

## Refugee Protection in Kenya

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### Abstract

*This journal article explores the framework for refugee protection in Kenya. The country has hosted refugees from neighbouring East African countries, primarily due to its perceived political stability. The refugee situation is marked by significant hardship, affecting not only the refugees themselves but also the host nation. This scenario places considerable strain on the financial and physical resources of the host nation and necessitates substantial efforts from the international community to provide aid to those in need. In response to the refugee crisis, Kenya has adopted several policies to ensure compliance with international standards for refugee protection. This article evaluates how effectively Kenya's Refugee Act of 2021 has been domesticated and upheld in line with internationally acknowledged and obligatory durable solutions to the refugee problem. A descriptive literature review was employed to collect, organise, analyse, and present the relevant data. The findings posit that although Kenya has made notable progress in establishing regulatory frameworks to protect refugees, the goals of refugee protection remain unfulfilled. Even with the enactment of the Refugee Act of 2021, refugees in Kenya still face numerous challenges related to their protection. The article contends that the key to resolving the refugee crisis in Kenya hinges on the diligent implementation of the durable solutions. This research contributes to the broader discourse on refugee protection worldwide, with a particular emphasis on the Kenyan context.*

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## 1. Introduction

The refugee problem is currently one of the most urgent challenges facing the global community. The world has been dealing with the problem of refugees ever since World War II, which resulted in the displacement of almost 100 million people (Benhabib, 2020). After the war, there was a concerted effort by various countries to address the refugee crisis. In 1951, the United Nations (UN) implemented international laws and protocols to help manage refugees on a global scale. The United Nations High Commissioner for Refugees (UNHCR) was established within the UN to “oversee humanitarian services for refugees worldwide. As a subsidiary of the UN, the UNHCR reports directly to the General Assembly, which has the power to modify its mandate” (UNHCR, 2016).

According to the 1951 UN Convention,

a refugee is a person who has a well-founded fear of being persecuted based on race, religion, nationality, membership of a particular social group, or political opinion, and as a result is unable or unwilling to return to their home country (UNHCR, 2016).

Following the 1951 UN Convention, the Organisation of African Unity (OAU), later renamed African Union (AU) defines a refugee as,

an individual who is forced to leave their home country due to external aggression, occupation, foreign domination, or events disrupting public order or peace in part or all of their country (OAU Convention, 1969).

It is clear from these definitions that refugees have the right to seek asylum in UN member countries, and these countries cannot forcibly return asylum seekers to their home countries. However, some UN and AU member countries have violated these refugee regulations by forcibly repatriating refugees.

Despite the establishment of the UN and OAU, the number of refugees continued to increase post-World War II due to conflicts and political instability worldwide. The refugee issue varies in intensity across different regions, with a more significant impact in the global South. In Africa, the refugee crisis is mainly attributed to the displacement caused by conflict and violence in various countries on the continent. Africa currently hosts approximately 30 million internally displaced persons, refugees, and asylum seekers, accounting for about a third of the global refugee population as of 2019 (Dare & Abebe, 2019). Throughout 2021, Africa experienced a surge in internal displacements in several countries due to heightened insecurity and human rights violations. Countries such as Nigeria, Democratic Republic of Congo (DRC), Central African Republic, Ethiopia, and South Sudan recorded millions of displacements (Reliefweb, 2021).

It can thus be posited that the ongoing conflict and instability in Africa have led to a notable rise in the number of refugees across the continent since the era of independence. Numerous African nations have encountered various forms of political unrest at different times since gaining independence, often attributed to dictatorship, fragile democratic institutions, terrorism, and cross-border disputes. In East Africa, countries such as Uganda, Somalia, Rwanda, Burundi, Sudan, and the Democratic Republic of the Congo have been profoundly impacted by conflicts, contributing to the increasing refugee statistics. A significant number of refugees from Eastern Africa seek relative safety in Kenya, which has become a refuge due to its relatively stable political environment (Reliefweb, 2021). Consequently, Kenya has gained recognition on the international stage for its humanitarian efforts, as demonstrated by its willingness to host a large population of refugees. As of December 2021, Kenya hosted 540,068

refugees and asylum-seekers, making it the fifth largest refugee-hosting country in Africa. Most of the refugees in Kenya are from Somalia, South Sudan, the Democratic Republic of the Congo, Rwanda, Uganda, Ethiopia and Eritrea.

