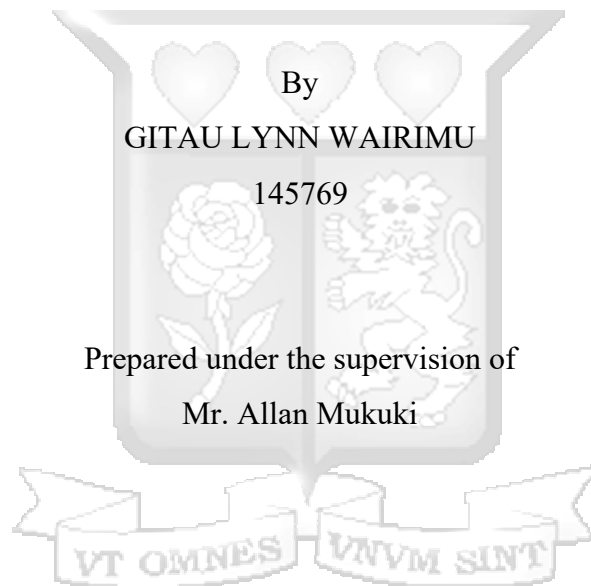


**INTEGRATING KENYA'S VISA POLICY SHIFT WITH ITS
COUNTERTERRORISM MEASURES; ENHANCING BORDER
SECURITY FRAMEWORK ON THE KENYA-SOMALIA BORDER**

Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree, Strathmore

University Law School



December 2024

Word Count:12301

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	5
DEDICATION	6
DECLARATION	7
ABSTRACT	8
LIST OF ABBREVIATIONS	9
LIST OF LEGAL INSTRUMENTS	10
1. CHAPTER ONE	11
1.1. INTRODUCTION	11
1.2. BACKGROUND	11
1.3. STATEMENT OF PROBLEM	13
1.4. RESEARCH OBJECTIVES	14
1.5. HYPOTHESIS	14
1.6. RESEARCH QUESTIONS	14
1.7. SIGNIFICANCE OF STUDY	15
1.8. THEORETICAL FRAMEWORK	15
1.8.1. DEFENSIVE REALISM	15
1.8.2. SECURITISATION	16
1.9. LITERATURE REVIEW	18
1.9.1. TERRORISM AND COUNTERTERRORISM	18
1.9.2. KENYA-SOMALIA BORDER RELATIONSHIP	19
1.9.3. BORDER CONTROL	20
1.10. METHODOLOGY	21
1.11. ASSUMPTIONS	22
1.12. LIMITATIONS	22
1.13. CHAPTER BREAKDOWN	23

2. EVOLUTION OF KENYA’S VISA POLICY	25
2.1. INTRODUCTION	25
2.2. WHY THE VISA CONVERSATION	25
2.3. OVERVIEW OF KENYA’S PREVIOUS VISA POLICY	26
2.4. TRANSITIONAL PERIOD	26
2.5. IMPLEMENTATION OF THE NEW OPEN VISA POLICY	27
2.6. CONCLUSION	28
3. KENYA’S INTERACTION WITH TERRORISM AND COUNTERTERRORISM EFFORTS	30
3.1. INTRODUCTION	30
3.2. MAJOR TERRORIST ATTACKS	31
3.2.1. AL QAEDA	31
3.2.2. AL SHABAAB	31
3.3. NATIONAL COUNTERTERRORISM EFFORTS	34
3.4. CONCLUSION	36
4. KENYA-SOMALIA BORDER RELATIONSHIP	37
4.1. INTRODUCTION	37
4.2. HISTORY	37
4.2.1. OGADEN WAR	37
4.2.2. SOMALI CIVIL WAR	39
4.2.3. EMERGENCE OF AL SHABAAB	39
4.3. MEASURES TO ADDRESS BORDER INSECURITY	41
4.3.1. AMISOM	41
4.3.2. IGAD	42
4.3.3. OPERATION LINDA NCHI	43
4.3.4. VETTING FOR KENYAN CITIZENSHIP	44
4.4. POLICY GAPS IN IMPLEMENTATION	45



4.4.1. CORRUPTION IN SECURITY FORCES UNDERMINING EFFECTIVE BORDER MANAGEMENT	45
4.4.2. ETHNIC AND SOCIAL MARGINALISATION	45
4.4.3. LIMITED CROSS BORDER COLLABORATION	46
4.4.4. REFUGEE MANAGEMENT CHALLENGES	46
4.5. CONCLUSION	47
5. CONCLUSION	48
5.1. INTRODUCTION	48
5.2. RECOMMENDATIONS	49
5.2.1. INTEGRATION OF TERRORIST DETECTION SYSTEM WITH THE ICAO- DTC9 SYSTEM	49
5.2.2. ESTABLISHING A FUNCTIONING BORDER SURVEILLANCE SYSTEM	49
5.2.3. REBRANDING THE VETTING COMMITTEE FOR SOMALI NATIONALS	49
5.2.4. POLICY AND LEGISLATIVE REFORMS	50
5.3. CONCLUSION	50
BIBLIOGRAPHY	52
DISSERTATION & THESES	52
INTERNET RESOURCES	52
JOURNAL ARTICLES	55
SELF PUBLISHED ARTICLE	55
RESEARCH PAPER	56
UNITED NATION DOCUMENTS	56

ACKNOWLEDGEMENTS

I am profoundly grateful to God for the sustenance throughout the journey of jotting down this dissertation. I also extend regard to my supervisor, Mr. Allan Mukuki whose counsel played a major part in the completion of this work. Finally, a well deserved acknowledgement to myself, for the unwavering resilience and determination that turned this accomplishment into a reality.



DEDICATION

This dissertation is dedicated to myself for the countless hours of effort that made this work possible; as a testament to my perseverance and unwavering commitment to achieving my goals

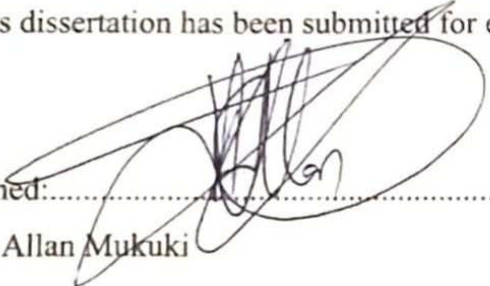


DECLARATION

I, LYNN WAIRIMU GITAU, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: .....
Date: 20/1/2025.....

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

.....
Mr. Allan Mukuki 20/1/2025

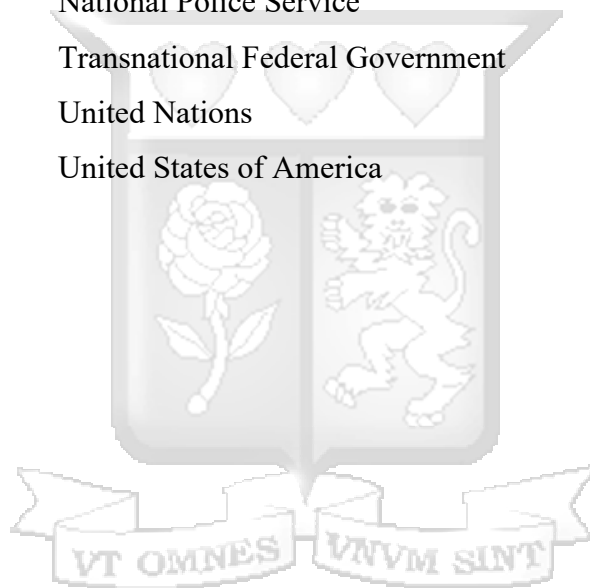
ABSTRACT

With the introduction of a new digital platform for tourist authentication, there seems to be a disregard to the country's possible exposure to insecurity, given Kenya's history of terrorist attacks. The study seeks to infer the impact of Kenya's transition to an open visa policy on national security, with a specific focus on its insufficient integration with counterterrorism measures. The analysis focuses on synchronising the existing counterterrorism policies with the open visa policy in order to enhance the functionality of the visa as a line of defence against terrorism. This study addresses gaps within current national frameworks in effectively mitigating foreign threats so as to amplify security measures and counter potential threats while facilitating the free movement of people under Kenya's new open visa status



LIST OF ABBREVIATIONS

AMISOM	African Union Mission to Somalia
AU	African Union
AUSSOM	African Union Support and Stabilisation Mission
EAC	East African Community
ICU	Islamic Courts Union
IGAD	Intergovernmental Authority on Development
KDF	Kenya Defence Forces
NIS	National Intelligence Service
NPS	National Police Service
TFG	Transnational Federal Government
UN	United Nations
USA	United States of America



LIST OF LEGAL INSTRUMENTS

1. The Prevention of Terrorism Act, Act No 30 of 2012
2. The Kenya Citizenship and Immigration Act, Act No 12 of 2011
3. East African Community Common Market Protocol, 2013.
4. United Nations Security Council Resolution No 2178 of 2014
5. Letter from the Permanent Representative of Kenya to the United Nations addressed to the President of the Security Council, October 2011
6. Report of the Monitoring group in Somalia pursuant to security council 118 (2008)



1. CHAPTER ONE

1.1. INTRODUCTION

The transition of Kenya to an open visa policy, from January 2024, through the establishment of a digital platform for tourist authentication, has stirred a spectrum of reactions among Kenyans¹, with concerns emerging regarding potential exposure to high-risk individuals and an increase in insecurity, given the lingering impact of previous terrorist attacks. This study delves into the legal implications of this policy shift within the context of national counterterrorism efforts, focusing primarily on Kenya's implementation of the open visa policy while highlighting existing regional and national policies adopted in Kenya to illuminate potential challenges posed by Kenya's visa-free status on counterterrorism efforts. It also explores the intricate relationship between migration policies, border security, and counterterrorism in the East African region. It builds a case on the danger of Somalia joining the East African Community on Kenya's new visa policy and its counterterrorism efforts².

As argued above, the study aims to provide insight into the current frameworks for border security and counterterrorism and how the current open visa policy may affect these frameworks. Thereafter, it offers recommendations on policy changes that would ensure an efficient migration system that offers maximum border security and reduces the risk of terrorism in the country.

1.2. BACKGROUND

Kenya has experienced numerous terrorist attacks due to its geopolitical ties with Western powers, particularly the United States and Israel³. These attacks have often been linked to Islamic radical groups such as Al-Qaeda and Al-Shabaab, with the latter recruiting a significant number of Kenyan youth⁴. Notable incidents include the 2002 Kikambala hotel attack in Mombasa, the 2013 Westgate Shopping Mall shooting that resulted in 67 deaths, and the 2015 Garissa University attack, which

¹ Kalekye M, 'Ruto declares Kenya visa free' , <https://www.kbc.co.ke/ruto-declares-kenya-visa-free/> on December 12, 2023

² <https://issafrica.org/iss-today/too-much-too-fast-somalia-joins-the-east-african-community> on March 7 2024

³ Woldemichael W, 'International Terrorism in East Africa: The Case of Kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006, 48

⁴ Adan H, Maj. Kenya army, ' Combating transnationalism terrorism in Kenya', published, US Army Command and General Staff College, Kansas, 2005, 10.

claimed 150 lives⁵. The most recent large-scale terrorist attack occurred in 2019 on Riverside Drive, Nairobi, with 21 fatalities⁶. Investigations revealed the involvement of both Somali nationals and Kenyan citizens with ties to Islamic extremism, fueling a growing strain between Kenya and Somalia. This dynamic has also heightened suspicion toward Kenyan Muslims, exacerbating internal tensions through evidence of Al-Shabaab's recruitment of Kenyan youth, alongside reports of mosques in Nairobi being used as recruitment centres, underscoring the complex security challenges at the Kenya-Somalia border⁷.

Another source of tension between Kenya and Somalia, though not pertinent to the subject matter of this study, is the screening of Somali individuals before obtaining Kenyan citizenship. The vetting dates back to 1989, initially tied to poaching and ivory smuggling activities that were associated with Somali nationals entering Kenya through obtaining citizenship illegally⁸. This led to the establishment of a Somali Probe Committee, which, over time, evolved into a discriminatory mechanism based on clan affiliations, initially targeting Somalis from specific clans like the Hamiya, who were claimed not to be indigenous to the country⁹. However, as terrorism became a growing concern, the vetting shifted toward Muslim Kenyans broadly, heightening the stigmatisation of Somalis¹⁰. In light of these tensions, the vetting committee was dismantled in May 2024 following public outcry over its discriminatory practices¹¹.

