyan authorities work in close cooperation with EUCAP Somalia and other international organizations to ensure Kenyan maritime interests are taken into account in their operations.

The resolutions and the charter signed in October 2016 during the Togo summit by the Heads of State and Government on Maritime Security and Development in Africa should be put into practice immediately so that issues of insecurity, marine protection and economic exploitation of the seas are handled collectively and with a unified vision. The 2050 Africa's Integrated Maritime Strategy, which was adopted in 2012, should be vigorously followed through by regional governments. The Plan of Action for its operationalization should serve as a reference point for coordinated government efforts.

African states should put into practice the idea of a blue economy by adopting a cooperative strategy geared at integrated policies on management and sustainable exploitation of marine resources. Consistent with the 2050 AIM Strategic End State, Kenya and neighbouring states should pursue increased wealth creation from the West Indian Ocean maritime domain for socio-economic development of their citizens, and seek increased national and regional stability through cooperative, coordinated, collaborative, coherent and concerted efforts. This will lay a firm base for improving the maritime sector activities and cementing the foundations of maritime governance.

Kenya should enhance maritime civilian law enforcement capacity in order to exercise effective maritime governance over its coastline, internal waters, territorial seas and exclusive economic zones. Particularly, Kenya should strengthen her capacity to fight maritime piracy, carry out fisheries inspections and enforcement by her naval forces, ensure maritime search and rescue, counter smuggling, and police the littoral zone and the sea. The establishment of the Kenya Fisheries Services and Kenya Fisheries Advisory Council in 2016 to ensure conservation, development of standards on management,

sustainable use and protection of the country's fisheries resources is a step in the right direction.

Maritime patrol should include air assets for quick reach and reaction, ubiquity and other advantages offered by aerial platforms. These aerial vehicles are not cheap to acquire, operate and maintain and hence resources should be shared by the stakeholders in the maritime sphere of operations. The results of cooperation among navies from the international community in stemming the tide of piracy at its peak in 2011 in the Indian Ocean is proof that even rival nations can come together for a common and noble cause. Regional maritime organizations and symposia such as the Indian Ocean Naval Symposium, which includes most of the littoral and stakeholder nations around the world, should therefore be encouraged and given full government support.

The East African naval forces should be strengthened through training and equipment with modern seagoing vessels, both large and small, supported by aerial surveillance and patrol craft. The concept of community policing, adopted by some East African states to assist in monitoring and reporting crime on land can be adopted for law enforcement at sea by providing local fisherman with training and equipment, and connecting them to a local monitoring system. Governments in the region have realized that securing their nations and sourcing of economic output is not cheap and a few years without modernizing their security forces and equipment takes many years to dig themselves out of the resulting rut. The objectives of achieving safety, security and freedom of the seas for economic prosperity should be pursed through supporting Kenya maritime authorities, in developing the necessary legislation and setting up judicial powers, and by providing the necessary mentoring, advice, training and equipment to maritime civilian law enforcement agencies.

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The Dynamic Nature of Terrorism, Violent Extremism and Countering Violent Extremism in Eastern Africa

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Abstract

The dynamic nature of terrorism in Eastern Africa is a thorn in the flesh of its inhabitants. Violent extremism is on the rise and the respective governments are struggling to contain the menace. Efforts to counter terrorism have been undertaken and are still underway albeit with many setbacks. The region is still prone to terrorist attacks. The Al Shabaab is the dominant terrorist group in the region. The group has capitalized on the vulnerabilities in the region such as porous borders, corruption and terrorist sympathizers. The word Al Shabaab is an Arabic word, which means "the Youth". These terrorists have caused fear and psychological torture to the people of Eastern Africa by their killings and gross human rights violations. The terrorists do not have any regard to Natural Law that dictates that it is immoral to kill. Consequently, the respective governments in Eastern Africa have waged war against the terrorists. International law gives States the right to defend themselves against external aggression. Indeed, nations in Eastern Africa, rightfully, defend themselves in order to safeguard national and regional stability, and thus maintain peace, justice and order.

Introduction

This article interrogates the dynamic nature of terrorism, violent extremism and efforts to counter violent extremism Eastern Africa. The countries involved include Kenya, Tanzania, Uganda, Burundi, Rwanda and South Sudan. The region is fraught with challenges that are posed by terrorism. These countries are sovereign states that are governed by the rule of law and have a duty to protect their citizens from terrorism.

The word terror has negative undertones and so is with terrorism. Terrorists are the people involved in terrorism. Nonetheless, they hardly see themselves as terrorists but as liberators, (self-proclaimed) armies, freedom fighters or such like 'noble' definitions. According to them, they are victims reacting against those they don't agree with be they governments or communities. The word terrorism is derived from the Latin word *terrere,*

which forms the root of the English word terrorism. Terrorism thus means "to frighten". Terrorism is designed to cause far-reaching psychological effects to the targets and also to the general population. It is also important to note that terrorism is perpetrated by non-state actors rather than by a state (Moghadam, 2006: 3-4). However, this assertion is arguable in that some states commit terrorist acts, and thus the word terrorism should be redefined.

The Tanzanian Prevention of Terrorism Act (PTA) sections 3, 4 (2) and 4(3) highlights some definitions of terrorism. Section 3 of the PTA defines a "terrorist act" as "an omission". Section 4 of the PTA highlights that "a person commits a terrorist act if, with terrorist intention, does an act or omission" that "may seriously damage a country or an international organization" through destabilization and intimidation of the constitutional order (Hubschle, 2007). Therefore, terrorism as an act or omission should be countered in order to avoid damages to a country or an international organization.

The dynamic nature of terrorism

The world is changing and so is the nature of terrorism. Technological advancements have resulted to more sophisticated and discreet ways of planning and executing violent extremism. The nature of violent extremism is now well orchestrated. The terrorists have identified and capitalized on the vulnerabilities facing the Eastern African countries and thus manage to strike with relative ease. It should be noted that terrorism is not a 'weak weapon' of the 'weak' but their best possible choice. Terrorism has a dynamic nature in that it does not require massive financial capabilities or training and can be done with negligible resources. A single terrorist is therefore capable of inflicting numerous deaths and damages. Violent extremists are ready and willing to wear suicide vests, blow themselves up and cause deaths of many people and lead to massive destruction of property (Bell, 1978: 98).

Al Shabaab has cast a dark shadow over the relative peace that has prevailed in Eastern Africa. This group of terrorists hails from Somalia, which is categorized as a fragile state. The leadership of the group drew from across clans in Somalia, which had a common vision of uniting Somali-inhabited areas of Eastern Africa under an Islamist caliphate (Ploch, 2010: 6). Along the Somali coast, the militant Islamist movement known as Al Ittihad Al Islamiya (AIAI) which is the Arabic name for "the Islamic Union" managed to penetrate into that region with a goal of establishing a pan-Somali Salafist emirate (Dagne, 2005). In addition, Marchal (2009) posits that Al Shabaab was established by the Al Qaeda former commanders who had ties with AIAI group of terrorists. Al Qaeda is a terrorist group that launched its operations and facilitated training of new recruits in Sudan. This was after they attacked the country and caused deaths and injuries to the people. Variably, the Muslim Brotherhood, Hezbollah,

Hamas, and some Palestinian terrorist groups have managed to launch attacks in the region (Balance, 2006).