In response to the significant influx of refugees, Kenya implemented an encampment policy in 1991. Approximately 84% of the refugee population is situated within the Dadaab Refugee Complex in Garissa County, as well as the Kakuma camp and the Kalobeyei Integrated Settlement in Turkana County. It is estimated that,

around 205,000 Kenyans reside in areas that host refugees in these two counties, benefiting from humanitarian initiatives and development programmes, particularly through the Kalobeyei Integrated Socio-economic Development Plan in Turkana County. More than 53% of the refugee population originates from Somalia, predominantly found in Dadaab Camp. Refugees from South Sudan constitute 25% of the total population, primarily located in Kakuma and Kalobeyei (Reliefweb, 2021).

Additionally, about 16% of the refugee population live in urban centres, mainly in Nairobi, Eldoret, and Mombasa, although it is estimated that only half of these individuals have received official authorisation from the relevant authorities to reside in these areas (Reliefweb, 2021).

In addressing the challenges related to the hosting of refugees, Kenya enacted the Refugee Act of 2021. This legislation serves as the most thorough legal framework outlining the rights and responsibilities of refugees in the nation, while also addressing their needs and pursuing durable solutions for their situation (Reliefweb, 2021). Additionally, the rights of refugees are supported by various international humanitarian laws to which Kenya is a signatory. The protection of refugee rights outlined in these legal texts encompasses the enforcement and implementation of durable solutions to the refugee crisis. Such solutions may involve, “voluntary repatriation when conditions permit, resettlement to a third country for those at risk or unable to return home, or admission to a third country through complementary pathways, ultimately leading to integration and citizenship in the host nation” (Mun Refugee Challenge, 2022). Other rights afforded to refugees include safety, freedom of movement, access to employment opportunities, essential services, and the judicial system (Mun Refugee Challenge, 2022).

The objective of this study was to undertake a detailed examination of the refugee protection measures outlined in Kenya’s Refugee Act of 2021. To achieve this, the research explored several interconnected inquiries, including the enactment of the Refugee Act of 2021, the incorporation of durable solutions to tackle the refugee crisis within the legislative framework, the implementation of these solutions, and the challenges encountered in their enforcement.

## **2. Material and Methods**

This study utilised historical research methods. Historical research involves the systematic and objective reconstruction of past events by collecting, assessing, verifying, and synthesizing evidence related to those events to establish factual and defensible conclusions, to produce a scholarly narrative (That, Vinh, & Dung, 2021). Through the application of historical research methods, a comprehensive literature review was conducted to identify gaps in the current understanding and documentation on the evolving refugee protection policies in Kenya. As noted by Walliman (2016), literature review requires the reading, analysis, evaluation, and summarisation of the essential aspects of existing knowledge on a research topic.

Consequently, an extensive literature review of pertinent written materials aligned with the objectives of this paper was performed (Snyder 2019). This review facilitated a deeper comprehension of the research topic, its importance, and its framework, uncovering inconsistencies and knowledge gaps that necessitate further exploration.

By examining the existing literature, the study acquired insights into Kenya's refugee protection framework, identified critical resources, and underscored significant issues for further research inquiries. Thus, the literature review established a foundation for building upon the contributions of other scholars in the domain of refugee protection policies. The data collected was qualitatively assessed for accuracy and reliability, culminating in a narrative summary of the findings.

### **3. Data Analysis and Discussion**

This section explores the concept of refugee protection and the collaborative efforts involved in safeguarding refugees. The purpose of this section is to present an overview of the refugee protection framework in Kenya, along with the challenges faced in the implementation and enforcement of measures designed to protect refugees.

#### **The concept of refugee protection**

Refugee protection is defined by legal protection, specifically focusing on the “rights established by law and the processes in place to address grievances and enable individuals to assert their rights effectively” (UNHCR, 2016). An investigation into whether a population is ‘protected’ involves assessing how the relevant authorities adhere to the rights of individuals under international law, as well as how these legal principles are enforced and honoured (Zubair & Khan, 2019). The significance of refugee protection is underscored by the numerous challenges faced by individuals in refugee situations. The term "refugee" is derived from the French word “*réfugié*,” which was first used in 1685. Initially, “it referred to Protestants who escaped from France after the revocation of the Edict of Nantes, a law that had previously ensured religious freedom and civil rights for the Huguenots” (Zubair & Khan, 2019). This historical context created a necessity for the protection of refugees. The roots of refugee protection are, however, often linked to the aftermath of World War II, which resulted in a substantial influx of refugees. Notably, the 1951 Convention represents a revision and unification of earlier international agreements concerning the status of refugees, as acknowledged in the Convention’s Preamble where it states:

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and protection accorded by such instruments by means of a new agreement (UNHCR, 1951).