Kenya's new visa policy reflects the evolving regional security landscape. Traditionally, visa applications involved visiting Kenyan embassies and undergoing interviews, with some countries enjoying visa exemptions or simplified processes due to multilateral agreements. The new visa policy introduced the Electronic Travel Authorization (ETA) system, requiring foreign nationals

⁵ <https://www.bbc.com/news/world-africa-32169080> on 3 April 2015

⁶ Kahongeh J, 'How Dusit terror attack unfolded', Nation Africa, 15 January 2020, <https://nation.africa/kenya/news/how-dusit-terror-attack-unfolded-241014> on 15 January 2020

⁷ Adan H, Maj. Kenya army, 'Combating transnationalism terrorism in Kenya', published, US Army Command and General Staff College, Kansas, 2005, 10.

⁸ Lochery E 'Rendering Difference Visible: The Kenyan state and its Somali citizens', 111(445) *Oxford University Press*, 2012, 623

⁹ Lochery E 'Rendering Difference Visible: The Kenyan state and its Somali citizens', 111(445) *Oxford University Press*, 2012, 626

¹⁰ Lochery E 'Rendering Difference Visible: The Kenyan state and its Somali citizens', 111(445) *Oxford University Press*, 2012, 637

¹¹ Nasubo F, Ngira D, 'Citizenship Rights: The quest for identification', The Elephant, 10 July 2024, <https://www.theelephant.info/analysis/2024/07/10/citizenship-rights-the-quest-for-identification/> on 10 July 2024

to upload their travel documents online and pay a fee of USD 34-52 for entry approval¹². Exemptions apply to Kenyan citizens, passport holders, and citizens of East African Community (EAC) member states except Somalia¹³. This exclusion underscores the strained relationship between Kenya and Somalia, rooted in broader concerns about border security and terrorism.

Regionally, the EAC has made significant strides in fostering visa-free movement among its member states by allowing visa-free entry of citizens of member states in any country within the region¹⁴. After an extended 11-year vetting process, Somalia officially joined the EAC in November 2023¹⁵. However, Somalia's political instability has raised concerns among member states regarding the implications for regional security¹⁶. The prolonged vetting process reflects these apprehensions, highlighting Somalia's internal challenges and the risks it may pose to the region's collective stability.

To conclude, Kenya's approach to border security and immigration, particularly regarding its relationship with Somalia, is profoundly shaped by its history of terrorism. While regional efforts, such as the EAC's visa-free policy, aim to promote cooperation and ease movement, the complex security concerns through the Kenya-Somalia border continue to influence the country's visa policies and national security strategies.

1.3. STATEMENT OF PROBLEM

Given Kenya's move towards a visa-free status and its potential implications for national security, it is imperative to thoroughly examine this shift's complexities. By conducting scholarly research into the intricacies of the visa policy and the counterterrorism measures in place, the study seeks to identify effective policies that, once implemented, would enhance migration governance, particularly in addressing foreign threats.

¹² <https://www.etakenya.go.ke/en> on 25 September 2024

¹³ https://www.etakenya.go.ke/en/pages/GENERAL_INFO on 25 September 2024

¹⁴ Article 7(1), *East African Community Common Market Protocol*, 2013

¹⁵ <https://www.eac.int/press-releases/3049-somalia-finally-joins-eac-as-the-bloc-s-8th-partner-state> on 04 March 2024

¹⁶ <https://www.eac.int/press-releases/2711-eac-officially-launches-the-verification-mission-to-assess-somalia-s-readiness-to-join-the-community> on 25 January 2023

1.4. RESEARCH OBJECTIVES

The research objectives intended to be realised in the study are as follows;

- (a) Investigate the rationale behind Kenya's transition towards an open visa policy.
- (b) Analyse the effectiveness of the current border security measures and counterterrorism efforts in light of Kenya's visa policy changes.
- (c) Analyse the history behind the Kenya-Somalia border relationship, highlighting issues regarding immigration and terrorism.
- (d) Propose evidence-based recommendations for enhancing migration governance strategies to strengthen national security and counter potential external threats effectively.

1.5. HYPOTHESIS

Kenya's adoption of an open visa policy will necessitate changes in migration policies and counterterrorism measures to advance effective border security.

1.6. RESEARCH QUESTIONS

The following research questions are set to be answered in the study;

- (a) What are the primary objectives driving Kenya's transition towards a visa-free status?
- (b) How adequate are Kenya's current border security and counterterrorism measures in light of the recent changes in visa policy?
- (c) How is the historical relationship between Kenya and Somalia, more specifically focusing on immigration and terrorism?
- (d) Based on the findings, what evidence-based recommendations can be proposed to enhance migration governance strategies in Kenya, with a focus on strengthening national security and more effectively countering potential external threats?

1.7. SIGNIFICANCE OF STUDY

The research aims to shed light on the gap within the current migration frameworks arising from the change in Kenya's visa policy while retaining the current migration policy and

counterterrorism measures. By understanding this gap, the research endeavours to provide evidence-based policies that will enhance security measures, effectively counter future terrorism threats, and foster a positive border relationship between Kenya and Somalia.

1.8. THEORETICAL FRAMEWORK

The theoretical framework encompasses an array of perspectives which offer unique insights into the relationship between security measures and border management. Some of the theories the study will rely on include:

1.8.1. DEFENSIVE REALISM

This theory emerges from structural realism, a theory that Kenneth Waltz advanced in his work “Theory of International Politics” as a critique of classical realism¹⁷. Waltz sought to argue that the personal ambitions of world leaders do not drive international politics but the anarchic structure of the global system itself¹⁸. Structural realism is divided into two schools of thought: defensive realism and offensive realism¹⁹. The latter suggests that states constantly strive for hegemony, while defensive realism contends that states seek to enhance security to ensure their survival rather than pursuing dominance²⁰.

A central concept in defensive realism is the security dilemma. This occurs when state actions taken to enhance its security are perceived as threatening by other states, leading to adverse reactions which unintentionally lead to insecurity rather than an increase in national security²¹. The theory of defence realism, as a subset of structural realism, is often haunted by the offence-

¹⁷ Taliaferro J, ‘Security seeking under anarchy: Defensive realism revisited’ 25(3), *Massachusetts Institute of Technology Press*, 2000/01,132

¹⁸ Taliaferro J, ‘Security seeking under anarchy: Defensive realism revisited’ 25(3), *Massachusetts Institute of Technology Press*, 2000/01, 132

¹⁹ Taliaferro J, ‘Security seeking under anarchy: Defensive realism revisited’ 25(3), *Massachusetts Institute of Technology Press*, 2000/01, 128-129

²⁰ Taliaferro J, ‘Security seeking under anarchy: Defensive realism revisited’ 25(3), *Massachusetts Institute of Technology Press*, 2000/01,128-129

²¹Taliaferro J, ‘Security seeking under anarchy: Defensive realism revisited’ 25(3), *Massachusetts Institute of Technology Press*, 2000/01, 136

defence balance, which is guided by the assumption that states are more likely to lean into their defensive capabilities than creating war²².

However, some theorists, such as Stephen Waltz, critique the assumption, arguing that the offence-defence balance is ambiguous due to the unpredictable nature of war and the acquisition and use of military equipment²³. Critics of defensive realism point to this ambiguity, suggesting that it is difficult to accurately assess whether offensive or defensive strategies dominate in a given situation, which then complicates the practical application of the theory as the dynamics of warfare are constantly evolving, making it challenging to predict outcomes based on the offence-defence balance alone²⁴.

Nonetheless, defensive realism provides a helpful framework for understanding Kenya's approach to border security, particularly in building reasoning behind the national policies and measures undertaken at the Kenya- Somalia border. It rationalises the country's response to terrorist attacks and the previous vetting of Somalis before granting citizenship as a precaution in the face of security and immigration concerns. Moreover, the concept of security dilemma would help argue out the retaliatory terrorist attacks in response to Kenya's heightened security measures. The theory will be instrumental in analysing the national security strategies and their broader impact on regional stability.

1.8.2. SECURITISATION

The theory was introduced by Ole Wæver in 1993 as part of the broader Copenhagen School of International Relations. It centres on the idea that state actors can transform ordinary political issues into security matters, allowing them to take extraordinary measures to address these issues²⁵. Once an issue is securitised, it receives disproportionate attention and resources, justifying

²² Taliaferro J, 'Security seeking under anarchy: Defensive realism revisited' 25(3), *Massachusetts Institute of Technology Press*, 2000/01, 138

²³ Walt S, 'Alliance formation and the balance of world power' 9(4), *Massachusetts Institute of Technology Press*, 1975, 33

²⁴ Walt S, 'Alliance formation and the balance of world power' 9(4), *Massachusetts Institute of Technology Press*, 1975, 33

²⁵ Özari S, 'Securitization of energy through the lenses of Copenhagen school', 2(2) *West End Journal of Social Sciences*, 2013, 60

exceptional actions that might not be permissible under normal circumstances²⁶. Securitisation involves several key components: the securitising actor, who raises the alarm on the issue that needs to be securitised, usually the state; the existential threat which poses a danger to security; the object which needs to be protected from the threat; the audience which must be persuaded to view the issue as the threat²⁷. The success of any securitisation depends on the securitising actor's ability to willingly convince the audience that the threat is urgent and requires extraordinary measures to mitigate the danger²⁸.

A significant critique of the theory is that it can lead to an overreaction of states where they can overextend their power in ways that may be unhelpful²⁹. This can be displayed in Kenya, where the securitisation of terrorism led to the discrimination of Muslims in the country, a negative consequence of the state's response to the perceived threats³⁰.

The theory is often applied alongside classical realism and constructivism. The former addresses the reasons states prioritise their own security³¹ while constructivism explains how security issues emerge, evolve, and justify state actions.

The theory will be integral to my dissertation as it provides a framework for understanding Kenya's response to terrorism and its securitisation of immigration policies. It will support my argument for strengthening border security and immigration policies to manage the Kenya- Somalia border effectively. Using securitisation, I aim to demonstrate how framing immigration and border controls as national security concerns will allow the state to adopt more stringent policies to improve the overall border security in Kenya.

²⁶ Özari S, 'Securitization of energy through the lenses of Copenhagen school', 2(2) *West End Journal of Social Sciences*, 2013, 63

²⁷ Özari S, 'Securitization of energy through the lenses of Copenhagen school', 2(2) *West End Journal of Social Sciences*, 2013, 62

²⁸ Abulof U, 'Deep securitization and Israel's 'demographic demon'', 8(4), *International Political Sociology*, 2014, 396

²⁹ Latif MI & Khan RA, 'Tackling terrorism; traditional security approaches', 64(2), *Pakistan Institute of International Affairs*, 2011, 25

³⁰ Lochery E 'Rendering differences visible: The Kenyan state and its Somali citizens', 111(445) *Oxford University Press*, 2012, 637

³¹ Ciută F, 'Security and the problem of context: A hermeneutical critique of securitization theory' 35(2), *Cambridge University Press*, 2009, 318

1.9. LITERATURE REVIEW

In recent years, global migration policies have undergone a transformative shift, and Kenya is following suit with the change to an open visa policy. As the nation embarks on this change, it is imperative to scrutinise the implications of the open visa policy to the current national frameworks, particularly on counterterrorism and border security, with Kenya adopting a visa-free policy. This review aims to explain these intersecting domains' underlying dynamics and implications by synthesising insights from scholarly works. Through an examination of studies by Woldemichael, Kimunguyi, and Lochery, this review provides critical perspectives on the vulnerabilities of Kenya to terrorism, the correlation between porous borders and terrorist activities and the history behind the unstable Kenya-Somalia border relationship. These insights lay the groundwork for a focused analysis of the specific implications of Kenya's open visa policy on national security, counterterrorism efforts and the Kenya-Somalia border relationship.

1.9.1. TERRORISM AND COUNTERTERRORISM

Woldemichael Woldeselassie, in “ International terrorism in East Africa: The case of Kenya”,³² provides a comprehensive analysis of terrorism in its international dimensions, mainly focusing on Kenya’s experience. He offers insight into Kenya's various instances of these threats from 1980 to 2006. Woldemichael asserts that there is a direct correlation between terrorism and a state’s migration policies, emphasising the cross-border nature of international terrorism³³. He hints at the concept of balancing national security and individual rights and obligations, noting the mistreatment of Somali refugees in Kenya in the 1990s³⁴. This aids in understanding the relationship between migration policies and terrorism and the likely implication of lax border restrictions on international terrorism. However, while he alludes to the religious segregation of the Islamic religion³⁵, it is necessary to highlight that this is not a proper cause for a country to be under terrorist

³² Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006, 33

³³ Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006,49

³⁴ Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006,49

³⁵ Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006,46-47

attacks, majorly because terrorism is founded on radical groups of Islamic people but should not be tied to a particular religion. Woldemichael's work is relevant to my study as it offers a history of Kenya's struggle with terrorist attacks and the broader political and religious contexts³⁶ providing a foundation for discussing the limitations of the country's counterterrorism efforts.