Our valiant and brave soldiers have done their best to secure the region. Nonetheless, Al Shabaab has employed intimidation and terror tactics that have instilled fear among the populace (Human Rights Watch, 2010). The terrorist groups are involved not only in guerilla-style attacks but also do engage in conventional military tactics. They have used these tactics to attack the Transitional Federal Government (TGF) of Somalia and also the African Union (AU) forces. The Al Shabaab group use sophisticated weaponry in their attacks including grenades, mortars and automatic weapons. They also use guided surface-to-air missiles known as man-portable air defense systems (MANPADS). At one time in 2007, they used a type of missile known as SA-18 to shoot down a cargo plane in Mogadishu (United Nations Security Council, 2007).

Approaches to counter violent extremism in East African countries

An African scholar namely Dagne (2004) indicates that there exist internal indicators that make Africa to be a major player in the war against terror. He noted that abject poverty and rampant corruption in many parts of Africa provide avenues for terrorism to thrive. Besides, factors such as political, ethnic and religious tensions are seen as catalysts that enhance terrorist activities. It is for this reason that the respective governments in Eastern Africa need to adopt a holistic approach to counter violent extremism. The governments, for example, can address the scourge of corruption, which in turn would result in the creation of jobs and thus mitigate unemployment. Creation of job opportunities would ensure that the youth, who are susceptible to joining the terrorist groups due to abject poverty, are gainfully employed.

Kenya has witnessed several terrorist attacks including, for example, the Al-Shabaab terrorist attacks on innocent people in Lamu County who, among them, included the Kenyan Defense Forces (KDF). In his address to the nation on countering terrorism, the President of Kenya, Uhuru Kenyatta, declared a major security operation to wipe out Al-Shabaab. He observed that "no one has a right to take other people's lives or cause fear. When we get the terrorists, we will not jail but bury them". He further called on the residents of Lamu County to cooperate with the security officers and give information that would aid in the fight against terrorism (Daily Nation, July 18, 2017). This counter terrorism message was aimed at condemning and finding a solution to the menace. In the same county of Lamu, eight people , among them four police-men and four pupils, died on (?) when a police vehicle hit an Improvised Explosive Device (IED) that had been planted by the terrorists in Mangai. Additionally, some pupils from Arid Zone Primary School were reported to be missing after an Al-Shabaab

attack (Daily Nation, June 28, 2017). Therefore, the order by the President to kill the terrorists was meant to deter and prevent more attacks in the county/region.

To ensure regional stability, the Kenya Defence Forces (KDF) moved into Southern Somalia on 16th October 2011. Thereafter, the African Union (AU) request for the KDF to be integrated into the African Union Mission in Somalia (AMISOM) was granted. By (?) KDF accounted for 26% of the AMISOM forces. The forces managed to drive out Al Shabaab out of Kismaayo. In retaliation for deployment of the KDF in Southern Somalia, the Al Shabaab attacked the Westgate Mall in Nairobi in 2013. After the capture of Kismayo by the AMISOM, the Al Shabaab financial capabilities were significantly reduced which helped to counter their terrorist activities (Unuoha, 2013).

In Uganda, measures have been put in place to counter terrorism. In 2002, Uganda enacted an anti-terrorism legislation that provides the legal basis for prosecuting suspected terrorists (Ploch, 2010: 59). Part III of the anti-terrorism legislation states that "Any person who engages in or carries out any act of terrorism commits an offence and shall, on conviction: a) be sentenced to death if the offence directly results in the death of any person; b) in any other case, be liable to suffer death (The Anti-Terrorism Act, 2002). Uganda has contributed the majority of the African Union (AU) peacekeepers in Somalia. In this way, the country has helped tackle the problem of terrorism in the region. In addition, through the deployment of soldiers, Uganda has made efforts to counter the terrorist activities posed by the Lord's Resistance Army (LRA) rebel group in East Africa as well as in Central Africa (USA Department of State, 2009).

This notwithstanding, Uganda experienced a bombing attack in 2010. In response, the government charged more than 30 people who were connected with the attacks. These included 14 Ugandans, 10 Kenyans, six Somalis, one Rwandan and a Pakistani (Simon, 2010). The government of Uganda stepped up its efforts in countering any such recurrence of bomb attacks by equipping its military and police force with skills and weapons. The Assistant Secretary of State for African Affairs, Johnnie Carson, argued that the Al Shabaab's terrorism beyond Somalia indicated that the threat had risen. He pointed out that the Kampala bombings were a "wake up call" for the alertness of the international community in its fight against terror (Carson, 2010).

On 7 August 1998, the United States of America (USA) Embassy in Kenya was bombed by terrorists who detonated a large bomb that killed at least 213 people and injured thousands more. Kenyan hospitals admitted an estimated 5,000 wounded people (Driscoll, 2001). On the same day, another bomb blast occurred in the USA embassy in Tanzania that killed 11 people and injured 85 (Keller, 2005). Following these two terrorist attacks, key suspects who included Osama Bin Laden's personal secretary, Wadih el Hage, and a Comorian citizen, Fazul Abdullah Mohammed who had trained with Al Qaeda in Afghanistan, were apprehended. The two suspects and their four accomplices were sentenced to life in USA prisons (Ploch, 2010: 5).

On the international arena and precisely after the 2001 terror attack on the USA, President Bush administration declared a "war on terror". This initiative had a direct implication to the Muslims who lived in East Africa. They began to experience human rights violations and became subject to intrusive legislation. Such legislation was the 2002 Tanzania's Prevention of Terrorism Act (PTA) (Mbogo, 2002). In addition, in 2005, the government of Tanzania stepped up its efforts in countering terrorism. This led to the establishment of a National Counter-terrorism Centre that was mandated to share and analyze data among agencies and coordinate response when terrorists attack. With the financial assistance from the USA, courses were offered in criminal investigation, crisis response, small arms trafficking, among other related courses (Ploch, 2010: 57).

Conclusion

The deadly implications of the dynamic nature of terrorism have been felt near and far. The Eastern African countries have been left to grapple with a regional security that in turn affects the global security. Respective governments in the region have made counter terrorism efforts but more needs to be done in order to seal loopholes in the security architecture. These governments have the legitimate authority to implement legislations made to counter terrorism. The AMISOM forces are doing their best to fulfill their mandate and thus should be supported in their peacekeeping efforts . Corruption should be comprehensively addressed if the region is to secure its borders and stem terrorism. Unfortunately, the region continues to contend with the reality of Al Shabaab attacks, a factor that should motivate every citizen to keep vigil and share information on any suspected terrorist activities with the relevant security organs of state in order to secure the region.

Recommendations

It is imperative for the Eastern Africa governments to work with all stakeholders such as the civil society and the local people in order to share information that would preempt and prevent terrorist attacks.

Corrupt government officials, regardless of their rank, should face disciplinary actions and made to return all stolen money that can be used to, for example, to create jobs and thus alleviate abject poverty in general, and specifically, engage poor citizens, particularly the idle youth who are easily enticed to join the terrorist groups for economic gains.

It is incumbent upon the governments in Eastern Africa to strengthen security systems within and without their borders. Due to the fact that many borders are porous, the

security personnel should always be vigilant and resist potential compromise by terror groups. In addition, governments in the region should refrain from politicizing or discrediting the work done by AMISOM and should fully support its operations in Somalia.

In conclusion, Eastern African countries should work together, share intelligence and support one another and fight, as a unified entity, to counter terrorist groups and their terror activities.

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The Challenges of Reforming Security Sector in Kenya

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Abstract

The security sector in Kenya is under scrutiny due to innumerable security concerns that range from terrorism to criminal activities of vigilantes and militia groups and ethnic related violence. The institutional and structural weaknesses within the security sector together with increased security threats promote a critical re-examination of the process of reforming the sector.