The 1951 Convention did not mark the inception of refugee protection efforts; rather, it represented the culmination of earlier initiatives aimed at safeguarding refugees. Nonetheless, the 1951 Refugee Convention provided a clear and comprehensive definition of refugee protection. According to the Convention,

a refugee is an individual who leaves their homeland or country of habitual residence due to an inability to secure protection from their home country, as they face a well-founded fear of persecution based on factors such as religious beliefs, racial discrimination, affiliation with a particular social or demographic group, ideology, or nationality (UNHCR, 2016).

The 1967 Protocol to the 1951 Convention Relating to the Status of Refugees is both unique and intricately linked to the 1951 Convention. This Protocol effectively eliminated the “temporal and geographical limitations that were originally present in the 1951 Convention” (UNHCR, 2016). Both documents address three critical areas: the fundamental definition of a refugee, the conditions under which refugee status may be terminated or excluded, and the legal status of refugees in the host country, including their rights and responsibilities. This encompasses the right to protection against forced return or *refoulement* to a country where they fear persecution. Additionally, states are obligated to cooperate with the UNHCR in fulfilling its responsibilities and to oversee the application of the Convention (UNHCR, 2016).

The signing of the 1967 Protocol marked a consensus among member states to implement the majority of the articles of the Refugee Convention (Articles 2 to 34) for all individuals defined under the Protocol (UNHCR, 2016). A significant number of states have since ratified both documents, reflecting their commitment to the importance of these treaties within the international refugee protection framework. The 1967 Protocol urges all governments and their legislative bodies to recognise “their obligations regarding the protection of refugees and to provide refuge to those fleeing political persecution, as outlined in the 1951 Convention on Refugees” (UNHCR, 2016). The endorsement by the Executive Committee of the validity of both the 1951 Convention and the 1967 Protocol on the Status of Refugees establishes a foundational basis for International Refugee Law (UNHCR, 2016).

In accordance with a core tenet of international law, all state parties to the treaty are required to implement and uphold the Convention on Refugees in good faith. Countries that have ratified the 1951 Convention must provide protection to refugees within their borders, complying with both the explicit terms and the underlying principles of the treaty. Moreover, states are obliged to cooperate with the UNHCR as per Article 35 of the 1951 Convention and Article II of the 1967 Protocol, particularly in aiding the UNHCR in monitoring the execution of various provisions set forth in these treaties. Additionally, states are expected to furnish information regarding their national legislations. This information must be communicated to the United Nations Secretary-General by the state parties, outlining the laws they have enacted to ensure the enforcement of the Convention (Zubair, & Khan, 2019).

Regarding the principle of reciprocity, it is impermissible for a country to grant rights to an alien based on reciprocity and subsequently demand equivalent treatment from that individual’s home country; refugees are exempt from such stipulations. The concept of reciprocity does not apply to refugees, as they do not receive protection from their country of origin. At the international level, both states and the UNHCR receive encouragement from the Executive Committee to enhance the protection of refugees and pursue durable solutions at regional levels, ensuring that these initiatives align with international standards while addressing specific regional needs (Zubair, & Khan, 2019).

The Convention of OAU, which addresses specific issues related to refugees on the African continent, was adopted in 1969. This regional instrument expanded upon the definition established by the 1951 Convention by incorporating an additional consideration. The OAU Convention defines a refugee as “any individual forced to flee his or her country due to external aggression, occupation, foreign domination, or events that significantly disrupt public order in either a portion or the entirety of their country of origin or nationality” (OAU Convention, 1969).

In 1984, representatives from Latin American governments, alongside distinguished legal experts, convened to adopt the Declaration of Cartagena. Similar to the approach taken by OAU, this Declaration introduced an additional, objectively grounded criterion to the refugee definition established in the 1951 Convention. According to this Declaration,

individuals fleeing their home countries due to threats to their life, freedom, or security—stemming from widespread violence, foreign aggression, civil strife, large-scale human rights violations, or other severe disruptions to public order—are recognized as refugees (Zubair, & Khan, 2019).