1.9.2. KENYA-SOMALIA BORDER RELATIONSHIP

Kimunguyi Patrick, in "Terrorism and Counterterrorism in East Africa", argues that Somalia is a breeding ground for terrorist groups due to their instability and Islamic inclinations, citing Al-Qaeda's use of the country as a coordination point and transit route³⁷. His work plays a role in this study by linking the instability of the Kenya-Somalia border to terrorism, highlighting the involvement of Somali nationals and radical groups stemming from Somalia in terrorist attacks on Kenyan soil³⁸. This then forms basis for the fourth chapter in the study that will look at the Kenya-Somalia border relationship with an aim of establishing the link between the instability and terrorism, paying attention to the measures Kenya has undertaken to mitigate the instability and insecurity; forming the argument that border controls need to be amended to ensure effective measures are set in place to match the open visa policy that guarantees free movement of nationals into Kenya.

Lochery in her work, "Rendering Difference Visible: The Kenyan State and Its Somali Citizens", provides a historical foundation for understanding the Kenya-Somalia border relationship, through her exploration of the screening process and its underlying motivations. Her article is essential for contextualising Kenya's modern border security measures, particularly in the era of terrorism in the 2010s³⁹. By looking at these previous measures, we may be able to form a bedrock for some of the recommendations on border control strategies that would align with the current open visa policy.

³⁶ Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006,46-47

³⁷ Kimunguyi P, 'Terrorism and counter terrorism in east africa' Global Terrorism Research Centre and Monash European and EU Centre Monash University, 2011,5

³⁸ Kimunguyi P, 'Terrorism and counter terrorism in east africa' Global Terrorism Research Centre and Monash European and EU Centre Monash University, 2011,7

³⁹ <https://www.bbc.com/news/world-africa-32169080> on 3 April 2015

1.9.3. BORDER CONTROL

Woldemichael in his article draws a link between terrorism and migration policies⁴⁰. I agree with his discussion on the laxity of Kenya's border controls which has led to the influx of refugees and potentially contributed to the country's vulnerability to terrorism⁴¹. This then drives the conversation on border control to be more proactive as opposed to the reactive nature where the government becomes more stringent on closing the borders after a terrorist attack has taken place. Woldemichael's emphasis on the need for more robust border controls will be used to argue that there are insufficient border security measures, particularly in light of the open visa policy adopted in Kenya. His work will be instrumental in discussing how migration policies influence national security and how Kenya can balance openness and protection against terrorism.

Kimunguyi also highlights the vulnerability of the East African region to terrorism due to the porous borders⁴². He states that the free movement policy established in the Protocol on the Establishment of East African Community Common Market has caused borders to become more porous as they allow citizens to enter freely and exit member countries. While I agree with his assessment of Somalia's instability on regional security and the impact of porous borders in the region, I would argue that his analysis would benefit from a deeper exploration of how regional cooperation and policy reforms might mitigate these issues. Broader geopolitical factors, such as international counterterrorism alliances and economic instability in Somalia, also play a crucial role in sustaining the terrorism threat, which Kimunguyi only briefly touches on. The article will provide foundation for forming the correlation between the unstable border relationship and the immigration and terrorism issue which will then form the basis for the main claim in the study, that enhanced border security and counterterrorism measures are critical for Kenya's national border security.

⁴⁰ Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006,49

⁴¹ Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006,49

⁴² Kimunguyi P, 'Terrorism and counter terrorism in east africa' Global Terrorism Research Centre and Monash European and EU Centre Monash University, 2011,1

In her article, Lochery also examines the history of Somalis in Kenya, mainly focusing on the vetting process for granting Kenyan citizenship to Somali nationals⁴³. Lochery claims that this screening process was rooted in the institutionalisation of state power, which at first sought to distinguish between indigenous Kenyan nationals and Somali refugees. According to her, this differentiation was a deliberate effort by the state to assert control over its population and manage the influx of Somalis from across the border⁴⁴. While shedding light on the government's motivation behind the screening process, she lacks enough evidence in her claim that the process became marred with discrimination⁴⁵, particularly on the Muslims in light of the terrorist attacks that happened. Nonetheless, her article will be critical in establishing a historical view of some of the border control measures taken in place, assessing their effectiveness, and if they could be tweaked to form new measures aligning with the open visa policy.

The authors' discussions underscore the study by contextualising the history of terrorism in Kenya and the proactive and reactive national border security measures undertaken. They also set the stage for a focused analysis of the specific implications of Kenya's open visa policy on border security measures.

1.10. METHODOLOGY

This study will utilise doctrinal research methodology to conduct a case study on Kenya's legislation on immigration and counterterrorism. It will include examining primary sources of law, such as the Constitution of Kenya and parliamentary statutes, such as The Prevention of Terrorism Act and The Kenya Citizenship and Immigration Act, which would help establish the current frameworks. Secondary sources of law, such as literature in books, articles and theses on the subject matter, will be reviewed to ascertain scholarly perspectives on immigration policies and

⁴³ Lochery E 'Rendering Difference Visible: The Kenyan state and its Somali citizens', 111(445) *Oxford University Press*, 2012, 616

⁴⁴ Lochery E 'Rendering Difference Visible: The Kenyan state and its Somali citizens', 111(445) *Oxford University Press*, 2012, 623

⁴⁵ Lochery E 'Rendering Difference Visible: The Kenyan state and its Somali citizens', 111(445) *Oxford University Press*, 2012, 636

counter-terrorism efforts in Kenya. These articles will aid in understanding the history of the Kenya and Somalia border relationship, given that many terrorist groups have originated from Somalia⁴⁶. By studying this relationship, the research seeks to conclude on policy changes that ensure Kenya's open visa policy gels well with the border security and counterterrorism measures to avoid further insecurity in the country.

1.11. ASSUMPTIONS

The study acknowledges the following assumptions to enhance the validity and practical interpretation of its findings:

Impactfulness: The study assumes that its findings and recommendations have the potential to contribute to informed decision-making regarding national border security and regional movement of people

Data Accuracy: The study assumes that the data and information sourced from written literature are accurate and reliable for analysis by relying on the credibility and integrity of existing literature.

Policy Consistency: The study assumes that Kenya's legislature and regulatory framework on visa policies and counterterrorism efforts remain consistent throughout the study without significant change to maintain the relevance of the analysis.

1.12. LIMITATIONS

While this study aims to provide insights into the implications of Kenya's visa exemption policy on national counterterrorism efforts, several limitations should be noted to ensure the interpretation of the findings accurately and transparency in the research process:

Time constraints: The timeframe allocated for this research may restrict the depth of the analysis. Given the topic's complexity and need for a thorough investigation, the short

⁴⁶ Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006,1

timeframe could limit the extent to which all aspects of the research questions can be explored comprehensively.

Lack of Availability of Reliable Literature: The need for more reliable literature and data on visa exemption policies implemented in other African jurisdictions, such as Rwanda, poses a significant challenge as it may constrain the analysis of the jurisdiction, therefore affecting the quality of recommendations on the problem statement.

Despite these constraints, efforts will be made to mitigate their impact and provide a proper analysis within the scope of this study.

1.13. CHAPTER BREAKDOWN

This study is organised into the following five distinct chapters, each serving a specific purpose in the research;

Chapter 1; Introduction

This chapter sets the dissertation in motion by introducing the various themes delved into in other chapters. It highlights the brief background on the terrorist attacks in the country and the transition into the open visa policy which paves way for the problem statement, where the shift in Kenya's visa policy would have implications on national security if the counterterrorism measures are not changed accordingly. The chapter also focuses on the theories relied on, including defensive realism and securitisation which underpins Kenya's need to enhance its security and have proactive measures against terrorism. It ends with looking at previous articles written on the subject matter at hand, scrutinising the themes of terrorism and counterterrorism, Kenya-Somalia border relationship and border control.

Chapter 2:History of Kenya's visa policy changes

This chapter lays the foundation of the research as we examine Kenya's visa policy, highlighting the previous visa policy and the current open visa policy. The research explores the reasons behind Kenya's current open visa policy. To that end, the chapter will call attention to the theme of migration policies and question the effectiveness of both visa policies.

Chapter 3; Kenya’s interaction with terrorism and the national counterterrorism efforts

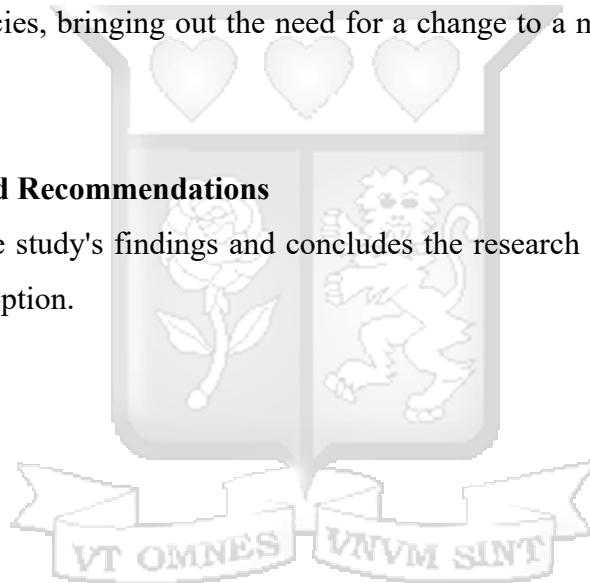
This chapter will discuss at length the study's problem statement, highlighting the country’s interaction with insecurity and raising questions about the effectiveness of national counterterrorism efforts. It also headlines the next chapter, which delves into Kenya’s border relationship with Somalia.

Chapter 4; History of Kenya and Somalia’s Border Relationship

This chapter looks at the history of Kenya and Somalia, particularly in terms of terrorism and border security. This research sheds light on the murky relationship and some previous measures to handle the insecurity problem. Consequently, the study will be able to establish some of the gaps in the national policies, bringing out the need for a change to a more productive system to enhance border security.

Chapter 5; Findings and Recommendations

This chapter provides the study's findings and concludes the research by giving evidence-based recommendations for adoption.





2. EVOLUTION OF KENYA'S VISA POLICY

2.1. INTRODUCTION

The following section delves into the evolution of Kenya's visa policies tracing their development from earlier iterations to the newly implemented open visa system which started operating as of January 2024⁴⁷. By charting this progression, the chapter seeks to assess the motivations behind the policy shift highlighting the challenges occurred in the previous regime, paying attention to border insecurity, and how border control was carried out. The analysis is structured in three key phases: first, an exploration of Kenya's previous long-standing visa policy; second, the transitional period that set the stage for the adoption of the open visa policy; and third, an examination of the newly implemented visa policy. Each phase will be discussed along the lines of counterterrorism strategies and border security measures demonstrating the use of visa policies as integral components of national border security. This chapter will underscore this crucial role positioning visa policies as a strategic tool for maintaining national security in the height of globalisation.

2.2. WHY THE VISA CONVERSATION

It is important to discuss the evolution of the visa policy in Kenya as it paves way for the ensuing discussion on border control particularly the Kenya-Somalia border. Visa policies, other than being a method of controlling migration into a country, can be used as a line of defence, particularly against non-state threats such as terrorism⁴⁸. This being the case, looking at the progression of Kenya's visa policy, and the underpinnings of the current open visa policy, aids in forming the right recommendations on some border control measures that would align with the open visa policy.

⁴⁷ Kalekye M, 'Ruto declares Kenya visa free' , <https://www.kbc.co.ke/ruto-declares-kenya-visa-free/> on 12 December 2023

⁴⁸Avdan N, 'Controlling Access to Territory: Economic Interdependence, Transnational Terrorism, and Visa Policies' 58(4), *Journal of Conflict Resolution*, 2014, 595

2.3. OVERVIEW OF KENYA'S PREVIOUS VISA POLICY

Kenya's former visa policy was rooted in colonial-era practices that carried over into the post-independence government. Like many countries, the visa procedures required applicants to submit documents and attend a brief interview at Kenyan embassies or consulates abroad⁴⁹. Afterwards, tourists could either be denied or granted a visa allowing single or multiple entries. The primary purpose of this system was to control population levels through regulation of foreign entry and residency. However, over time, visa restrictions were used as the first line of defence against intrusion by non state threats such as terrorism⁵⁰. This could be seen over the years as Kenya's previous visa policy has predominantly impacted Somali nationals. This was because of Somalia's political instability which spilled over into Kenya in various ways such as Somali refugees and wars against Al Shabaab militants in the country⁵¹. Due to the repeated terrorist incidents, Kenya imposed strict visa restrictions on Somali nationals to address the border insecurity. Unfortunately, as will be discussed in the following chapters, the visa restrictions did not address the issue effectively as Al Shabaab militia set base in Kenya recruiting members who aided in the execution of some of the terrorist attacks in the country.