Introduction

Kenya has over the years enjoyed relative peace and security compared to her neigbouring countries. Yet there are security governance challenges that play out at local, regional, and international level. Crime and insecurity is a major challenge in urban and rural areas. Banditry, international terrorism, proliferation of arms, organized gangs and militia point to the declining role of the state over security. This article is divided into four sections. Section one deals with the insecurity; section two provides an overview of national regional and international policy frameworks on peace and security, section three deals with the implications of insecurity; section four is about security sector reform in Kenya and finally section five provides some recommendations.

Section one: Drivers of insecurity in Kenya

This section discusses several drivers of insecurity in Kenya

Small Arms Proliferation

Small arms availability continues to pose a security threat in Kenya. The report by Kenya National Focal Point on Small Arms and Light Weapons (KNFP, 2013) indicate that there are approximately 680,000 illegal firearms in circulation in Kenya. High concentration of the illegal arms is found in Mandera, Wajir, Garissa, Marsabit, Turkana, Samburu, Isiolo, Tana River, West Pokot, Baringo, Nairobi and Laikipia

counties while medium concentration of illegal small arms is found in Nakuru, Narok and Kisumu, among other counties. The proliferation of small arms pose security risks to the nation; facilitate and exacerbate violence, disruption of social cohesion and displacement of persons.

Political violence

Political violence in Kenya is understood in political context as: state repression and privatized violence was witnessed in 1969, 1975, 1988, 1991, 1993, 1995, 1996, 2002, 2004, 2007 and 2008. Political violence due to personalization of power and hegemonisation of ethnic politics contribute to displacement of persons and the climate of insecurity. For instance in 1993, 300,000 people were displaced and 1,500 died in political violence; 1995, 350,000 persons were displaced with 1,800 dead; in 2004, 360 displaced and in 2007 and 2008, about 66,921 were displaced and 1,133 died (Mueller, 2011).

Terrorism

Kenya is a good target for global terrorism because of a combination of geographic, regional, historical, political, economic and socio-cultural factors. The country's close ties with Israel and western countries, especially the USA, is a cause of resentment by terrorist groups. The relatively good transport and communications infrastructure enable the terror gangs to communicate and move easily. The political and socio-economic deprivation of some sections of the population, especially the youth, is an incentive for radicalization that contributes terror activities. Porous international borders with many unstable neighbors, especially Somalia and South Sudan, have resulted in a large inflow of refugees into Kenya. The neighboring countries, with varying degrees of political instability, undermine their ability to provide for their peoples' basic needs especially safety or protect their territorial integrity. Of the surrounding countries, Somalia shares a 700-kilometer boundary that is hardly marked.

Extremist Islamic groups such as Al-Ittihad al-Islami and Al-Qaeda Al-Ittihad al-Islami and Al-Qaeda have both managed to infiltrate cross-border refugee traffic and established Somali refugee camps in Kenya's North Eastern Province and have made their way into Somali dominated neighborhoods in Nairobi and Mombasa. From these convenient hideouts, these terror groups have been able to map their targets and mount terror attacks.

The collapse of the state of Somalia has graver impact on upsurge of terrorism. Furthermore, the extremist militant groups that formed Islamic Courts Union and today al-Shabaab have links with Osama bin Laden's al-Qaeda terrorist organization. Some prominent militants of al-Shabaab are said to have had paramilitary training

at al-Qaeda camps in Afghanistan. Furthermore, some of the radical Islamic militias' commanders in Somalia are themselves Kenyans who have been bent on recruiting many young Kenyans to fight in the Somalia jihad (Daily Nation, June 22, 2009). Such developments pose a serious security threat to not only Kenya, but also the entire Eastern Africa. The security threat is real and of great concern particularly in considering the fact that Kenya has been a target of terrorist attacks since the 1975 with two blasts in central Nairobi, inside the Starlight nightclub and in a travel bureau near the Hilton hotel. This was followed, in 1980, by the Norfolk Hotel bombing killing 20 and several injuries and in 1998 the bombing of the Embassy of the USA. In 2002, there was a failed missile attack on an Israel plane in Mombasa airport and the Kikambala bombing where 13 people were killed and 80 injured. Between 2011 and 2012, the Al-Shabaab launched 17 attacks killing at least 48 people and injuring 200. In the 2013 Westgate attack, 70 people died and scores were injured (The Star, October 8, 2013, Chronology of Terrorist Attacks in Kenya).

Refugees

Kenya is home to refugees from neighbouring countries such as Somalia, Ethiopia and South Sudan. Many of them crisscross the country's international borders at will. Additionally, Kenya's limited financial and human resources undermine its ability to better police her borders hence the country's inability to stop weapons smuggling and would be terrorists' entry into the country.

In 1984, Kenya hosted about 6,000 refugees mainly from Uganda and Sudan (Gorman, 1987). By 1992, the influx of refugees had soared to about 500,000 (Daily Nation, June 8, 2008). This led to congestion of the three Dadaab camps of Ifo, Dagahaley, and Hagadera and, Kakuma in Turkana County. Variously, there have been sporadic violent conflicts between refugees and the host population over resource use and employment opportunities. It has been pointed out that the influx of refugees has the potential of spreading diseases in the host country. In 2007 for instance, Kenya recorded the first polio cases in the districts that experienced refugee influxes. These, among others, are developments that have security bearing in the refugee host countries (Patrick, 2007).

Institutional and legal weaknesses

Legislative action

On 30 April 2003, the Suppression of Terrorism bill to guide Kenya's future response to terrorism sought to (1) criminalize unlawful weapons training, the leading of terrorist organizations, possession of articles on terrorism, being a member of or supporting a terrorist organization (Kenya 2003); (2) confers extra powers on police and spells

out cooperative procedures to enable Kenya to work with other countries to combat terrorism; (3) provides punishment, and or life imprisonment for anyone convicted of terrorism; and, (4) allows for the seizure of property acquired through terrorism. The bill was however opposed by a cross-section of the populace because of its alleged bias towards members of the Muslim community.

Laxity within the security apparatus

The laxity in the country security apparatus in stepping up security measures complemented, for example, by consistent patrols of Kenya's Indian Ocean territorial waters makes the country vulnerable to terrorist infiltration. The failure by the police to curb illegal immigration and the smuggling of narcotics and other contraband goods like weapons into country also, contributes to increased insecurity.

The lax security and immigration laws make it easier for terrorists to enter and blend easily. The government has taken a number of measures aimed at strengthening the forces' ability to combat terrorism through the creation of an Anti-terrorism Police Unit and of a National Counter-Terrorism Center to provide an institutional framework to combat the terrorist threats. However, these counter-terrorism efforts, such as, technical collaboration in detection and disarming of bombs, protection of government leaders, hostage negotiations and enhancement of airport security have not borne the desired results given the increased terrorist attacks in Kenya.

Ethnic related violence

Kenya has also experienced ethnic clashes resulting from competition over resources. Ethnic clashes are also caused by the elite for political reasons. Such conflicts were witnessed between the Orma and Pokomo tribes in Tana River District that resulted in the deaths of 118 people and more than 13,500 displaced with an additional 30,000 people affected by ethno-political clashes. Over 50% of the 13,500 people displaced were children and the rest women and the elderly. There are many other ethnic related violent incidences that have occurred in country culminating in the infamous 2007-2008 post-election violence that embraced ethnic dimensions.