The aforementioned conventions establish that refugees are entitled to three fundamental rights: safety, autonomy, and a viable means to resolve their status. Throughout its 70-year existence, the UNHCR, along with its member states, has collaborated closely to protect the rights and welfare of refugees. Governments worldwide have demonstrated significant generosity by offering sanctuary to those in need, allowing them to stay until conditions are suitable for a safe and dignified return to their countries of origin. Many governments have granted the UNHCR the authority to operate within their territories and have provided financial support to refugees, frequently by bolstering their own national refugee programmes (UNHCR, 2016). As a result, it can be concluded that the responsibility for upholding refugee protection rights lies primarily with each individual state. Regrettably, a significant number of refugees today are lacking these fundamental rights.

### **Collaborative efforts in safeguarding refugees**

The success of UNHCR in fulfilling its refugee protection mandate is significantly influenced by the degree of commitment demonstrated by regional organisations and governments towards enhancing the welfare of refugees (Thimm-Braun, 2020). Additionally, this effectiveness relies on the recognition by governments of UNHCR's pivotal role in coordinating efforts to tackle the challenges faced by refugees. For over seven decades, UNHCR has engaged in collaboration with governments, institutions, agencies, and non-governmental organisations to ensure refugee protection. Given that refugees are individuals lacking protection from their countries of origin, UNHCR was established to serve as a legal entity advocating on their behalf, a role that is evident in its supervisory duties concerning international refugee instruments (Thimm-Braun, 2020).

For the case of Africa, African Union (AU) is instrumental in the protection of refugees, serving as one of the most significant partners of UNHCR and leading initiatives aimed at eliminating forced displacement of individuals. The OAU Treaty stipulates that granting asylum to refugees is a humanitarian and peaceful gesture, which should not be perceived as an unfriendly act by any Member State (Adeola, 2019). The ethos of the AU Convention embraces the notion that the responsibility for African refugees lies within Africa itself. It acknowledges the principle of voluntary repatriation and has recently shifted its focus towards tackling the underlying causes of the refugee crisis (Adeola, 2019).

Article 35 of the 1951 Refugee Convention, along with Article II of the 1967 Protocol, delineates the supervisory responsibilities of UNHCR. It mandates that all member states collaborate with UNHCR to facilitate the fulfilment of its mandate. The 1951 Convention serves as a comprehensive consolidation of prior international instruments related to refugee protection, providing the most extensive codification of refugee rights on a global scale. It

establishes fundamental minimum standards for the treatment of refugees, allowing states the discretion to offer more favourable conditions (Ustun, 2019).

### **Regulatory framework for refugee protection in Kenya**

Since gaining independence in 1963, Kenya has developed several policies aimed at ensuring the protection of refugees. The most recent and comprehensive of these is the Refugee Act of 2021. This raises important questions regarding the alignment of this act with the international refugee protection framework. Additionally, it is crucial to examine the degree to which the act has been implemented and enforced.

The legal framework governing refugee protection in Kenya is rooted in its Constitution and various related statutes. The nation ratified the 1951 United Nations Convention on May 16, 1966, followed by the 1967 Protocol on November 13, 1981. Additionally, Kenya ratified the 1969 OAU Convention on Refugees on June 23, 1992. At that time, it was essential for international law to be incorporated into domestic legislation to ensure effective implementation. However, the Refugees Act was not enacted until 2006 (Kituo Cha Sheria, 2021). The Refugees Act of 2006 incorporated the ratified international conventions into national law and also established the encampment policy (Omata, 2020). Under this Act, refugees were required to reside in designated areas. However, it was not until 2014 that the government officially recognised Kakuma and Dadaab as refugee camps (Kituo Cha Sheria, 2021). Regrettably, the encampment policy does not represent a durable solution to the refugee problem. As a result, the Refugees Act of 2006 exhibited certain deficiencies, conflicting with both the Constitution of Kenya and the ratified conventions on refugee protection. For nearly a decade, organisations dedicated to refugee protection advocated for amendments to the Refugees Act of 2006. It was only in November 2021, that the President of Kenya enacted the Refugees Bill 2019 into law (Kituo Cha Sheria, 2021).