2.4. TRANSITIONAL PERIOD

The pan- African drive for globalisation within the continent exacerbated by talks in regional blocs including the East African Community and the African Union led to the shift in Kenya's visa policy to an open visa policy. This was in order to build global connections so as to grow tourism and foreign trade by enhancing economic globalisation⁵². The current government has been very active, showing its full support of this agenda⁵³. Additionally, President William Ruto, also cited paleoanthropological reasons for the policy change, linking it to the idea that all humans have roots

⁴⁹ <https://www.kenyaimmigration.org/faq/what-are-the-differences-between-the-previous-visa-requirements-and-the-new-eta-requirements> on 12 December 2023

⁵⁰ Avdan N, 'Controlling Access to Territory: Economic Interdependence, Transnational Terrorism, and Visa Policies' 58(4), *Journal of Conflict Resolution*, 2014, 595

⁵¹ Lochery E 'Rendering difference visible: The Kenyan state and its Somali citizens' 111, *Oxford University Press*, 445, 2012, 622

⁵² Kinyanjui M, 'Kenya to be a visa-free country from 2024- President Ruto' Citizen Digital, 12 December 2023 <https://www.citizen.digital/news/kenya-to-be-a-visa-free-country-from-january-2024-president-ruto-n333050> on 14 November 2024

⁵³ Mataire R, 'President Ruto: An advocate for a borderless Africa' The Herald, 25 April 2024, <https://www.herald.co.zw/president-ruto-an-advocate-for-a-borderless-africa/> on 14 November 2024

in Kenya, particularly in Turkana County, where significant archeological discoveries have been made such as Homo Habilis and Homo Sapiens fossils in Koobi Fora⁵⁴. This vision connects Kenya's identity as the cradle of humanity to a more open, welcoming approach to global travellers. Kenya has followed in the footsteps of other African nations such as Benin, Gambia and Rwanda which adopted open visa systems in the past years⁵⁵. In the East African Community, the no visa policy granted in the EA Common Market Protocol⁵⁶ involving free movement of citizens of EAC member states within the region using only their national identification cards⁵⁷, acted as a catalyst in Kenya's decision to have an open visa policy. One of the important milestones prior to the change including agreements such as the visa waiver with South Africa, allowing Kenyans and South Africans to freely move between the two countries without applying for a visa⁵⁸.

Basing it on the above, it is important to note that the change comes at a time, where there has been a slump in terrorist threats and activities in the country, coupled up with the fact that terrorism is a securitised issue, with minimal international and regional attention over the past years, highlights the inadequate recognition of the problem as it relates to visa policy. However, this poses a threat to border security, as will be seen below in the functionality of the visa policy, where no counterterrorism measure has been implemented in the system used to verify persons entering the country.

2.5. IMPLEMENTATION OF THE NEW OPEN VISA POLICY

The open visa policy is centred on the implementation of an electronic Travel Authorisation (eTA) system. The system is operated by the Ministry of Interior and National Administration, the State Department for Immigration and Citizen Services, and the Directorate of Immigration Services⁵⁹.

⁵⁴ Kinyanjui M, 'Kenya to be a visa-free country from 2024- President Ruto' Citizen Digital, 12 December 2023 <https://www.citizen.digital/news/kenya-to-be-a-visa-free-country-from-january-2024-president-ruto-n333050> on 14 November 2024

⁵⁵ Willige A, 'With Kenya and Rwanda opening borders for other Africans, what will visa-free travel mean for Africa's economic growth?' World Economic Forum, 15 November 2023 <https://www.weforum.org/stories/2023/11/kenya-rwanda-visa-free-travel-afcfta/> on 14 November 2024

⁵⁶ Article 7(1), *East African Community Common Market Protocol*, 2013

⁵⁷ <https://www.eac.int/immigration/migration-management/visa-free-entry> on 14 November 2024

⁵⁸ <https://www.president.go.ke/president-ruto-kenya-south-africa-visa-free-regime-will-boost-trade-and-investment/> on 9 November 2022

⁵⁹ https://www.etakenya.go.ke/en/pages/GENERAL_INFO on 14 November 2024

The platform allows visitors to apply for travel authorisation online through uploading travel documents which are verified by the system in accordance with the International Civil Aviation Organisation's Digital Travel Credential 9 (ICAO-DTC9)⁶⁰. Those exempted from this system include Kenyan citizens, Kenyan passport holders, diplomats, and citizens of EAC member states-except for Somalia⁶¹. The policy reflects Kenya's push for immigration management through simplifying travel procedures for visitors.

The use of ICAO-DTC9 standards ties Kenya's immigration controls to a global system of travel credential verification. However, there is a need for contextualisation of the system to accommodate the special issues the country faces with regards to border management, particularly border insecurity with Somalia, bringing refugee management and entry of terrorists into the country as obstacles to the effective functionality of the international standards. This may involve the use of secondary authentication or national security measures to mitigate the risks, full dependence on the international system may arise in future.

The contextualisation of the controls may flow into other areas including regional integration, as impacts are already being felt in the East African region as the eTA system temporarily failed to recognise EAC documents as they are not ICAO-DTC9 compliant making it difficult to recognise free movement within the region⁶².

2.6. CONCLUSION

The previous regime, as was discussed above, attempted to be a defence mechanism in guarding the country's border security, particularly in the Somali- Kenya border relationship⁶³. It was however unable to effectively guard Kenya against major security threats, evidenced by the numerous terrorist attacks, which will be furthered in the next chapter. In light of this, it is the fear

⁶⁰ https://www.etakenya.go.ke/en/pages/GENERAL_INFO on 14 November 2024

⁶¹ https://www.etakenya.go.ke/en/pages/GENERAL_INFO on 14 November 2024

⁶² Feleke B, 'Kenya goes visa free for travellers- but there's a catch' CNN Travel, 9 January 2024 <https://edition.cnn.com/travel/kenya-visa-free-electronic-travel-authorization/index.html> on 14 November 2024

⁶³ Avdan N, 'Controlling Access to Territory: Economic Interdependence, Transnational Terrorism, and Visa Policies' 58(4), *Journal of Conflict Resolution*, 2014, 595

of history repeating itself and creating a worse outcome that forms the basis of this discussion. Therefore it is vital to strengthen the current system using other strategies and systems that cater for this particular border insecurity problem. By doing so, there may be a guarantee of the use of the visa policy as a line of solid defence against terrorism and ensure border security.



3. KENYA'S INTERACTION WITH TERRORISM AND COUNTERTERRORISM EFFORTS

3.1. INTRODUCTION

Terrorism shall adopt the following definition; the threat of violence against noncombatant targets by clandestine agents calculated to create an atmosphere of fear and alarm or to coerce a government, the civilian population or any segment of the society⁶⁴. It became an international security problem majorly after the 9/11 Twin Towers attack as it inspired attacks in London, Bali and Madrid. Military forces and law enforcement authorities built common databases, and conducted joint operations to address the common threat of violence. The main driving force behind the counterterrorism efforts globally was the United States especially in the formation of the Patriot Act, significant in its expansion of the surveillance power of the State, allowing for information sharing between intelligence agencies and law enforcement⁶⁵. Kenya has had numerous interactions with terrorism particularly due to two reasons; its international ties with the West, particularly Israel and the United States who have had long standing support of Israel in its border war with Palestine making Kenya a casualty in the combat between the two parties. The second reason is its involvement with Somalia's political affairs that led to the fight against Al Shabaab militants⁶⁶. The research will examine some of the attacks conducted by Al Qaeda and Al Shabaab, emphasizing their role in exacerbating border insecurity. It will also highlight how terrorists exploit loopholes to infiltrate the country undetected by existing counterterrorism measures. Additionally, the chapter shall identify shortcomings in counterterrorism efforts, particularly the disconnect between the implementation of the visa policy and the strategies adopted.

⁶⁴ Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006, 35-36

⁶⁵ § 203, US Patriot Act of 2001

⁶⁶Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006, 35-36

3.2. MAJOR TERRORIST ATTACKS

3.2.1. AL QAEDA

Kenya has had interactions with Al Qaeda, particularly the 1998 UN Embassy bombing in Nairobi where a large bomb was detonated outside the embassy on August 7 1998, which killed 224 people, 12 being Americans⁶⁷. The attack was claimed to be orchestrated by Al Qaeda, who had set base in Somalia, as it was conducted at the same time on the UN Embassy in Tanzania. The reason behind the attack was the relations between the United States and the two East African countries. Given the magnitude of the attack, the local police and emergency services were overwhelmed by the scale of casualties therefore causing delay in securing the scene and providing effective crowd control⁶⁸. At the time, the government then addressed the matter of terrorism as an international problem as it was considered a fight between the extremist group and the USA with Kenya as collateral damage⁶⁹. The ability of Al Qaeda militants to enter the country undetected, and from their base in Somalia, became the first time the country's preemptive measures against terrorism, were put to test, and failed. However, during this time, President Moi's regime still believed that the terrorist attacks were a fight between the West and the Middle East, with Kenyans as collateral damage⁷⁰, given the nature of the attacks.

3.2.2. AL SHABAAB

However, over the years, due to frequent interactions between the Kenya and Somalia governments, an indigenous radical islamist group with a varying degree of semblance to Al-Qaeda's agenda was formed in Somalia⁷¹. As opposed to the pro-Palestine interests pushed by Al

⁶⁷Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006, 43

⁶⁸Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006, 42

⁶⁹Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006, 44

⁷⁰Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006, 43

⁷¹Kimunguyi P, 'Terrorism and counter terrorism in east africa' Global Terrorism Research Centre and Monash European and EU Centre Monash University, 2011,9, para.1

Qaeda, Al Shabaab were engaging in war against the Kenyan government due to their interference in Somalia's internal affairs, through attempting to attenuate the Somali civil war⁷².

One of the major terrorist attack carried out by Al Shabaab militants was that on Westgate Shopping mall as a retaliation for the Kenyan military operation in Somalia against the group known as Operation Linda Nchi⁷³. The attack came after several threats from the group due to the military operation and a three month preparation by the militants who conducted extensive reconnaissance of the building marking entrances, exits and security systems⁷⁴. Afterwards on 21 September 2013, the four masked assailants threw grenades at the entrance of the Westgate shopping mall and began entering the mall unleashing more grenades and gunshots on civilians. Kenyan security forces began their operation almost four hours after the beginning of the attack, where most of the victims were killed in the first hour. There was also lack of coordination between the Recce Squad, a specialized unit of Kenya's General Service Unit and the Kenya Defence forces leading to a friendly fire incident which led to the death of the Recce Squad commander and 2 officers injured⁷⁵. This attack revealed the weakness in the counterterrorism measures employed in the country, more so the inadequacy in the immigration office, where the attackers accessed the country through various borders, except through the Jomo Kenyatta International Airport, which was assumed to have the border control measures to identify and deny access to prohibited people.

The latest major terrorist attack occurred on the 15 and 16 January 2019 and began after a suicide bomber blew himself up outside the DusitD2 complex in Westlands, Nairobi. Thereafter four attackers carried out mass shooting in the complex for over 22 hours which left at least 15 people⁷⁶.