Vigilantes, gangs and militia

The National Crime Research Centre study, released on 30 August 2013, showed that some of the notorious gangs in Kenya included: Sungu Sungu, Mombasa Republican Council (MRC), Brothers, Kamjeshi, Sabaot Land Defence Force (SLDF,) Jeshi La Embakasi, Super Power, Siafu, Kamukunji Pressure Group, Kibera Batallion, Kenya Youth Alliance, the Nubians, Angola Msumbiji and Kamkunji Boys. These groups contribute to a climate of insecurity.

The above discussion point to the security threats in the country but the security also suffers from institutional capacity, limited resources, and lack of skills to combat modern crime and diminishing public trust of the security institutions. Despite this, there several local, regional and even international coordinated efforts to deal with insecurity as noted in the following section.

Section two: Government initiatives in reforming the security sector

In 2008, the Agenda IV, as agreed under the National Accord, established principles of partnership of the coalition government that brought to an end the post-election violence. Agenda IV as agreed under the National Accord also established the Truth, Justice and Reconciliation Commission (TJRC) in 2009 to spearhead a national process of truth telling, healing and reconciliation.

The enactment of the 2010 democratic constitution and subsequently the establishment of a National Task Force on Police reform, into an effective and accountable institution, were based on the recommendations of the Waki and Ransley Reports stemming from the 2007/8 post election violence (PEV). Other security initiatives include the creation of the Kenya Police and Oversight Board; Policy coordination: Cabinet Security Committee, Provincial administration, National Security Advisory Committee, and National Committee on Security and Foreign Relations to improve on security.

Funding the Security Sector through National Budget

In (?), budget allocation for national security was as follows: Ksh. 67 billion for national police service; Ksh. 4 billion for purchase of security equipment; Ksh. 4.5 billion for security operations, Ksh. 1.5 billion crime research and investigation, Ksh. 3 billion to motorize the police; Ksh. 1.2 billion for housing; and, Ksh. 16.1 for judiciary transformation programmes.

Capturing security matters under the First and Second Medium Term Plan of the Kenya Vision 2030

The Kenya Vision 2030 was launched in 2008 to promote industrialization, incomes and high quality life to all its citizens by the year 2030. The Vision is implemented through successive five year Medium Term Plans (MTPs), which provide focus and direction to Kenyans and all other stakeholders, on the nature of programmes necessary to meet future goals as envisaged by the Vision 2030. The first MTP launched simultaneously with the Vision expired in 2012. Several challenges were registered in the security sector including: organized crime, resource conflicts, political violence, drug and substance abuse, transnational crime and the proliferation of small arms.

The second MTP (2013-2017) was launched in June 2013 and implemented within the context of the Kenya Constitution 2010, which gave rise to a devolved structure of government and hence new and distinct governance structures at the national and county levels. The second MTP endeavoured to steer the economy onto a growth path to achieve an average of 10 percent Gross Domestic Product (GDP) growth rate per annum by 2017.

The MTP prioritizes policies, programmes and projects to reduce poverty and inequality including meeting the remaining Millennium Development Goals (MDGs) targets. The Constitution of Kenya 2010 provides calls for participation of Kenyans in the policy making and planning process. Within the security sector it commits the country to the adoption of policy, legal and institutional frameworks in security, peace building and conflict management. This includes improved safety and security; enforcement of law and order; building harmony among ethnic racial and interest groups; promoting peace building; and, restraining people from using violence to resolve disputes.

Regional security frameworks

The regional security frameworks include, among others, those of the United Nations and African Union on peace and Security; Regional Oversight Mechanism of Peace and Security and Cooperation of 2013 by International Conference between Great Lakes Region (ICGLR); East African Community (EAC) regional policy framework for peace and security and the IGAD coordinated Peace and Security Division.

International frameworks

There are number of international security frameworks to promote peace and security that Kenya subscribes including:

The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW holds states responsible for ending discrimination against women, which it defines in Article 1.

The Beijing Declaration and Platform for Action (1995). The Beijing Declaration resulted from the Fourth World Conference on Women and aimed to promote the advancement and empowerment of women.

The United Nation's Security Council Resolutions (UNSCRs) 1888 and 1889 (2009) that builds on UNSCR 1820 by mandating that sexual violence be addressed in peace processes and calls for the deployment of experts and a Special Representative on Sexual Violence in Conflict. The UNSCR 1889 calls for an increased role for women at the top levels of mediation as well as mandating the UN to collect gender-segregated data on all activities related to peace and security.

The UNSCR 1960 (2010 encourages the inclusion of women in police, civil and military functions during peacekeeping missions.

The UNSCR 2106 (2013) requests relevant UN entities to assist national authorities in addressing sexual violence, with effective participation of women, in security sector reform (SSR) and justice sector reform processes, specifically through training, increasing female recruitment and implementing vetting processes that exclude perpetrators of sexual violence from serving in security institutions.

Section three: Implications of security challenges in Kenya

One of the major security challenges facing Kenya is terrorism, which has had negative impacts on the country. Though widespread, the economic effects of Kenya's terrorist attacks are most noticeable in the tourism sector. The terror attacks have also resulted in profound negative sociopolitical effects in Kenya including the loss and disruption of lives, growing tension between Muslims and Christians, radicalization of the country's Muslims, harassment of Kenyans by the security forces, erosion of the country's sovereignty and rising anti-western sentiments. The tension stems from differences in the perception of the country's terrorism risk and the issuance of economically harmful travel advisories on Kenya. Ethnic related violence contributes to ethnic rivalry while gangs, vigilantes and militia groups undermine and erode the public confidence of the state capacity to provide security.

Section four: Reforming the security sector

Gender Mainstreaming of the Security Sector in Kenya

Gender mainstreaming is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.

In the context of SSR, gender mainstreaming involves considering the impact of and on security programmes and how different security needs of women, men, boys and girls are taken care off. Gender and SSR is a process of transforming security sector on several fronts. Among others, it includes the promotion of gender initiatives such as gender training for security sector personnel and mentoring schemes to facilitate the professional development of female police officers. Gendered budgets ensure that resources are distributed equally. The promotion of equal participation of men and

women in SSR processes and security sector institutions is a method of strengthening local ownership as well as increasing representation and effectiveness. In relation to SSR processes, this may involve ensuring that women and men are equally involved in SSR needs assessment, monitoring and evaluation, and that representatives of women participate in SSR policy- and decision-making. Because men are over-represented, promoting equal participation generally involves increasing the recruitment, retention and advancement of women.

Dealing with male-dominated, militarized command structures remains a challenge in the military. Recruiting more women into newly reconstructed security sector institutions and ensuring that the newly reformed justice institutions take into account the needs of both men and women are instrumental in reforming the security sector.

According to the UN 2008 report gender security sector reform is key to developing security sector institutions that are non-discriminatory, representative of the population and capable of effectively responding to the specific security needs of diverse groups. Gender dimensions are often included in SSR processes as part of a country's commitment to UN Security Council Resolution 1325 (2000), which calls for wider female participation in all aspects of post-conflict reconstruction and for more consideration of the specific needs of women and girls (UNSCR, 1325).

Constitutional amendment

Reforming the security sector by restructuring National Intelligence Service has its challenges. The national intelligence Security Act, first and foremost, violates the bill of rights because of the arbitrary powers bestowed upon the National Intelligence Service officers to detain suspects, search and seize private property and monitor communications in the pretext of protecting national security. It also violates the rights of refugees and freedom of association and assembly.