The Refugees Act of 2021 establishes a range of rights for refugees and asylum seekers in Kenya. These rights encompass the following:

1. Refugees are permitted to participate in economic and social development upon obtaining the necessary documentation and permits from both county and national authorities. Consequently, they are eligible for gainful employment and are required to pay taxes similarly to Kenyan citizens.
2. Refugees possess the right to seek employment, initiate businesses, or engage in trades within sectors where their qualifications are recognized by relevant authorities.
3. Refugees are entitled to obtain identification and civil registration documents, which are essential for accessing rights and services as stipulated in the Refugee Act 2021.
4. Refugees originating from Burundi, Rwanda, South Sudan, Tanzania, and Uganda have the option to renounce their refugee status in favour of legal residency arrangements, thereby benefiting from the East African Community (EAC) Common Market Protocol.
5. The Act promotes the inclusion of refugees in both national and county development strategies, facilitating the shared use of public institutions, facilities, and spaces between refugees and host communities.
6. Refugees and asylum seekers are safeguarded against forcible repatriation to their countries of origin (*refoulement*), except in cases where there are justifiable grounds for considering them a threat to Kenya's national security.
6. The period allowed for appealing a denied refugee status application was extended from the previous 30 days to a maximum of 60 days (Julisha.info, 2022).

The primary objective of enacting a new law regarding refugees was motivated by the need to establish a more comprehensive framework that guarantees the protection of refugees' rights in accordance with the Constitution of Kenya. The Refugee Act of 2021 delineates the recognition, protection, and management of refugees in accordance with the 1951 United Nations Convention on the Status of Refugees and the 1969 OAU Convention. This act seeks to bolster the Kenyan government's efforts to protect asylum seekers within the nation and to implement durable solutions to the refugee crisis. Furthermore, the legislation aligns with the sustainable development goals aimed at promoting a better future for both Kenyans and refugees (Kituo Cha Sheria, 2021).

#### **4. Findings**

The research established that the implementation and enforcement of Kenya's regulatory framework for refugee protection have been significantly hindered by a range of challenges. These challenges primarily arise from insufficient compliance with both international and national refugee protection instruments. Compliance with these instruments is essential for ensuring the protection of refugees' rights, as outlined in the Refugee Act of 2021. However, study findings indicate that Kenya has not fully met its obligations under international refugee agreements. Specifically, in terms of refugee protection, Kenya has not complied with its own constitution and the Refugee Act of 2021. This non-compliance has led to significant challenges in ensuring the protection of refugees within the nation. Consequently, the research concluded that, despite the establishment of the Refugee Act of 2021, the safeguarding of refugees in Kenya remains negatively impacted by various governmental laws and directives, as detailed in the subsequent sections.

#### **The encampment policy**

The study established that the rigorous enforcement of the encampment policy has hindered refugee protection, as it prohibits refugees from leaving the camps without justifiable reasons. This regulation infringes upon the fundamental human rights of association and movement. Furthermore, the isolated nature of the refugee camps in Kenya has restricted refugees' ability to improve their social and economic status, as they are unable to pursue financial opportunities beyond the confines of the camps

According to Sections 28 (4) and (6) of the Refugees Act of 2021,

every refugee and asylum seeker shall be entitled to the rights and subject to the duties contained in the UN Convention, its protocol and OAU Convention, and all the laws in Kenya. Refugees shall be enabled to contribute to the economic and social development of Kenya by facilitating access to and issuance of documentation including identification and civil registration documents which shall be sufficient to identify a refugee (Refugees Act, 2021).

However, the above rights are undermined by Section 31 of the Refugees Act of 2021. This section stipulates that,

the Commissioner is mandated to work with the National and County Governments to ensure the protection of the environment and places used as designated areas. Any refugee or asylum seeker residing outside designated areas after the commencement of the 2021 Act, shall also notify the Commissioner (Refugees Act, 2021).

Furthermore, certain provisions of the encampment policy are punitive rather than rehabilitative. For example, the policy includes a clause that advocates for the prosecution of refugees in the Kenyan judicial system for offenses committed outside the camp. Should a



refugee be convicted of such an offense, they face a penalty of twenty thousand Kenya shillings (Ksh. 20,000) or a six-month imprisonment term. Regrettably, some refugees have been incarcerated in Kenyan prisons for minor infractions, such as loitering, due to their inability to pay the imposed fines (Human Rights Watch, 2023).