⁷²Changalwa K, 'Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*', published, University of Nairobi, Nairobi, 2019,6

⁷³ 39 people killed in Kenya mall attack claimed by Somali militant; hostages still held'The Washington Post, 22 September 2013, https://web.archive.org/web/20130922155502/http://www.washingtonpost.com/world/africa/gunmen-use-grenades-open-fire-at-nairobis-most-upscale-mall/2013/09/21/a9403b3a-22a8-11e3-ad1a-1a919f2ed890_story_1.html#expand on 08 December 2024

⁷⁴ Kamau J, 'How the terrorist left Eastleigh for Westgate', Nation Africa, 27 November 2020, <https://nation.africa/kenya/news/how-the-terrorists-left-eastleigh-for-westgate-3211286> on 08 December 2024

⁷⁵ Mutiga M, ' Westgate mall attack: How Kenya's vibrant media exposed the army's botched response', The Guardian, 3 November, 2013 <https://www.theguardian.com/commentisfree/2013/nov/03/terrorism-westgate-mall-press-freedom> on 08 December 2024

⁷⁶Burke J, 'Nairobi terror attack: gunfire heard hours after minister declares scene secure' The Guardian, 16 January 2019 <https://www.theguardian.com/world/2019/jan/15/nairobi-kenya-gunfire-hotel-complex-dusitd2> on 08 December 2024

Al Shabaab claimed responsibility for the attack which they claimed was a response to the US President's decision to recognize Jerusalem as the capital of Israel⁷⁷. The attack was carried out meticulously with the militants seen near the complex days prior to the attack. This attack showcased the inability in the counterterrorism strategies in the country where it was very evident that there was suspicious activity being carried out by the militants days prior to the attack⁷⁸. This ambush is similarly related to the Westgate attack, where the assailants were able to breach the borders and scope the scene days prior to the attack⁷⁹. However, there is inclusion of Kenyan recruits to the militia group signifying the ties between the Somali- inhabited regions in the country, and the Al Shabaab.

Due to the influx of terrorist attacks in the country, Kenya decided to close its border with Somalia, particularly border stops including Mandera, Lamu and Garissa as a way to mitigate the flow of Al Shabaab terrorists from Somalia⁸⁰. Moreover, there was an outcry by Kenya's deputy president then, William Ruto, requesting for the closure of Dadaab camp and relocation of the Somalis in the camp back to Somalia⁸¹, as it was claimed that it was harbouring affiliates to Al Shabaab and was used to transport arms into the country⁸².

3.3. NATIONAL COUNTERTERRORISM EFFORTS

Prior to 2012, Kenya had made diminutive efforts against terrorism majorly because it was believed that Kenya was collateral damage to the international war between the extremist groups

⁷⁷ Joscelyn T, 'Shabaab says Nairobi attack carried out in accordance with Zawahiri guidelines' Foundation for Defense of Democracies, Long War Journal, 16 January 2019, <https://www.longwarjournal.org/archives/2019/01/shabaab-says-nairobi-attack-conducted-in-accordance-with-zawahiris-guidelines.php> on 08 December 2024

⁷⁸ Kamau J, 'Anatomy of terrorist attack on DusitD2 Hotel' Nation Africa, 16 January 2019, <https://nation.africa/kenya/news/anatomy-of-terrorist-attack-on-dusitd2-hotel-128584> on 08 December 2024

⁷⁹ Kamau J, 'How the terrorists left Eastleigh for Westgate' Nation Africa, 27 November 2020 <https://nation.africa/kenya/news/how-the-terrorists-left-eastleigh-for-westgate-3211286> on 02 January 2025

⁸⁰ Agence France- Presse, 'Kenya says Somalia border reopening delayed after attacks' Voice of America, 06 July 2023, <https://www.voanews.com/a/kenya-says-somalia-border-reopening-delayed-after-attacks/7169364.html> on 02 January 2025

⁸¹ 'Kenya tells UN to close Dadaab camp after Garissa attack', BBC News, 11 April 2015, <https://www.bbc.com/news/world-africa-32269944> on 02 January 2025

⁸² Gluck Z, Brankamp H, 'Camps and counterterrorism: Security and remaking of refuge in Kenya' 40, *Environment and Planning D: Society and Space*, 1, 2022, *page no.*

and the West⁸³. The notable effort was the formation of a specialized unit in the National Police Service that catered to terrorist attacks as it was clear that these were not ordinary criminal offences and needed a specialized security force to contain it. It is therefore important to note that the visa policy at the time existed due to colonial influence on the country, meaning that there were no established immigration controls to regulate persons coming into the country. In addition to that, the only main border control implemented in the country was the presence of the Somali vetting committee that screened Somalis in Kenya prior to granting citizenship in the country⁸⁴. This too could not be termed as effective, with regard to entry regulation in Kenya, as it only sought to drive out Somalis that were based in Somalia and mitigate the clan clashes in the North Eastern Province⁸⁵. The Prevention of Terrorism Act became law in 2012 to address the growing threat of terrorism by Al Shabaab militants from Somalia. The Act was set to guide the detection and prevention of terrorist activities in the country⁸⁶. It also provides for a multi-agency approach in the fight against terrorism taking into consideration various entities which are mandated to work together to combat terrorism⁸⁷. Some of these agencies that also handle visa enforcement include;

- The National Counterterrorism Centre which is set to coordinate national counterterrorism efforts in order to detect, deter and disrupt terrorism acts⁸⁸. It consists of members stemming from other government agencies such as the NIS, KDF and NPS to name a few⁸⁹. However, in practice, the Centre's operations seem to be more focused on countering violent extremism, begging the assumption that terrorism is catalysed by recruitment of Kenyan citizens to the militia groups. By doing so, the Centre drives the conversation away from immigration screening, given that the operatives are majorly based in Somalia⁹⁰ leaving a lacuna for illegal immigrants to enter the country and take part in hostilities.

⁸³Woldemichael W, 'International terrorism in east africa: the case of kenya' Ethiopian Journal of the Social Sciences and Humanities, 4(1), 2006, 44

⁸⁴Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 626

⁸⁵Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 627

⁸⁶ Preamble, *Prevention of Terrorism Act* (Act No 30 of 2012)

⁸⁷ First Schedule, *Prevention of Terrorism Act* (Act No 30 of 2012)

⁸⁸Section 40B, *Prevention of Terrorism Act* (Act No 30 of 2012)

⁸⁹Section 40A, *Prevention of Terrorism Act* (Act No 30 of 2012)

⁹⁰'Conflict with Al Shabaab in Somalia' Council on Foreign relations, 15 October 2024, [https://www.cfr.org/global-conflict-tracker/conflict/al-shabab-somalia#:~:text=In2022 there was al Shabaab to expand its presence](https://www.cfr.org/global-conflict-tracker/conflict/al-shabab-somalia#:~:text=In2022+there+was+al+Shabaab+to+expand+its+presence) on 02 January 2025

- The State Department for Immigration and Citizen Services is authorised under the Ministry of Interior and National Administration, to deny access to the country prohibited immigrants under which suspects of terrorism fall under⁹¹. However, there is a loophole where an immigration officer can permit the prohibited immigrant into the country by issuing a pass with conditions specified for the transit purpose⁹². The Directorate is also tasked with the formulation of migration policy and reviewing immigration laws and regulations. As was seen in the Westgate attack case, there seems to be stringent screening only at the international flights at the Jomo Kenyatta International Airport and not on other means entering the country, as some of the militants were able to enter the country through other borders. One of the attackers boarded a flight from Mogadishu's airport to Nairobi via Wajir and another presented himself as a student with no travel history in Entebbe Uganda and passed through security without suspicion⁹³.

The presence of disharmony within the government agencies tasked with fighting terrorism alongside the inadequacy in established customs controls in an era of restrictive visa policy, spotlights an unsettling trend, forming the basis of the problem statement of the dissertation as a whole. It also showcases the basis of the interoperability issues where entities work on separate goals, such as the fight against violent extremism by the National Counterterrorism Centre. Given that most of the terrorist attacks began with the entry of the perpetrators into the country, months before the attack, it is daunting to note that there are minimal efforts set out to curtail entry of such people, particularly through screening and denial of visa into Kenya.

3.4. CONCLUSION

This chapter has sought to highlight the shortcomings of the previous visa regime in line with the counterterrorism measures set in place, as opposed to the high risk terrorist attacks the country was facing at that time. It explains that there was inadequacy in the steps taken against terrorism

⁹¹ Section 33(1)(ii), *Kenya Citizenship and Immigration Act* (Act No 12 of 2011)

⁹² Section 33(6), *Kenya Citizenship and Immigration Act* (Act No 12 of 2011)

⁹³ Kamau J, 'Westgate terrorists: the untold story' *Nation Africa*, 24 November, 2020, <https://nation.africa/kenya/news/westgate-terrorists-the-untold-story-3207874> on 08 December 2024

particularly through visa controls, with assailants coming into the country unknown and being recognised during the hostilities. Through this, we get to see some of the cracks in the law and policies in place, that seem to have a more reactive than proactive outlook, thus guiding the discussion into providing suitable preventive measures using immigration screening intertwined with the new open visa policy to curb terrorism and ensure efficient border control.



4. KENYA-SOMALIA BORDER RELATIONSHIP

4.1. INTRODUCTION

The Kenya- Somalia border relationship is one marked with various key events in history that dates way back to the colonial period to the recent milestone of Somalia joining the EAC. This chapter seeks to spotlight the deepening of the crack in the relationship of these bordering countries and accentuate the measures taken to ease the tension in the relationship by handling the main issue which is border insecurity. By doing so, the chapter seeks to spotlight the gaps in the implementation of these strategies as an underpinning of some of the recommendations in mending the border relationship. This would be via introducing measures complementing the current open visa policy in Kenya in order to allow for cross border movement while still fighting against insecurity.

4.2. HISTORY

The history between Kenya and Somalia's border insecurity is majorly influenced by Somalia's political instability over the years. Even though Somalia has sovereignty, President Barre's regime, driven by military rule and authoritarianism and the civil war after his ousting, has led to the instability in governance, which has spilled over into Kenya, through Somali refugees coming into the country and the fight between Kenyan soldiers and terrorist militants.

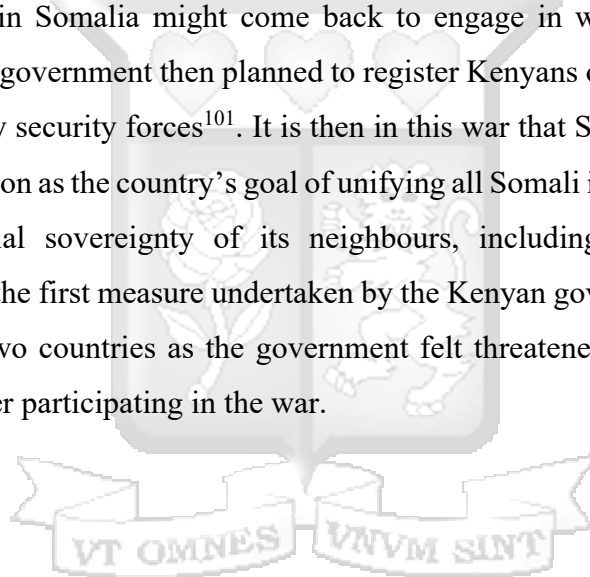
4.2.1. OGADEN WAR

In 1969, General Said Barre came into power in Somalia through staging a military coup that overthrew the independence regime⁹⁴. Though gaining public support at the beginning, it soon became authoritarian and corrupt with members of the President Barre's clan, the Darood clan, being favoured for government positions. This led to socio-economic inequality among clans in Somalia⁹⁵. His rule was therefore marked by dictatorship and intense rivalry between clan

⁹⁴Bruton B, Williams P, 'Counterinsurgency in Somalia: Lessons learned from the African Union mission in Somalia 2007-2013', Joint Special Operations University, 2014, 5

⁹⁵Bruton B, Williams P, 'Counterinsurgency in Somalia: Lessons learned from the African Union mission in Somalia 2007-2013', Joint Special Operations University, 2014, 5

factions⁹⁶. The Ogaden war was a conflict between Somalia and Ethiopia over the Ogaden region in Eastern Ethiopia primarily inhabited by ethnic Somalis. Somalia, under President Barre, sought to unite all Somali inhabited territories, including both the Ogaden region and the North Eastern region of Kenya. In July 1977, Somalia conducted an invasion on the Ogaden region and quickly captured most of the region as Ethiopian forces were unprepared and demoralized due to the overthrow of Emperor Haile Selassie in 1974⁹⁷. Through the support of Soviet Union and Cuba, Ethiopia was able to defeat Somali forces and drove them off the region by March 1978⁹⁸. Kenya played the role of facilitating Somali politicians and economic elites in Eastleigh, Nairobi⁹⁹. It was rumoured that President Barre would pay Kenyan Somalis to travel to Somalia to train for the war against Ethiopia leading to the screening of Somalis in Kenya as it was evident that the military personnel being trained in Somalia might come back to engage in war for the North Eastern Province¹⁰⁰. The Kenyan government then planned to register Kenyans of Somali descent to make them more identifiable by security forces¹⁰¹. It is then in this war that Somalia's internal political affairs destabilize the region as the country's goal of unifying all Somali inhabited territories would infringe on the territorial sovereignty of its neighbours, including Kenya. The screening committee, then became the first measure undertaken by the Kenyan government to handle border insecurity between the two countries as the government felt threatened that the Somalis would bring war into Kenya after participating in the war.