Institutional security reforms

Benefits of SSR

Effective Service Delivery

One of the key tenets of SSR is that the security sector should be designed to serve the security and justice needs of the population. A person's gender including sexual orientation, plays an important part in his or her own security needs. Women, men, girls and boys have different experiences in areas such as sexual violence, trafficking in human beings, gang violence, and robbery, among others.

Achieving security sector objectives

To effectively achieve the objectives of the security sector reform, gender perspectives are useful tools. For example, in order to encourage women who have been victims of sexual violence to report the crime, it may be important to give them the option of speaking to a woman police officer, perhaps in a specialized police station. In cases where men are affected, similar provisions may also be needed.

Forming partnerships and collaboration

It is important to form partnerships between security providers (e.g. police, justice institutions and prisons), health care providers and civil society organizations, as part of a holistic approach to SSR.

Collaboration between security sector institutions and civil society groups involved in gender issues can increase the effectiveness of the security sector. Such groups can deliver training, support policy development, and on an ongoing basis provide complementary security and justice services and keep security forces informed about issues within communities.

Appropriate staffing

If security sector institutions lack either male or female staff at any level, their staff will possess a smaller skill set which, limits their operational options.

Cultural aspects

Certain security roles might for cultural reasons only be able to be performed by personnel of a particular gender thus, requiring both male and female personnel for effective operations. For example, in many cultures it is inappropriate for a male police officer or soldier to search a woman. Likewise, in intelligence gathering, civilians may only be willing to speak with security sector personnel of a certain gender

Local ownership

Local ownership has been recognized as a key pillar in ensuring that SSR is both implemented correctly and sustainably. The reform of security policies, institutions and activities must be designed, managed and implemented by local actors rather than external actors. Given that security and justice needs vary by gender, it is important to ensure that people of different genders are consulted and involved in SSR processes. In practice, this can be achieved by involving women's groups, youth groups and other organizations that work on gender-related security issues such as human trafficking, gang violence and human rights.

Oversight and accountability

Improving oversight and accountability of the security sector can ensure the sustainability of SSR by building trust among the population and by deterring security sector personnel from abusing their power. To be effective, it is essential that security sector oversight bodies and accountability mechanisms (parliaments, national human rights institutions, complaints bodies, local security fora etc.) adopt a gendered perspective. This involves both giving particular attention to the different types of violations committed by security sector personnel against people of different genders, and monitoring the quality of services delivered to people of different genders.

Police ratio to civilian population

The United Nations recommended ratio for police to civilian is one police officer for every 450 citizens. For countries like Kenya, this is far from reality because the Kenya Police force of about 40,000 translates to one police officer for every 1,150 civilians. Even worse, in cases like Kenya, the few police forces are also underfunded and poorly equipped which is compounded further by poor pay, poor housing and accusations of corruption all of which negatively affects the provision of security to the public. In many cases, attempts to recruit more people to boost the police force and bridge the police-civilian ration gap is hampered by lack of funding, corruption and logistical challenges

Section Five: Conclusion and recommendations

Public participation, including civil society, in security sector reform contributes to civilian ownership of the security processes. The involvement of the community can take the form of neighbourhood policing; using local-level communications/newsletters and face-to-face meetings organized by police officers to improve the perceptions of police by the community.

The media has an important role to create public awareness, understanding and participation in security matters. The media can enhance the public responsiveness to security concerns through information albeit in a responsible manner. It should also be noted that the public has a right to be informed on security matters.

Engendering the security sector is a crucial component of security reform. Equally, increasing gender representation in the security sector can be a positive influence if it meets the needs and interests of various genders.

Research and academic institutions can assist in improving curriculum and conceptual understanding of security. The security sector curriculum should promote democracy,

human rights, good governance and the creation of a culture of accountability and transparency in the management of security sector processes.

The process of recruitment into the security sector should be divorced from the security institutions themselves and left to oversight bodies in order to minimize corruption that undermine the process. Reforming the vigilante and militia groups into the security sector framework can also contribute to a stable security environment. Countries should also develop regional security policy frameworks that can facilitate dealing with transitional crimes.

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Geo-politics, the Asylum Seekers and Refugees in Kenya

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Abstract

This paper is premised on the principle of geo- politics in the context of asylum seekers and refugees in Kenya. It is argued in the paper that Kenya has been and is increasingly becoming an attractive destination to asylum seekers and refugees because of its relatively longer period of political and economic stability. Its close proximity to the other surrounding nations experiencing political instability, porous borders and institutional weaknesses makes it a much easier preference for asylum seekers. Over the years Kenya has also developed a reputation of being an accommodating destination to asylum seekers and refugees. This has been evident by the existence of Dadaab and Kakuma refugee camps for more than two decades.

The legal framework in Kenya concerning refugees including the refugee act, the Banjul charter, the United Nations Convention on the status of refugees and its protocols and the Constitution of Kenya Article 2(6) implies that Kenya domesticates the international law and hence creates a stable infrastructure for refugees.

The presence of international organizations related to refugees such as the UNHCR and IOM in Kenya plays a contributory role as to why refugees prefer Kenya as a destination of asylum. Such bodies plays a supervisory role by ensuring that refugee and human rights are respected and promoted. The principle of non-refoulement under international law mandates the host country of refugee population such as Kenya from refouling refugees back to their country if it is experiencing instability. Kenya has over the years upheld this principle and hence creating relative stability for the refugees and asylum seekers. The paper will also interrogate how the changing security environment, and strain on resources and limited international support is affecting and likely to affect the status of refugees in Kenya.

Introduction

This paper is contextualized in a complex geo- political environment through which the refugees navigate. The geo-politics of the region, the changing diplomatic realignment, migration patterns and legal environment explain the pull and push factors relating to refugee mobility. The changing security environment, national interest, sovereignty and refoulement or non-refoulement of refugees principle is also discussed in view of the escalating refugee crisis in the region.

Geo-politics and refugee mobility

Geopolitics intertwines ethnic, religious, class, conflicts, domestic politics and refugee movements. The motivation for migration is also crucial as well as the historical perspectives and challenges associated with protecting human rights. Geo politics also includes geographical variables including topography, climatic conditions, natural resources such as water and food in relation to refugee migration and movements. Geo politics looks at political power, institutional frameworks as well as the legal frameworks through which refugees navigate to reach safe havens. Geo politics also encompass the push and pull factors that contribute refugee movement both in crisis and non-crisis situations.

The Spatial patterning of refugees

Geographical variables and spatial patterning of refugees influence refugee entry points. Refugee entry points into Kenya are through the Liboi border post from Somalia, border point One Village, Lamu, Kiunga and Dobley. Refugees from South Sudan enter Kenya through Nada pal and Kakuma. The Oroma refugees from Ethiopia enter Kenya through border points such as Sololo, Forolle, Dukana and illeret. Factors that influence the entry points include, for example, accessibility that is, flights, friendly land borders and availability of natural resource like water. According to UNCHR report 2011 Kenya is among the top five destination for refugees worldwide behind Pakistan, Iran, Syria and Germany.

Political-diplomatic realignment model

The states in the Horn of Africa answers to Hobessian model. The region may be answering to the characteristics of the Hobessian state of nature because of conflict and war. For example, in 1991, Ethiopia witnessed the overthrow of the military government by the Ethiopian People's Revolutionary Democratic Front. In 1995, a new constitution installed the transitional government of Ethiopia but the country continues to experience

internal challenges. Sudan (including now South Sudan) has been a theatre of conflict for more than a quarter a century. Djibouti has enjoyed relative stability despite internal opposition. Uganda has faced challenges from rebel activities from the Lords Resistance Army (LRA) and West Nile Bank Front. Somalia ceased to be a state in 1991 and the process of reconstruction has been difficult.