Consequently, the right to freedom, as articulated in international treaties, the Constitution of Kenya, and the Refugee Act of 2021, is not extended to refugees in Kenya. For example, Article 12 of the International Covenant on Civil and Political Rights underscores the right to freedom of movement and the ability to choose a place of residence. (Human Rights Watch, 2023). However, refugees living in camps are not permitted to leave without the authorisation of the Commissioner of Refugee Services, which demonstrates that the encampment policy instituted in 1991, requiring all refugees to remain within the camps, is still in force. This requirement limits the freedom of movement for refugees within the camps, even though the Refugee Act of 2021 assures such freedom. This scenario represents a breach of the protective rights afforded to refugees in Kenya.

### **The placement of refugee camps**

The research established that refugee camps in Kenya are situated in regions with adverse climatic conditions. These areas endure high temperatures and arid conditions year-round, rendering them unsuitable for agricultural activities, which are vital for the local economy. Additionally, the camps are positioned in remote locations, distanced from urban centres, and lack sufficient governmental protection. For example, Dadaab Camp in Garissa County is located 474 kilometres from Nairobi and 569 kilometres from Mombasa, while being only 80 kilometres from the Somali border. In the case of Kakuma, it is 723 kilometres from Nairobi and 566 kilometres from Nakuru, yet it lies just 130 kilometres from the Southern Sudan border and approximately 95 kilometres from the Ugandan border (Maalim, Adwek & Arowo, 2021). The combination of a harsh physical environment and challenging social conditions has resulted in refugee camps in Kenya being marked by poverty, limited employment prospects, insufficient food supplies, frequent illnesses among children, and insecurity.

Furthermore, refugee camps in Kenya are situated in isolated regions with limited access to essential social services; however, refugees residing in these camps are prohibited from seeking alternative health and educational resources elsewhere in the country. The majority of individuals in these marginalised camps depend on food rations, which are not only insufficient but also lack nutritional value. As a result, child malnutrition is prevalent in many of the camps due to inadequate dietary options. Additionally, poor sanitation and overcrowding have exacerbated the transmission of infectious diseases (Maalim, et al, 2021). The interplay of inadequate nutrition and unsanitary conditions has resulted in elevated child mortality rates within the camps. Furthermore, refugees face challenges in finding alternative income sources, as the encampment policy restricts their movement. A refugee is only permitted to leave a camp for a valid reason (Maalim, et al, 2021). Therefore, while the right to freedom of movement is ostensibly protected under Kenya's refugee laws, the realities of life within the camps suggest otherwise. The encampment policy thus poses a significant threat to the rights of refugees as outlined in the Refugee Act of 2021. Consequently, this situation has led to increased dependency and crime rates within the camps.

### **Vulnerability and ambiguity within refugee camps**

The research shows that safety concerns persist in refugee camps in Kenya. It should be noted that ensuring physical security is a crucial element of protection in line with internationally accepted standards for refugee protection. This involves protecting the dwellings of refugees

and guaranteeing their well-being. Instances of insecurity have been frequently reported in refugee camps in Kenya. Insecurity within these camps is marked by numerous cases of sexual assault, physical abuse, and theft. These offenses were reportedly committed not just by individuals residing in the camps, but also by locals pretending to be refugees in order to access aid (Cannon & Hirotaka, 2018).

Conflicts have also arisen between the local population and the refugees, as the host communities feel that refugees are receiving preferential treatment and special benefits from organisations like UNHCR. This has led to incidents of xenophobia directed towards refugees. Local residents believe that they too should receive the same goods and services provided to refugees, such as healthcare, food and education (Oxford Analytica. 2021). As a result of being unable to afford these services, many Kenyans living near the camps view refugees as adversaries and occasionally resort to attacking them. This escalation of violence within the camps is also indirectly linked to perceptions associating refugees with lawlessness, which limits their interactions with the host communities. For instance, Somali refugees in Kenya were unfairly targeted during periods of insecurity because of the misconception that they were linked with the Somali-based militant group *Al-Shabaab*. The rise of *Al-Shabaab* attacks in Kenya prompted the Kenyan government to push for the repatriation of refugees to Somalia and the closure of the Dadaab camp (Oxford Analytica. 2021).