⁹⁶Bruton B, Williams P, 'Counterinsurgency in Somalia: Lessons learned from the African Union mission in Somalia 2007-2013', Joint Special Operations University, 2014, 5

⁹⁷Hughes G, 'The battle for the horn of Africa: a retrospective' Defence in Depth, 19 February 2019 <https://defenceindepth.co/2019/02/19/the-battle-for-the-horn-of-africa-a-retrospective/#:~:text=TheEthiopians quickly recovered control,if Ethiopian forces crossed the> on 04 January 2025

⁹⁸Wilkins S, 'Buried in the sands of the Ogaden: Lessons from an obscure cold war flashpoint in Africa' War on the Rocks, 6 September 2019 <https://warontherocks.com/2019/09/buried-in-the-sands-of-the-ogaden-lessons-from-an-obscure-cold-war-flashpoint-in-africa/> on 04 January 2024

⁹⁹Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 621

¹⁰⁰Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 622

¹⁰¹Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 622

4.2.2. SOMALI CIVIL WAR

By the late 1980's President Barre's regime was under threats by rebel movements and in 1991, his government was violently ousted by the United Somali Congress forces under Ali Mahdi¹⁰². Given the earlier clan based preferential treatment during Barre's regime, even after his ousting, intense fighting ensued amongst clan lords with the aim of gaining power and control over Somalia¹⁰³. The prolonged and bloody civil war waged against Barre's regime acted as the immediate precursor of the disintegration in Somalia and degenerated into a civil war between clan based rebel groups¹⁰⁴. The civil war tied with the severe famine that occurred from 2011 to 2012 led to an influx Somali refugees fleeing into the Dadaab refugee camp¹⁰⁵ which became strained as it was not made to handle the high number of refugees therefore aggravating the chronic refugee crisis in Kenya¹⁰⁶. The Kenyan government then came to terms that it was poorly equipped to handle the multifaceted challenges of Somalia's civil war as it had previously concentrated on maintaining security in the North Eastern Province and not its developmental needs¹⁰⁷.

4.2.3. EMERGENCE OF AL SHABAAB

The Al Shabaab emerged as a militant movement of the former Islamic Courts Union (ICU). It gained traction with Somali nationals after the ouster of the Union's forces in 2006 as it was being used to guard Somalia's internal affairs from external forces¹⁰⁸. The militia group fought off AMISOM, which defended the Transitional Federal Government (TFG)¹⁰⁹. In the course of time, the group evolved rapidly into an autonomous force with transnational links with international

¹⁰²Changalwa K, 'Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*', published, University of Nairobi, Nairobi, 2019, 1

¹⁰³Bruton B, Williams P, 'Counterinsurgency in Somalia: Lessons learned from the African Union mission in Somalia 2007-2013', Joint Special Operations University, 2014, 5

¹⁰⁴Gordon R, 'Growing Constitutions' 1 *Journal of constitutional law*, 3, 1999, 534

¹⁰⁵Bruton B, Williams P, 'Counterinsurgency in Somalia: Lessons learned from the African Union mission in Somalia 2007-2013', Joint Special Operations University, 2014, 61

¹⁰⁶Bruton B, Williams P, 'Counterinsurgency in Somalia: Lessons learned from the African Union mission in Somalia 2007-2013', Joint Special Operations University, 2014, 61

¹⁰⁷Lochery E 'Rendering difference visible: The Kenyan state and its Somali citizens' 111, *Oxford University Press*, 445, 2012, 622

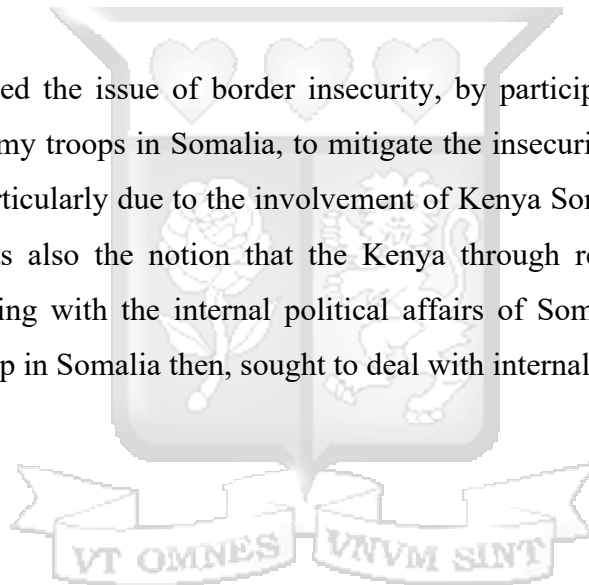
¹⁰⁸Bruton B, Williams P, 'Counterinsurgency in Somalia: Lessons learned from the African Union mission in Somalia 2007-2013', Joint Special Operations University, 2014, 22

¹⁰⁹Changalwa K, 'Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*', published, University of Nairobi, Nairobi, 2019, 6

terror groups such as the Al Qaeda¹¹⁰. In the absence of an effective state authority, Somalia became a haven for terrorist elements with some of the faction leaders under the ICU accused of being closely associated with Al Qaeda¹¹¹. Therefore Al Shabaab, being a militia movement for the ICU was able to acquire sophisticated weaponry and easily adopted a transnational character by shifting into cross border terrorist attacks¹¹². It became prescribed as an international terrorist group due to the terror attacks carried out in Kenya and its affiliations to the Al Qaeda terror group¹¹³.

Al Shabaab targeted locals and foreigners along the Kenya- Somalia coastline¹¹⁴, capturing and reigning over Kenyan land such as the Kismayu islands¹¹⁵. Such attacks led to the immediate trigger of the deployment of the KDF troops in Somalia in October 2011, under Operation Linda Nchi¹¹⁶.

In this era, Kenya handled the issue of border insecurity, by participating in direct hostilities through deploying the army troops in Somalia, to mitigate the insecurity which had now spilled over into the country, particularly due to the involvement of Kenya Somali elites in the civil war in Somalia¹¹⁷. There was also the notion that the Kenya through regional missions such as AMISOM, were interfering with the internal political affairs of Somalia, which the ICU, the dominating political group in Somalia then, sought to deal with internally¹¹⁸.



¹¹⁰Bruton B, Williams P, 'Counterinsurgency in Somalia: Lessons learned from the African Union mission in Somalia 2007-2013', Joint Special Operations University, 2014, 25

¹¹¹Bruton B, Williams P, 'Counterinsurgency in Somalia: Lessons learned from the African Union mission in Somalia 2007-2013', Joint Special Operations University, 2014, 23

¹¹²Bruton B, Williams P, 'Counterinsurgency in Somalia: Lessons learned from the African Union mission in Somalia 2007-2013', Joint Special Operations University, 2014, 23

¹¹³*Report of the Monitoring group on Somalia and Eritrea pursuant to security council resolution 2002 (2011)*, 11 July 2012, para 32

¹¹⁴*Report of the Monitoring group on Somalia and Eritrea pursuant to security council resolution 2002 (2011)*, 11 July 2012, para 91

¹¹⁵*Letter from the Permanent Representative of Kenya to the United Nations addressed to the President of the Security Council*, 17 October 2011, 1

¹¹⁶*Letter from the Permanent Representative of Kenya to the United Nations addressed to the President of the Security Council*, 17 October 2011, para 5

¹¹⁷Lochery E 'Rendering difference visible: The Kenyan state and its Somali citizens' 111, *Oxford University Press*, 445, 2012, 622

¹¹⁸Changalwa K, 'Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*', published, University of Nairobi, Nairobi, 2019, 6

4.3. MEASURES TO ADDRESS BORDER INSECURITY

Somalia's state of affairs has caused it to be recognized as a failed state at the international level despite the numerous attempts to restore order¹¹⁹. Kenya being the neighbouring country has had to take numerous measures to address the insecurity. From joining forces with other member states of the AU and IGAD, to conducting military action against Somalia forces, the section aims to highlight the weaknesses in some of the main measures, so as to form basis of the proposed strategies, that hope to seal the gaps in the border security system by incorporating the visa system adequately.

4.3.1. AMISOM

The AMISOM was a regional mission established in January 2007 by the AU's Peace and Security Council in liaison with the United Nations¹²⁰. Its intervention came to fill the power vacuum left after the Ogaden war which was exploited by Somalia war lords and militia groups which proliferated the Somali civil war¹²¹. The initial mission was to help the TFG stabilize Somalia and lead to the post conflict restoration of Somalia as a long term measure¹²². Notably, the mission had a multidimensional approach comprising of military, police and civilian components where it was mandated to foster a secure environment that would enable the smooth running of humanitarian support programmes in Somalia¹²³. The involvement of the AMISOM troops was premised on a number of reasons, one of which was the security concerns that the conflict situation in Somalia could escalate as evidenced by the transnational terror attacks on the US Embassies in Kenya and Tanzania¹²⁴. This is because the country had become a safe haven for terrorists to conduct their activities.

AMISOM transitioned into the African Union Transition Mission in Somalia (ATMIS) in April 2022 to hand over security responsibilities to Somalia forces by December 2024¹²⁵. AMISOM

¹¹⁹ Changelwa K, 'Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*', published, University of Nairobi, Nairobi, 2019, 2

¹²⁰<https://amisom-au.org/amisom-background/> on 16 December 2024

¹²¹ Changelwa K, 'Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*', published, University of Nairobi, Nairobi, 2019, 36

¹²²<https://amisom-au.org/mission-profile/amisom-police/> on 16 December 2024

¹²³<https://amisom-au.org/mission-profile/humanitarian-work/> on 16 December 2024

¹²⁴ Woldemichael W, 'International terrorism in east africa: the case of kenya' *Ethiopian Journal of the Social Sciences and Humanities*, 4(1), 2006, 42

¹²⁵ <https://atmis-au.org/> on 16 December 2024

faced significant challenges, particularly the resistance from the Somali people due to the belief that the AMISOM troops were interfering in Somalia's internal political affairs¹²⁶. ATMIS is set to conclude its mandate by the end of December 2024, with the Somali Security forces expected to take over under the Somali transition plan in an aim to finally put an end to the instability of Somalia¹²⁷. However, concerns about a security vacuum such as that after the Ogaden war, has led to the AU and UN working on establishing the African Union Support and Stabilisation Mission in Somalia (AUSSOM) expected to begin in 2025, to continue supporting Somalia's stabilisation efforts¹²⁸.

4.3.2. IGAD

Regionally, aims to maintain peace in Somalia began with peacemaking talks convened by IGAD in 2001, where Kenya participated as a key mediator¹²⁹. In 2004, after several unsuccessful attempts, the Transitional Federal Charter was adopted. This charter called for the creation of an interim government, the TFG that could establish administrative order and foster peace and unity¹³⁰. However, the charter was seen as an affront on Somalia's political integrity as it was a product of an external process and was therefore rejected by Somalia's faction leaders and politicians under the coalition, Islamic Courts Union¹³¹. The ICU became a popular union within the country, as it was seen to fight for the relinquishing of external help in its internal affairs¹³².

¹²⁶Changalwa K, 'Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*', published, University of Nairobi, Nairobi, 2019, 6

¹²⁷ <https://atmis-au.org/> on 16 December 2024

¹²⁸Adopting Resolution 2767 (2024), Security Council endorses new African Union Support Mission in Somalia, United Nations Press Releases, 27 December 2024 <https://press.un.org/en/2024/sc15955.doc.htm> on 04 January 2025

¹²⁹Changalwa K, 'Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*', published, University of Nairobi, Nairobi, 2019, 4

¹³⁰Changalwa K, 'Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*', published, University of Nairobi, Nairobi, 2019, 4

¹³¹Changalwa K, 'Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*', published, University of Nairobi, Nairobi, 2019, 1

¹³²Changalwa K, 'Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*', published, University of Nairobi, Nairobi, 2019, 6

4.3.3. OPERATION LINDA NCHI

Kenya invoked Article 51 of the UN Charter as the legal basis of launching the military foray in Somalia, code named, ‘*Operation Linda Nchi*’ in October 2011¹³³. This implied a shift in strategy as Kenya ceased to play the neutral role to direct combat in the conflict situation in Somalia¹³⁴. One of the main underlying objective was to pursue the Al Shabaab militants and secure the Kenya-Somali border in order to forestall terror attacks and safeguard Kenya’s territorial sovereignty¹³⁵. Prior to the incursion, Kenya wrote to the UN Security Council in a communique informing it of her decision to take preemptive action to defend her territory and secure peace in the face of the escalating Al Shabaab threat in the Eastern Africa region¹³⁶. It also indicated that the government had sought permission of the TFG prior to invoking the decision¹³⁷ exhibiting its interconnection with Somalia political affairs. From 2011 to June 2012, KDF operated as a stand alone force besides the AMISOM troops, but this was viewed as a violation of the 1992 UN ban on arms in Somalia since the AMISOM troop- contributing countries were exclusively allowed to offer both military and technical assistance including the supply of arms¹³⁸. Therefore, Kenya agreed to integrate its troops into AMISOM force after it acceded to a Memorandum of Understanding with the AU¹³⁹. Since the integration of KDF into AMISOM troops, Kenyan troops have remained in Somalia transitioning into the ATMIS in 2022. They are expected to complete their withdrawal from Somalia, together with the AMISOM troops to allow for the stabilisation of Somalia by its national troops.