The region also exhibits shaky inter-state relations. Ethiopia, Eritrea and Uganda have loosely aligned against Sudan from what is perceived to be threats from dissidents based in Sudan. Ethiopia accuses Sudan of supporting the creation of the Islamic Oromo State. The Kampala government is also accusatory of Sudan for supporting LRA. The Ethiopia, Eritrea and Djibouti relations are equally strained due to the question of Afar. Eritrea is suspicious of Djibouti for supporting irredentist activities by the Afar group who live in both Eritrea and Ethiopia. There exist border clashes between Eritrea and Ethiopia and South Sudan is accusatory of Eritrea and Sudan for allegedly supporting South Sudan opposition forces

The Ethiopian Oromo anti-government groups have over the years sought refuge in Sudan; but Sudan's warming relationship with Ethiopia since 1991 meant that SPLA did not have a safe haven in Ethiopia nor military support and training which left Kenya as the optional haven. The increased political instability in southwestern Ethiopia stems from opposition and political activities of the (Oromo Liberation Front (OLF). With the exception of Djibouti, all the states exhibit elements of dysfunctionality. Eritrea after a long civil war gained its independence from Ethiopia but does not maintain good relations with Addis Ababa. Another problem is a conflict between Addis Ababa and Khartoum and Egypt, over the use of waters of the River Nile. In general, there exists a challenge of regional rivalry and the problem of 'bad neighbor syndrome' between Ethiopia and Eritrea, Somalia and Ethiopia and between Sudan and Ethiopia.

Migration chain theory

The region exhibit ethnic, religious and political loyalties that cut across state boundaries. Indeed, there are historical and cultural ties that transcend international border; for example, the Oromo clans such as Boran are found in Ethiopia and Kenya and similar Somalia clans are both in Somalia and Kenya. Myron Weiner writing on international migration and international relations discusses the relationship between cultural affinities and movement of refugees across the world. The Vietnamese assault on Kampuchea resulted in the movement of refugees to Thailand, Ethiopian Jews fled to Israel and Tamils from northern Sri Lanka moved to India; Eritrea and Iraq refugees prefer going to Norway. Original migrants already established in a host country provide prospective migrants with social capital, knowledge skills and support.

Language clannism and religion influence the migration patterns of refugees. Oral Informants such as Abdulla (OI, 3/11/2016) state:

> The Somali migrants in Eastleigh stay together according to the clan, and in their various groups the Samaale and the Ogaden. They are not stable in one particular section of Eastleigh, they would easily move into a new flat very first and rent the whole flat, have their own sheikh and thus build their own mosque. The new members are assisted with money to be able to establish themselves. They also carry out their business according to their clans and families.

Another informant Mohammed, (OI, 3/11/2016) corroborate this information:

> The Somali migrants of Eastleigh who are rich rent a whole flat and thus welcome the Somali refuge of his clan to the flat. In the flat they establish their own mosque either at the furthest end of the flat [and] all the residents of the flat worship in the same mosque having their own clan member as their Sheikh. The refugee from Somali from this flat are able to get assistance in terms of cash to be able to sustain them in Eastleigh [un]till they establish themselves.

The legal framework and refugees in Kenya

Kenya is a signatory to a host of Conventions and treaties dealing with specific issues relating to refugees. These conventions and treaties are fully domesticated by the Constitution as well as Section 16 of the Refugees Act which stipulates that every recognized refugee and every member of his or her family living in Kenya shall be entitled to the rights and be subject to the obligations contained in the international conventions to which Kenya is party.

Furthermore, by the provisions of Article 2(5) and 2(6) of the Constitution, Kenya ensures that all international Conventions that have been ratified or acceded by the country form part of Kenyan domestic law. Among these include: the 1951 United Nations Convention Relating to the Status of Refugees, its 1967 Protocol as well as the 1969 OAU Convention Governing Specific Aspects of the Refugee Problems in Africa; these are the core instruments in regards to refugee rights. Thus, Kenya has endeavoured, legally, voluntarily and in good faith, to undertake obligations to protect refugees within its territory.

The Constitution of Kenya, 2010

Kenya took a historic step towards the protection of refugee rights when it promulgated its Constitution on 27 August 2010. Prior to it, international law, specifically international human rights law, played a blunt role in Kenya's national legal system. The preceding

1963 Independence Constitution, with its dualist approach, did not provide for the direct application of international Treaties or Conventions in the Kenyan legal system despite being either ratified or acceded.

With the adoption of the dualist approach, Kenya advocated for the doctrine of transformation, which meant that international law could only be applicable in the country only if it had been domesticated through parliamentary legislation. This doctrine meant that ratified international treaties, once domesticated, only had application in Kenya's legal system on the same level as other domestic legislations, and they could be amended by a simple legislative majority.

This led to a practice where most ratified treaties had no force of law in Kenya due to the absence of domesticated legislation. And due to this, Kenyan courts had also developed an inconsistent practice in relation to international law, with the courts generally shying away from directly applying international law.

The promulgation of the 2010 Constitution heralded change and disregarded the dualist approach, and adopted a monist approach giving rise to the doctrine of incorporation. What this means is that once Kenya ratifies or accedes to an international treaty or Convention, then those rules of international law automatically form part of Kenya's national law.

The Constitution of Kenya is regarded as the supreme law of the land and therefore binds all persons and state organs. The doctrine of incorporation is thus realized under Article 2(5) of the Constitution, which states that 'the general rules of international shall form part of the laws of Kenya.' Article 2(6) then goes on to add that any treaty or convention ratified by Kenya shall form part of the laws of Kenya under the Constitution. By virtue of this provision, Kenya need not domesticate any ratified international treaty or convention for it to acquire the force of law. It simply becomes law when it is signed, ratified or acceded.

The reason why this is important is because most rights relevant for refugee care and protection mainly emanate from international refugee and human rights law. These are specifically laid out under UN Convention relating to the Status of Refugees, its Protocol, the OAU Convention, the UDHR, the ICCPR and the ICESCR among many others that Kenya has acceded or ratified. By virtue of all these individual treaties, each forms part of the laws of Kenya and through Article 2(6) of the Constitution these international laws find life within the country.

Equally, a significant contribution by the 2010 Constitution is the Bill of Rights provided for under Chapter IV. It is an important feature of the Constitution because it caters for a broad range of rights and fundamental freedoms, which in turn ought to and should

play an important role in how individuals, including refugees and asylum seekers, are treated in the country,

Another defining aspect of this comprehensive development is that these rights are not limited to the ones laid out under the Constitution. Through the interpretation of Article 2(5) and 2(6) and 19(3) (b), other existing rights and freedoms are recognized in the country under the law provided they are consistent with the Constitution.

The Refugee Act, 2006

The Act was passed with the aim of governing the recognition, protection and management of refugees in Kenya and its effective implementation of the 1951 United Nations Convention, its 1967 Protocol and the 1969 OAU Convention. The construction of this Act relied heavily on the international refugee instruments that Kenya has signed over the years.

This Act was thus significant for a number of reasons. Most importantly, it allowed the Kenyan government to formally assume overall responsibility for the management of refugee matters through the Department for Refugee Affairs (DRA) including the process on 'refugee status determination', which had been delegated to the UNHCR in the 1990's.

The DRA was established under the then Ministry of State for Immigration and Registration of Persons (now, Ministry of Interior and Coordination of National Government) and was tasked with the responsibility for the administration, coordination and the management of issues relating to refugees in Kenya. Under the Act, the obligations of the DRA include: developing policies, promoting durable solutions, receiving and processing applications for refugee status, registration of refugees, issuing of identity cards and travel documents and the management of refugee camps.