For instance, in March 2021, the Kenyan government issued a 14 - day ultimatum to UNHCR to formulate a plan for the closure of the Kakuma and Dadaab refugee camps. By April 2021, the UNHCR had submitted to the government a proposal that included durable, rights-based strategies aimed at addressing the protracted displacement of refugees. These strategies encompassed voluntary repatriation, resettlement to third countries, and alternative residency options within Kenya. Subsequently, the Kenyan authorities extended the deadline for the closure of the camps to June 30, 2022 (Human Rights Watch, 2023). However, on that date, government officials remained silent, and the new administration that took office in August 2022 did not address the matter either. This lack of clarity has led to considerable anxiety among the refugees and asylum seekers residing in the camps, many of whom hail from Somalia and South Sudan, regions currently experiencing significant security threats (Human Rights Watch, 2023).

The government did not provide any rationale for its threat to close the camps in 2022. Previously, in 2016 and 2019, government officials had threatened to shut down the Dadaab camp, claiming it was a haven for *Al-Shabaab* members, yet they failed to present any evidence to substantiate this claim. Indeed, no refugee from the camp had faced prosecution for alleged terrorist affiliations (Human Rights Watch, 2023). The perception that refugees are associated with the security threats presented by *Al-Shabaab* in Kenya has led to a breakdown in communication between the local population and the refugees residing in Dadaab camp. The local residents regard the refugees as possible security threat linked to terrorist actions and criminal conduct. Consequently, the minimal physical engagement between these two communities results in the hosts lacking a personal commitment to the welfare of the refugees.

### **Law enforcement**

The research established that as a result of difficult living conditions in the refugee camps, a number of refugees opted to relocate to urban areas. However, law enforcement authorities employed the Section 31 Refugees Act of 2021 to detain and prosecute refugees residing in these urban settings. In cities such as Nairobi, refugees faced harassment, arbitrary arrests, and

detention without a fair trial by the police. Those who were apprehended for moving outside the camps without permission were charged for violating the Refugee Act (Oxford Analytica, 2021). Additionally, refugees reported numerous violations by the Kenyan police, including sexual assault, physical violence, theft, extortion, and confinement in harsh and degrading conditions. There were also claims against police officers for the mass arrest and detention of numerous refugees in Nairobi on public order charges, often without credible evidence. Reports suggested that police frequently labelled refugees as “terrorists”, potentially indicating a motive for their mistreatment in response to approximately 30 attacks on law enforcement and civilians by unidentified individuals in Kenya (Oxford Analytica, 2021)

Moreover, the manner in which the encampment policy was enforced, both within and outside the asylum camps, was perceived as unethical, further compromising the rights of refugees. For instance, police officers faced allegations of extorting money from refugees during regular security patrols, threatening arrest if their demands were not met. Furthermore, the relationship between refugees and their host communities became increasingly strained due to the government's sweeping denunciation of refugees as a security threat. Consequently, refugees have experienced discrimination, particularly in their access to both public and private services (Oxford Analytica, 2021)

## **5. Contribution to Knowledge**

This paper makes two significant contributions. The primary contribution lies in the analysis of refugee protection mechanisms in Kenya, particularly emphasising the Refugee Act of 2021. Previous research has largely focused on international treaties and the Refugee Act of 2006; however, the extent to which the Refugee Act of 2021 aligns with internationally recognized durable solutions for refugee problems has not been comprehensively explored. Consequently, this study builds upon earlier findings by improving both temporal and spatial precision. Furthermore, the article contributes to the ongoing discourse surrounding refugee protection in Kenya. The examination of the Refugee Act of 2021 also produces a dataset that allows researchers to investigate new questions related to refugee protection in the nation, including the strategies that refugees employ to address the economic challenges they face in Kenya.

## **6. Conclusion**

This paper has demonstrated that refugees in Kenya possess the right to protection. They are entitled to security, freedom of movement, the right to work, access to essential services, and the right to seek justice. These rights are enshrined in international refugee instruments as well as in Kenya's Refugee Act of 2021. Nevertheless, the realisation of these protective rights remains incomplete due to inadequate implementation and enforcement of both international standards and the provisions of the Refugee Act. As a result, refugees in Kenya continue to encounter various protection challenges. These challenges include insufficient enforcement of durable solutions to the refugee problem, the encampment policy, and the association of refugees with insecurity in the country.

## **7. Recommendations**

The research presents the subsequent recommendations;

1. Kenya should comprehensively adopt and enforce international instruments for the protection of refugees;
2. Kenya ought to pursue durable solutions to the refugee crisis; and

3. Kenya is encouraged to thoroughly implement and uphold the Refugee Act of 2021.

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