¹³³Changalwa K, ‘Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*’, published, University of Nairobi, Nairobi, 2019, 37

¹³⁴Changalwa K, ‘Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*’, published, University of Nairobi, Nairobi, 2019, 38

¹³⁵Changalwa K, ‘Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*’, published, University of Nairobi, Nairobi, 2019, 38

¹³⁶Changalwa K, ‘Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*’, published, University of Nairobi, Nairobi, 2019, 38

¹³⁷*Letter from the Permanent Representative of Kenya to the United Nations addressed to the President of the Security Council*, 17 October 2011, para 5

¹³⁸*Report of the Monitoring group in Somalia pursuant to security council 118 (2008)*, 10 December 2008, para 74

¹³⁹Changalwa K, ‘Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*’, published, University of Nairobi, Nairobi, 2019, 39

4.3.4. VETTING FOR KENYAN CITIZENSHIP

During the tensions in Somalia under President Barre's regime, and the inclusion of some political elites supporting the Somali government by funding from their businesses in Kenya, the government sought to form the Somali Probe Committee, which vetted Kenyan Somalis before granting them Kenyan citizenship¹⁴⁰. However, the means in which the Committee was formed were politically driven especially by the politicians of the North Eastern Province¹⁴¹. The initial mission of the Committee includes; introducing tribal boundaries, providing new identity cards for Kenyan Somalis after vetting and repatriating of unqualified Kenyan Somalis to Somali¹⁴². The latter was more controversial as it seemed that the vetting was targeted at flushing out non-indigenous Somali clans from Kenya, that is the Hawiya clan¹⁴³. As expected, the Committee raised concerns in the human rights community and the Somali community in Kenya as it was seen as highly discriminatory in principle and in practice with people forced to recite their lineage from as far back as they could, clearly deviating from the initial presentation of valid documents to prove citizenship¹⁴⁴. Some of the Kenyan Somalis cited the committee as a humiliation to the community as they had to prove their claim to Kenyan citizenship, while their counterparts in other tribes, became citizens through birth¹⁴⁵. Aligning to the claim of ties within Kenya and President Barre's regime, there were claims that some of the targets that got repatriated to Somalia, included people against the Barre regime, with some wealthy Somali businessmen having to leave behind all their wealth with no one to take care of their businesses¹⁴⁶. After the announcement of the dissolution of the vetting committee citing corruption and bias in the carrying out of their duties, the President requested the Ministry of Interior to come up with guidelines to enable affected communities to be easily identified and registered. These guidelines have been criticized to be a

¹⁴⁰ Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 626

¹⁴¹ Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 625

¹⁴² Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 627

¹⁴³ Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 627

¹⁴⁴ Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 629

¹⁴⁵ Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 631

¹⁴⁶ Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 634-635

replica of the abolished process¹⁴⁷. This process of vetting nationals prior to granting citizenship has deepened the wedge between Kenya and Somali through the repatriation of Somalis, born in Kenya back to Somalia based on tribal barriers and political affiliation.

4.4. POLICY GAPS IN IMPLEMENTATION

Some of the strategies employed to lessen the tension in the Kenya- Somali border relationship have faced challenges that have not only stalled the mission of reducing the tension but have also agitated further erosion in the border relationship between the two countries. The challenges faced include;

4.4.1. CORRUPTION IN SECURITY FORCES UNDERMINING EFFECTIVE BORDER MANAGEMENT

As is seen throughout this chapter and earlier on in the dissertation, there has been infiltration in the border management system, showcased by the success of terrorist attacks in Kenya by Al Qaeda and Al Shabaab militants. This is also seen in the vetting committee, where Kenyan citizenship was granted because of affiliation to certain clans, particularly those of the committee members¹⁴⁸.

4.4.2. ETHNIC AND SOCIAL MARGINALISATION

Kenya's approach to border security, as highlighted in previous chapters and earlier on in this chapter, has been framed within a hard-security perspective which marginalizes Somali communities and members of the Islam community, within its borders. This has perpetuated social tensions and lack of trust within the country which could be seen as a catalyst for radicalisation and would undermine peacebuilding efforts between the two countries.

¹⁴⁷ Nasubo F, Ngira D, 'Citizenship rights:the quest for identification', The Elephant, 10 July 2024, <https://www.theelephant.info/analysis/2024/07/10/citizenship-rights-the-quest-for-identification/> on 10 July 2024

¹⁴⁸ Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111,*Oxford University Press*, 445, 2012, 635

4.4.3. LIMITED CROSS BORDER COLLABORATION

Despite various efforts to improve cooperation with Somalia, long standing issues like the accusations of political meddling and the maritime dispute have widened the crack between the two countries. The operation of Somali politicians and economic elites in Kenya while offering technical and financial assistance, primarily during President Barre's regime, formed a strain on the border relationship especially after the ousting of Barre's government¹⁴⁹. Meanwhile the maritime dispute revolved around a triangular area of the Indian Ocean where both countries could not agree on the demarcation of the maritime boundary on that area¹⁵⁰. Tensions escalated as oil exploration intensified as the area was believed to be rich in oil and gas reserves. The dispute was brought to the International Court of Justice, which ruled in favour of Somalia by adjusting the boundary closer to the equidistant line¹⁵¹. The ruling was binding but Kenya rejected the decision citing concerns over sovereignty and the ICJ's impartiality¹⁵². The ruling deepened existing mistrust with Kenya accusing Somalia for politicising the dispute and Somalia alleging Kenyan interference in its domestic affairs¹⁵³. It undermined the regional stability efforts and weakened cross-border cooperation.

4.4.4. REFUGEE MANAGEMENT CHALLENGES

The Dadaab refugee camp, established in 1991 to accommodate the refugees fleeing the Somali civil war¹⁵⁴, experienced significant security challenges including smuggling of arms and inter-community tensions, hosting thousands of Somali refugees¹⁵⁵. Kenya has

¹⁴⁹ Lochery E ' Rendering difference visible: The Kenyan state and its Somali citizens' 111, *Oxford University Press*, 445, 2012, 622

¹⁵⁰ *Maritime delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgement, ICJ Reports 2021, para 35.

¹⁵¹ *Maritime delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgement, ICJ Reports 2021, para 214.

¹⁵² 'Kenya rejects ICJ's verdict on Somalia maritime border row' Aljazeera news, 13 October 2021 <https://www.aljazeera.com/news/2021/10/13/kenya-rejects-icjs-verdict-on-somalia-maritime-border-row> on 16 December 2024

¹⁵³ Mwakideu C, ' What's behind Kenya and Somalia's dicey relations?' Deutsche Welle, 20 May 2021 <https://www.dw.com/en/what-is-behind-kenya-and-somalias-dicey-relations/a-57598939> on 16 December 2024

¹⁵⁴ <https://www.unhcr.org/ke/dadaab-refugee-complex> on 04 January 2025

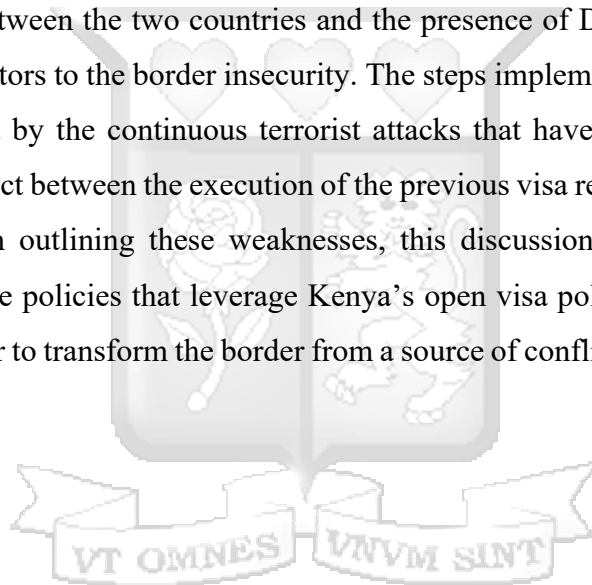
¹⁵⁵ Gluck Z, Brankamp H, 'Camps and counterterrorism: Security and remaking of refuge in Kenya' 40, *Environment and Planning D: Society and Space*, 1, 2022, 536

not been able to address resource competition or integration concerns contributing to the volatility of the region¹⁵⁶.

Such disputes distract from establishing strong collaborative mechanisms to address shared security and development concerns along the border.

4.5. CONCLUSION

Evident from the discussions above, the presence of Somalis in both Kenya and Somalia coupled up with Somalia's political history and Kenya's direct and indirect involvement in Somalia's internal affairs has led to the volatility in the border relationship between the two countries. The porosity of the border between the two countries and the presence of Dadaab refugee camp also become underpinning factors to the border insecurity. The steps implemented by Kenya may have proved futile, showcased by the continuous terrorist attacks that have occurred in the country, emphasising the disconnect between the execution of the previous visa regime and maintaining the border security. Through outlining these weaknesses, this discussion would set the stage for recommending integrative policies that leverage Kenya's open visa policy to foster secure cross border movement in order to transform the border from a source of conflict to a conduit of regional stability and cooperation.



¹⁵⁶Oucho L, Williams Donald, 'Challenges and solutions to migrant integration, diversity and social cohesion in Africa' United Nations University, World Institute for Development Economics Research, 10

5. CONCLUSION

5.1. INTRODUCTION

This dissertation is structured around the comprehensive understanding of the interplay between Kenya's visa policy, border security and counterterrorism efforts. Each chapter contributes to this analysis by examining key themes and laying the foundation for subsequent discourse.

The first chapter lays the groundwork by introducing the various themes delved into in other chapters. It provides a brief background on terrorism in Kenya and the shift in the visa policy, showcasing how the change in the visa policy would have implications on national security if the change is not integrated in the security frameworks. It also focuses on the theories relied on underpinning Kenya's need to enhance its security. This chapter lays the groundwork for all other chapters by introducing the themes of border security, terrorism and counterterrorism and the visa policy in Kenya.

Chapter two traces Kenya's visa policy from its colonial roots to the recently adopted open visa regime in January 2024 which promotes economic integration and tourism. By exploring the reasons for the shift, the chapter seeks to highlight the disregard for the impact of the new visa policy on national security, given the ineffectiveness of the previous policy in containing non-state security threats, specifically terrorism.

It sets the stage for chapter three which examines Kenya's history of terrorist attacks, highlighting the role of porous borders and inadequate visa controls in enabling these incidents. It also critiques the effectiveness of national counterterrorism measures. Through this, we get to see some of the cracks in the law, guiding the discussion into providing suitable proactive measures to curb terrorism and ensure effective border control.

Chapter three paves way for the discussion in chapter four of the Kenya-Somalia border relationship. It looks into some of the triggers of the border strife, and criticizes the measures undertaken such as AMISOM and Operation Linda Nchi. This then foreshadows the recommendations on integrative policies that leverage Kenya's open visa policy thus transforming the border from a source of conflict to a conduit of regional stability and cooperation.

5.2. RECOMMENDATIONS

Based on the findings of this study, it is evident that Kenya's open visa policy presents both opportunities and risks. To ease security vulnerabilities while maintaining the benefits of regional and global integration, the following recommendations are proposed;

5.2.1. INTEGRATION OF TERRORIST DETECTION SYSTEM WITH THE ICAO-DTC9 SYSTEM

The ICAO-DTC9 system existing in the Kenyan electronic travel authorisation system should be supplemented with a robust detection module capable of identifying individuals flagged as security risks. This could involve integrating data from national and international counterterrorism databases. It could also entail integrating National Intelligence Services conducting investigations on distinct features of members of militia groups and integrating that into the detection module. After being flagged down, the individuals may be subjected to a series of interviews to establish that they are not a security risk. Having such a system backing the eTA system in place currently would streamline threat identification upon application for a Kenyan visa.