In its definition of a refugee, the Act categorizes refugees into two main groups: statutory refugees and *prima facie* refugees. In regard to statutory refugees, the Act adopts the definition from the 1951 Convention with the addition of 'sex' as a ground for persecution. On the other hand, the definition of a *prima facie* refugee follows the expanded refugee definition under Article I (2) of the 1969 OAU Convention. The Act further gives the Minister discretionary powers in which he may declare *prima facie* status to any class of persons.

In 2011, quite a considerable number of Somali asylum seekers were granted *prima facie* refugee status in Kenya as a result of the famine that ravished parts of Somalia. Through this, a collective group of individuals are able to acquire refugee status rather than go through the individualized statutory refugee status determination process. This is one

of the advantages of the Act in respect to expeditiously protecting vulnerable persons in their times of need; a win for international humanitarian law.

Section 11 of the Act makes provision for refugees entering Kenya whether lawfully or otherwise. Whether an asylum seeker enters into the country lawfully or unlawfully, they have up to 30 days to report to reception centers set up by the DRA. It is here that their details are recorded and in turn issued with an Asylum Seekers Certificate, which provides protection against arrest as an illegal migrant. The Act provides that the mere illegal entry of an asylum seeker is no cause for such person to be declared a prohibited immigrant provided he/she reports to the DRA centers within the prescribed time.

The purpose of this Section is that it ought to protect refugees from the ordeal of going through the Kenyan police and the Kenyan criminal justice system. This then prevents situations where asylum seekers are rounded up, locked up in police cells and arraigned in court for the offence of being in Kenya illegally. However, failure to comply with this requirement vacates the Act's protection responsibility of such persons. However, in the event an asylum-seeker is denied refugee status, they have the right to appeal the decision of the DRA to an Appeals Board and, if unsuccessful, to the High Court. If these appeals are rejected they have 90 days to leave the country.

If granted asylum, refugees receive a Refugee Identification Pass and can apply for a Convention Travel Document, which enables them to travel abroad without a passport. Those considered by the DRA to have a legitimate reason to leave the refugee camps receive a Movement Pass.

Another significant contribution of the Act is captured under Section 18 which is the principle of *non refoulement*; that no state shall expel or return 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 or membership of a particular social group or political opinion.

The Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

The OAU Convention, in particular, which was adopted in 1969, and entered into force on 20 June 1974, has been signed or ratified by 50 of the 53 Member States of the AU including Kenya. The 1969 Convention is a relatively short instrument, containing a preamble and 15 articles. The OAU Convention has done a commendable job on taking into account the unique aspects of the refugee situation on the continent.

One of the distinguishing features of the OAU Convention regards its definition of who a refugee is. In addition to adopting the 1951 Refugee Convection, the OAU Convention further adopted a unique definition that the term refugee should also apply "to every

person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."

This unique definition explicitly introduces an objective criterion, based on the conditions prevailing in the country of origin for determining refugee status.

Article I also includes paragraphs on cessation and exclusion. Each paragraph closely follows the 1951 Convention, with three additions. The additional cessation clauses provide that the 1969 Convention shall cease to apply to any refugee who has 'committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee' or has 'seriously infringed' the 1969 Convention's purposes and objectives.

While the 1969 Convention reflects this international consensus, it nevertheless significantly 'strengthens the institution of asylum' by providing that Member States 'shall use their best endeavors consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality'.

Another significant contribution by the OAU Convention is in respect to it solving protracted refugee crises in Africa is through its institution of burned sharing which lacks in the 1951 Refugee Convention. Article II articulates a very early notion of responsibility sharing, providing that where a Member State finds difficulty in continuing to grant asylum to refugees, such a Member State may appeal directly to other Member States and through the African Union, and that such other Member States shall, in the spirit of African solidarity and international cooperation, take appropriate measures to lighten the burden of the Member State granting asylum.

The 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol

Grounded under Article 14 of the Universal Declaration of Human Rights, which recognizes the right of persons to seek asylum from persecution from other countries, the United Nations Convention relating to the Status of Refugees is regarded as the centerpiece of international refugee protection. The Convention entered into force on 22 April 1954 and has been subject to only one amendment in the form of the 1967 Protocol. These are the only global instruments that explicitly provide for the most important aspect of refugee life. Effective 16 May 1966, Kenya became party to the Convention thus assuming the voluntary obligation to care and protect refugees within its borders.

Once granted asylum in a host state, asylum seekers and refugees have a number of rights. However, there are also responsibilities that are expected of them. While some rights are basic, others are of gradual entitlement the longer a refugee stays in the host country, in this case Kenya.

While the Refugee Act of Kenya has stayed silent in enlisting these rights, it makes up for this by providing, in general terms, for recognized refugees and their families the rights and obligations contained in the 1951 Convention. The 1951 UN Convention prescribes what can be viewed as minimum rights to which refugees are entitled to. This can be classified into two main groups; rights which refugees ought to receive which are similar to that of nationals of the host country and similar rights which are generally granted to foreign nationals in the host state.

In regard to similar rights granted to nationals of the host state, refugees should be entitled to the free exercise of religion and religious education, access to the courts, including legal assistance, access to elementary education, access to public relief and assistance, and the protection provided by social security among a cluster of other rights. On the other hand, refugees should also be able to enjoy similar rights and treatment which are generally granted to foreign nationals in Kenya.[156] These are inclusive of the right to own property, the right to practice a profession, the right to self-employment, access to housing, the right to choose their place of residence and to move freely within the country as well as the right to access higher education. In addition to all this is of course the right to return to their countries of origin, on a voluntary basis. This boils down to voluntary repatriation - the ability of a refugee to make an informed decision to return back to his country of origin once appraised on the conditions on the ground where they seek to return.

One of the most crucial principles under the 1951 Refugee Convention is the principle of *non-refoulement*. Enshrined under Article 33 of the Convention, a refugee should not be expelled or returned against their will to the 'frontier of territories where their life or freedom would be threatened.' This has been argued to be an international fundamental norm of refugee law. So fundamental has been this principle in safeguarding refuges that no reservations or derogations have been allowed to it.

This right to *non-refoulment* is not absolute in itself. It can be lost. Where one has been granted refugee status or as an asylum seeker is found under reasonable grounds to be a danger to the security of the host country or whom has in turn been convicted by a final judgment of a particular serious crime constituting a danger to the community, then the benefit of *non-refoulement* will not afford such person any protection under domestic or international law. This includes terrorists, fighters, radicalists and refugees or asylum seekers convicted of serious crimes.

While the aforementioned Acts and Conventions highlight core obligations arising out of these core instruments, Kenya's obligation continue through a host of other international instruments that cater for the protection of refugees rights. These include the African Convention on Human and People's Rights, the Convention against Torture, the Geneva Convention, and OAU Convention Governing the Specific Aspect of Refugee Problems in Africa, among others.

Changing security environment, national interest, sovereignty and refoulment or non-refoulment of refugees

Concept of sovereignty

According to Osiender (2001) the international community consists of sovereign states that are formally equal. Sovereignty is a responsibility of the sovereign to protect the well-being of its people. The Peace of Westphalia in 1648 is often cited as the source of modern sovereignty and modern inter-state relations. It oversaw the passing of treaties that were designed to ensure peace after many wars that had devastated Europe. The treaty involved the Holy Roman Emperor, Kingdom of Spain; the Kingdom of France; the Swedish Empire and the Dutch Republic.

The treaty initiated a new system of political order in Europe, later called Westphalian sovereignty and laid the legal and political framework for international affairs that barred other states from interfering in a nation's domestic issues including respect for the boundaries of political units and territories. The Westphalian sovereignty stood as a precursor to later international treaties and continues to influence contemporary international relations and law by looking at several cases brought before the International Court of Justice (ICJ).

Contemporary terrorism is raising a set of questions about the status of sovereignty in contemporary international relations, and the extent to which a sovereign state is justified in the actions it can take to protect itself. The self-assertion of a terrorist group is in itself an aggressive process of undermining the sovereignty of nations. Terrorism also interferes with country's sovereignty by undermining the civil liberties of a country's citizens and the disruption of social and economic development.

In the above context and in reference to the UNSC resolution 1373 (2001) adopted on 28 September 2001 in response to the terrorist attacks in the United States of America on 11 September 2001, it is obligatory upon a member of the United Nations to suppress terrorism '*including persons who commit, or attempt to commit, terrorist acts; persons who participate in or facilitate the commission of terrorist acts; entities owned or controlled directly or indirectly by such persons; and persons and entities acting on behalf of, or at the direction of, such persons and entities*'.

National interest

The national interest (reason of the state) refers to a country's goals; economic, political and social. The concept is an important one in international relations especially when nations justify wars in the context of national interest and indeed, over the centuries, nations have justified wars in order to protect or pursue national interests.

National interest sometimes comes first before the law and may contradict international law. For example, from international law perspective, the invasion of Iraq in 2003 by the USA was illegal but was justified under 'national interest'. On 16 September 2004, Kofi Annan, the Secretary General of the United Nations, said of the invasion: *"I have indicated it was not in conformity with the UN charter. From our point of view, from the charter point of view, it was illegal".* Retrospectively the USA position was: "the UN cannot constrain any member state from acting to defend itself or protect its interest" In September 2014, the USA coordinated air strikes in northern and eastern Syria targeting terrorist bases. A total of five Arab countries - Saudi Arabia, the United Arab Emirates, Qatar, Bahrain and Jordan coordinated and supported the attacks. National interest was the driving motivation.

Refugees, national security and state sovereignty

An extract from national security agency in Kenya reads as follows:

> *On May 7th and 14th, 2015 the Security Intelligence service of Kenya provided a warning citing 15 and another 25 militants (consecutively / circa dates) from the Somali terror group Harakat al-Shabaab al-Mujahideen crossed the border from Deglema area which is about 12-KMS from Dhobley area into Kenya. Intelligence showed that the 15 heavily armed Al Shabaab militants entered Madaghisi area 10 kilometers from the Dadaab refugee camp. The militants split into single or double cells and disappeared into the Dadaab refugee camp. Intelligence shows they hid their weapons and assumed normal refugee life in the camp. The Government of the Republic of Kenya identifies the Dadaab Refugee camp is a threat to the national security. The militants finalized plans on the Yumbis Police attack from the refugee camp and further deployed the banditry strategy from the refugee camp. Dadaab refugee camp provides the perfect cover for Al Shabaab elements, particularly their intelligence wing Amniyaat.*

The above extract shows the changing security environment and its impact on refugees. The examples below shows how states around the world have dealt with the refugee question in a changing security environment. The increased threat from international terrorism also has had its effects on the international protection regime of refugees. In the aftermath of 11 September 2001 in the USA, the bombing of the UN building in Baghdad and the murder of an UNHCR protection officer in Afghanistan are some of the other examples that involve terrorism and that impact on the refugee question.

Following these attacks, governments all over the world passed anti-terrorism legislation that also affect refugees and asylum seekers.

Examples of anti-terrorism legislation include: the June 2002 Inter-American Convention against Terrorism; the July 2002 Council of Europe, Committee of Ministers Guidelines on human rights and the fight against terrorism and the December 2002 Charter on Preventing and Combating Terrorism. Several European States have, in addition, adapted specific asylum laws and/or policies. These include, among others:

1. Detention of asylum seekers; United Kingdom Anti-Terrorism, Crime and Security Act 2001, also affect asylum seekers and refugees.

2. Exclusion clause; The United Kingdom, application of Article 32 of the refugee Convention and declare an asylum applicant's removal "conducive to public good" under Section 33 of the Anti-Terrorism, Crime and Security Act 2001 (ATCS). Section 34 of the Act explicitly forbids the application of a balancing test for Art. The gravity of the fear or threat of persecution therefore does not prevent an exclusion from refugee status.

3. Expulsion and Extradition: Under the Swedish Special Control of Foreigners Act the government can expel a foreigner if this is deemed necessary to the security of Sweden or if there are reasons to suspect that he or she will commit or take part in crimes involving violence, threats or coercion for political purposes. There is no provision of appeal against such a decision.

4. Refusal of Convention Travel Documents: In Germany, a practice has been developing recently to refuse refugees without proper documentation a residence permit and a Convention travel document according to Art. 28 of the 51 Convention (CTD). The authorities argue that the refugees are obliged to prove their identity and point to the security risks resulting from the lack of proven identity

Does the refoulment of refugees violate their rights?

The decision to exclude a person from refugee status has serious consequences. The person loses his/her status and all rights attached to it, including the right not to be refouled. However, it has to be borne in mind, that refoulement prohibitions have also been developed in the context of various human rights law.

The 2013, the Tripartite Agreement on Voluntary Repatriation Programme of Somalia Refugees by the government of Kenya, the Federal Republic of Somalia, and the United Nations High Commissioner for Refugees to allow for voluntary repatriation of refugee to their country of origin faces a number of challenges including the unwillingness of the refugees to go back to their country of origin due to fear of persecution. The May 2016, government of Kenya announcement to close down the Dadaab refugee camp

on grounds of national security should be interrogated in the context of pre-emptory rule of international law and the principle of non refoulement. Indeed, it requires the due process of law to be followed in accordance to article 32 of the refugee convention:

(1). The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order; (2). The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require the refugee shall be allowed to submit evidence to clear himself and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority; and, (3). The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Conclusion

This paper has demonstrated that the changing geo politics of the region has far reaching implications on the refugees and refugee rights. National security is taking precedence over the international humanitarian law hence affecting the full realization of refugee conventions.

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Article 19 (3) (b), Constitution of Kenya "The rights and fundamental freedoms in the Bill of Rights do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognized or conferred by law, except to the extent that they are inconsistent with the Bill of Rights"

United Nations Convention Relating to the Status of Refugees, 1951

United Nations Protocol Relating to the Status of Refugees, 1967

Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969 140 Section 6, Refugee Act 2006

Section, 3 (2) Refugee Act 2006 "A person shall be a *prima facie* refugee for purposes of this Act if such person owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality"

Section11 (1), Refugee Act 2006

Kariuki Muigua, 'Protecting Refugees Rights In Kenya' [2011] 1(1) Utilizing International Refugee Instruments, The Refugee Act 2006 And The Constitution Of Kenya As Catalysts 18

Section 15, Refugee Act, 2006

Section 17 (f), Refugee Act 2006

Article 1 (2), Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa

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Article 12-30, The United Nations Convention Relating to the Status of Refugees 1951. United Nations General Assembly Resolution 429(V) of 14 December 1950, available at http://www.unhcr.org/refworld/docid/3b00f08a27.html. Accessed (?)

Article 33 (2), United Nations Convention Relating to the Status of Refugees 1951

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UNCHR Convention article 32.

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