5.2.2. ESTABLISHING A FUNCTIONING BORDER SURVEILLANCE SYSTEM

Forming a technologically advanced border surveillance system interconnected with the visa issuance process would enable detection of unauthorised entries and automatically flag both prohibited and illegal entries into the country. The system, if executed accordingly, would reduce reliance on human intervention, minimize corruption and enhance operational efficiency as it would cut across various government institutions and databases providing the system with information that it bases its flagging on.

5.2.3. REBRANDING THE VETTING COMMITTEE FOR SOMALI NATIONALS

The specialized vetting committee to scrutinise visa applications from Somali nationals, should be reinstated under the national government. This may seem to be a retrogressive

step in enhancing regional integration, but remains necessary as it eases the tension on border controls particularly across the Kenya-Somalia border. Priority should be given to individuals from high risk areas such as the Dadaab refugee camp, which will aid in singling out the militia harboured in such areas. The main focus of this should be retaining a balance between national security concerns with human rights obligations to avoid the discriminatory practices that led to the dismantling of the committee.

5.2.4. POLICY AND LEGISLATIVE REFORMS

For the optimal functioning of the above recommendations, there ought to be reforming of policies and review and amending of legislature to include the above system changes, highlighting their functionality and how to address any mishaps or the treatment of prohibited persons and illegal entries into the country through the court system and other arbitrary measures. Furthermore, existing loopholes such as allowing the entry of prohibited individuals under special passes ought to be addressed through an amended legislature.

5.3. CONCLUSION

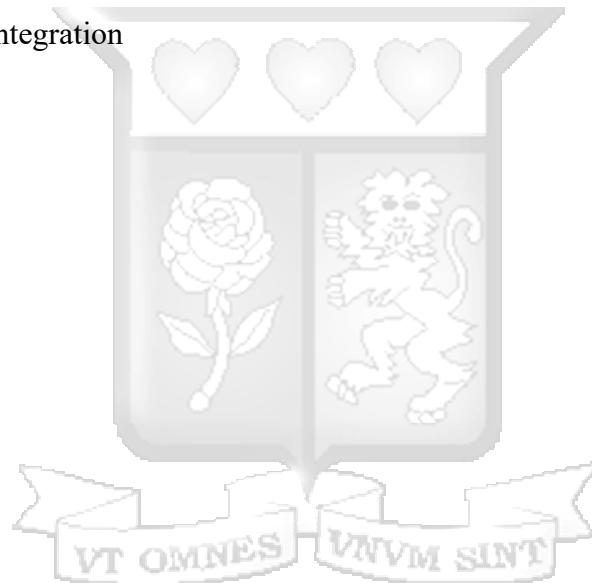
This dissertation seeks to analyze the implications of Kenya's open visa policy on national security, with a focus on its integration into the counterterrorism strategies and border security frameworks. By studying the themes, the paper aims to provide actionable recommendations for addressing gaps in existing frameworks while promoting secure and collaborative regional integration.

I believe that the themes explored; terrorism, border security and visa policies are deeply interconnected and cannot be addressed in isolation. Therefore, the open visa policy, being relied on for global integration, with inadequate consideration on national border insecurity, seems to be a huge disconnect of the themes in the dissertation. Effective migration policies should not only prioritize openness but also incorporate robust security measures that align with the realities of Kenya's unique security challenges. This involves Kenya's border relationship with Somalia

which needs to be redefined from being a source of conflict to an opportunity for regional cooperation and stability.

Through this dissertation, I hope that the advocacy for a balanced approach embracing benefits of globalisation while implementing proactive measures to promote national security is inferred. I contend that the measures recommended will bridge the existing policy gaps while changing the reactive nature of counterterrorism strategies to a more proactive approach, through integrating the open visa policy.

As Kenya navigates its journey towards globalisation, it must prioritise the dual goals of openness and security so as to position itself competent in balancing the demands of national and regional safety and international integration



BIBLIOGRAPHY

DISSERTATION & THESES

1. Changalwa K, 'Accountability in the exercise of self defence under international law: A case study of *Operation Linda Nchi*', published, University of Nairobi, Nairobi, 2019
2. Adan H, Maj. Kenya army, 'Combating transnationalism terrorism in Kenya', published, US Army Command and General Staff College, Kansas, 2005
3. Bruton B, Williams P, 'Counterinsurgency in Somalia: Lessons learned from the African Union mission in Somalia 2007-2013', published, Joint Special Operations University, 2014.

INTERNET RESOURCES

4. <https://www.kenyaimmigration.org/faq/what-are-the-differences-between-the-previous-visa-requirements-and-the-new-eta-requirements> on 12 December 2023
5. Kalekye M, 'Ruto declares Kenya visa free', <https://kbc.co.ke/ruto-declares-kenya-visa-free/> on 12 December 2023
6. Kinyanjui M, 'Kenya to be a visa-free country from 2024- President Ruto' Citizen Digital, 12 December 2023 <https://www.citizen.digital/news/kenya-to-be-a-visa-free-country-from-january-2024-president-ruto-n333050> on 14 November 2024
7. Mataire R, 'President Ruto: An advocate for a borderless Africa' The Herald, 25 April <https://www.herald.co.zw/president-ruto-an-advocate-for-a-borderless-africa/> on 14 November 2024
8. Willige A, 'With Kenya and Rwanda opening borders for other Africans, what will visa-free travel mean for Africa's economic growth?' World Economic Forum, 15 November 2023 <https://www.weforum.org/stories/2023/11/kenya-rwanda-visa-free-travel-afcfta/> on 14 November 2024
9. <https://www.eac.int/immigration/migration-management/visa-free-entry> on 14 November 2024
10. <https://www.president.go.ke/president-ruto-kenya-south-africa-visa-free-regime-will-boost-trade-and-investment/> on 9 November 2022

11. <https://www.etakenya.go.ke/en> on 14 November 2024
12. Feleke B, 'Kenya goes visa free for travellers- but there's a catch' CNN Travel, 9 January 2024 <https://edition.cnn.com/travel/kenya-visa-free-electronic-travel-authorization/index.html> on 14 November 2024
13. '39 people killed in Kenya mall attack claimed by Somali militant; hostages still held' The Washington Post, 22 September 2013, https://web.archive.org/web/20130922155502/http://www.washingtonpost.com/world/africa/gunmen-use-grenades-open-fire-at-nairobis-most-upscale-mall/2013/09/21/a9403b3a-22a8-11e3-ad1a-1a919f2ed890_story_1.html#expand on 08 December 2024
14. Kamau J, 'How the terrorist left Eastleigh for Westgate', Nation Africa, 27 November 2020, <https://nation.africa/kenya/news/how-the-terrorists-left-eastleigh-for-westgate-3211286> on 08 December 2024
15. Mutiga M, 'Westgate mall attack: How Kenya's vibrant media exposed the army's botched response', The Guardian, 3 November, 2013 <https://www.theguardian.com/commentisfree/2013/nov/03/terrorism-westgate-mall-press-freedom> on 08 December 2024
16. Burke J, 'Nairobi terror attack: gunfire heard hours after minister declares scene secure' The Guardian, 16 January 2019 <https://www.theguardian.com/world/2019/jan/15/nairobi-kenya-gunfire-hotel-complex-dusitd2> on 08 December 2024
17. Joscelyn T, 'Shabaab says Nairobi attack carried out in accordance with Zawahiri guidelines' Foundation for Defense of Democracies, Long War Journal, 16 January 2019, <https://www.longwarjournal.org/archives/2019/01/shabaab-says-nairobi-attack-conducted-in-accordance-with-zawahiris-guidelines.php> on 08 December 2024
18. Kamau J, 'Anatomy of terrorist attack on DusitD2 Hotel' Nation Africa, 16 January 2019, <https://nation.africa/kenya/news/anatomy-of-terrorist-attack-on-dusitd2-hotel-128584> on 08 December 2024
19. Kamau J, 'Westgate terrorists: the untold story' Nation Africa, 24 November, 2020, <https://nation.africa/kenya/news/westgate-terrorists-the-untold-story-3207874> on 08 December 2024
20. <https://amisom-au.org/> on 16 December 2024

21. Nasubo F, Ngira D, 'Citizenship rights:the quest for identification', The Elephant, 10 July 2024, <https://www.theelephant.info/analysis/2024/07/10/citizenship-rights-the-quest-for-identification/> on 10 July 2024
22. 'Kenya rejects ICJ's verdict on Somalia maritime border row' Aljazeera news, 13 October 2021 <https://www.aljazeera.com/news/2021/10/13/kenya-rejects-icjs-verdict-on-somalia-maritime-border-row> on 16 December 2024
23. Mwakideu C, ' What's behind Kenya and Somalia's dicey relations?' Deutsche Welle, 20 May 2021 <https://www.dw.com/en/what-is-behind-kenya-and-somalias-dicey-relations/a-57598939> on 16 December 2024
24. <https://www.unhcr.org/ke/dadaab-refugee-complex> on 04 January 2025
25. McSweeney D, 'Conflict and deteriorating security in Dadaab', Humanitarian Practice Network, 20 March 2012 <https://odihpn.org/publication/conflict-and-deteriorating-security-in-dadaab/#:~:text=The%20UN%20mission%20in%20Dadaab,6%20pm%20to%206%20am> on 04 January 2025
26. Wilkins S, 'Buried in the sands of the Ogaden: Lessons from an obscure cold war flashpoint in Africa' War on the Rocks, 6 September 2019 <https://warontherocks.com/2019/09/buried-in-the-sands-of-the-ogaden-lessons-from-an-obscure-cold-war-flashpoint-in-africa/> on 04 January 2024
27. Hughes G, 'The battle for the horn of Africa: a retrospective' Defence in Depth, 19 February 2019 <https://defenceindepth.co/2019/02/19/the-battle-for-the-horn-of-africa-a-retrospective/#:~:text=TheEthiopians quickly recovered control,if Ethiopian forces crossed the> on 04 January 2025

JOURNAL ARTICLES

28. Woldemichael W, 'International Terrorism in East Africa: The Case of Kenya' 4, *Ethiopian Journal of the Social Sciences and Humanities*, 1, 2006
29. Lochery E 'Rendering difference visible: the kenyan state and its somali citizens', 111 *Oxford University Press*, 445, 2012.
30. Taliaferro J, 'Security Seeking Under Anarchy; Defensive Realism Revisited' 25, *Massachusetts Institute of Technology Press*, 3, 2000/01

31. Walt S, 'Alliance Formation and the Balance of World Power' 9, *Massachusetts Institute of Technology Press*, 4, 1975
32. Abulof U, 'Deep Securitization and Israel's 'demographic demon'', 8, *International Political Sociology*, 4, 2014
33. Latif MI & Khan RA, 'Tackling terrorism; Traditional Security Approaches', 64, *Pakistan Institute of International Affairs*, 2, 2011
34. Ciută F, 'Security and the problem of context: A Hermeneutical Critique of Securitization Theory' 35, *Cambridge University Press*, 2, 2009
35. Avdan N, 'Controlling Access to Territory: Economic Interdependence, Transnational Terrorism, and Visa Policies' 58, *Journal of Conflict Resolution*, 4, 2014
36. Özari S, 'Securitization of Energy through the lenses of Copenhagen School', 2 *West End Journal of Social Sciences*, 2, 2013
37. Gordon R, 'Growing Constitutions' 1 *Journal of constitutional law*, 3, 1999, 534
38. Gluck Z, Brankamp H, 'Camps and counterterrorism: Security and remaking of refuge in Kenya' 40, *Environment and Planning D: Society and Space*, 1, 2022

SELF PUBLISHED ARTICLE

39. Kimunguyi P, 'Terrorism and Counter terrorism in East Africa' Global Terrorism Research Centre and Monash European and EU Centre Monash University, 2011

RESEARCH PAPER

40. Oucho L, Williams Donald, 'Challenges and solutions to migrant integration, diversity and social cohesion in Africa' United Nations University, World Institute for Development Economics Research

UNITED NATION DOCUMENTS

41. *Report of the Monitoring group on Somalia and Eritrea pursuant to security council resolution 2002 (2011)*, 11 July 2012
42. *Letter from the Permanent Representative of Kenya to the United Nations addressed to the President of the Security Council*, 17 October 2011

43. *Maritime delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgement, ICJ Reports 2021

44. Adopting Resolution 2767 (2024), Security Council endorses new African Union Support Mission in Somalia, United Nations Press Releases, 27 December 2024
<https://press.un.org/en/2024/sc15955.doc.htm>

