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Refugees, convenient bargaining chips?

A comparative analysis of Kenyan and Ethiopian refugee policy

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Declaration

I, **Judith Tesfaghiorghis**, declare that this thesis is a result of my research investigations and findings. Sources of information other than my own have been acknowledged and a reference list has been appended. This work has not been previously submitted to any other university for award of any type of academic degree.

Signature.....

Date.....

Abstract

The recent refugee crisis have caused turmoil across the world, in which many states responds differently and making refugees a “hot” topic again. The global south have traditionally hosted the majority of the world’s refugee population, and they still do, as for them, there is more of a protracted situation. Anyhow, states in the global south have responded to the recent crisis, and two countries with many similarities have seemingly responded differently. Kenya have threatened to shut down the world’s largest refugee camp and repatriate hundred thousands of Somali refugees, while their neighbor Ethiopia has promoted its open door policy.

I study in this thesis to what extent their policy actually differ, why it potentially has changed, and causes for the different responses and approaches.

Based on interviews conducted during my fieldwork in Nairobi and Addis Abeba I find that the policies in the two countries have not changed as much as initially stated, and they only differ in one policy area. What is the major change, causing my curiosity, is mainly the countries rhetoric in the light of recent global events.

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Acknowledgment

A course I took while studying IR about international politics in sub-Saharan Africa woke my curiosity. Power can be exerted in many ways, it is not just economic power, and by utilizing other sources of power, the picture will be different. Many studies of Africa and the international community gives the impression that there is an asymmetrical power relation between Global North and South. I wanted to investigate this further.

I would first and foremost, very much like to thank my supervisor, Paul Beaumont, for being understanding, encouraging, always available and extremely helpful, even when he was on trips around the world, be it China or Cambridge, he responded, and commented within hours. I have definitely made his last year more stressful.

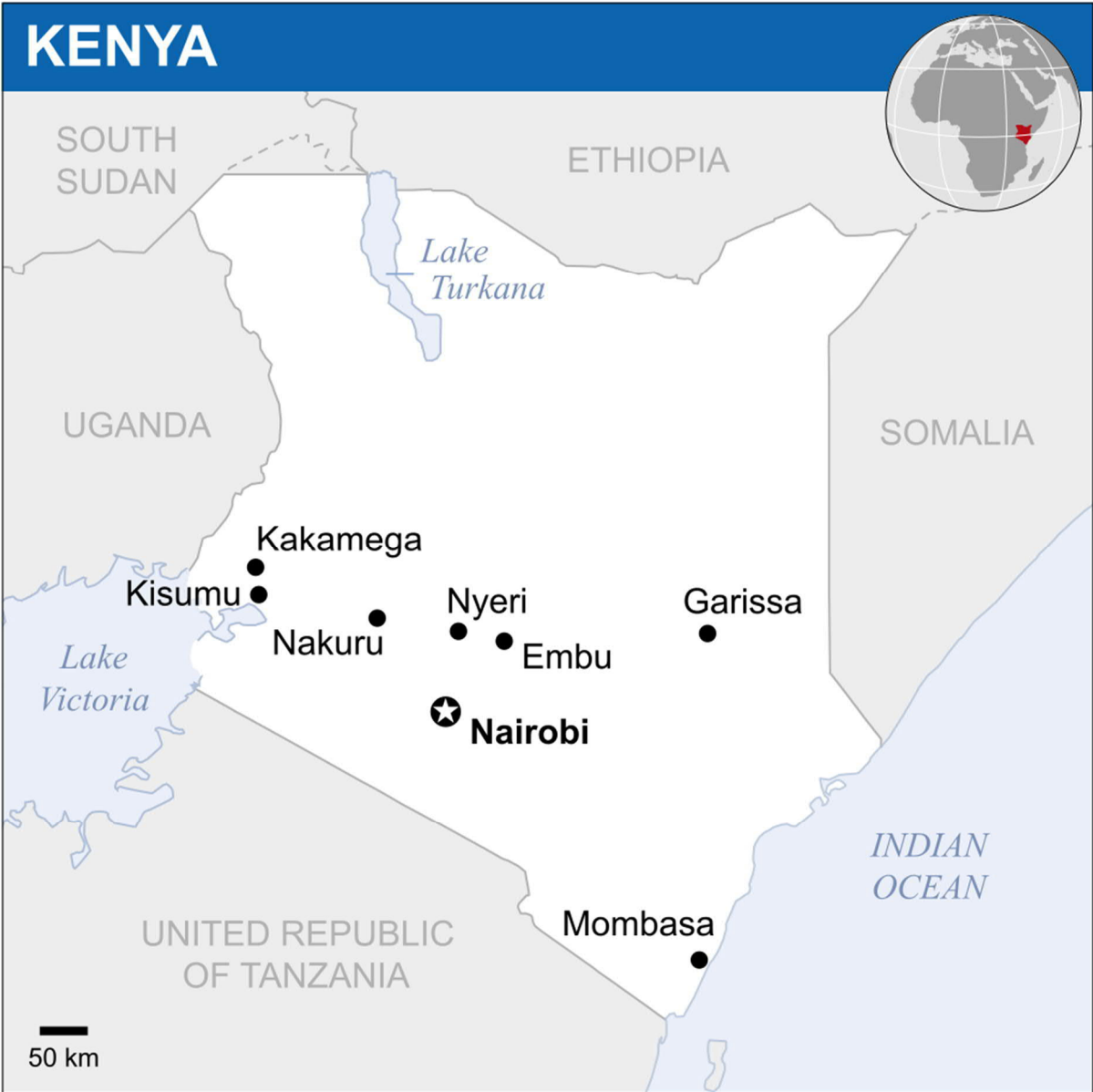
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All faults and errors are solely my responsibility.

Map of Kenya



(UN Office for the Coordination of Humanitarian Affairs (OCHA))

Map of Ethiopia



(UN Office for the Coordination of Humanitarian Affairs (OCHA))

Acronyms

AMISOM	African Union Mission in Somalia
ARRA	Administration for Refugee & Returnee Affairs
DRA	Department of Refugee Affairs
EU	European Union
HCR	Office of High Commissioner for Refugees
IGAD	Intergovernmental Authority on Development
INGO	International Non-Governmental Organization
IR	International relations
NGO	Non-Governmental Organization
NRC	Norwegian Refugee Council
OAU	Organization for African Unity
OCP	Out-of-Camp-Policy
RAS	Refugee Affairs Secretariat
RSD	Refugee status Determination
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

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1. Introduction

In 2014 and 2015 an increased number of people began to arrive in the The Global North. We witnessed hundreds of thousands of people crossing seas, walking great distances and risking their lives to gain entry to the European Union in search for protection. By 2015, more than a million migrants and refugees crossed the borders in to Europe (Greussing and Boomgaarden, 2017: 1749). The influx of the refugees to Europe has been discussed and featured as a *European* refugee crisis. The influx has created a political and humanitarian crisis as the European countries struggled, and still do, to cope. However, Morten Bøås (2017) argues that this framing creates a geographical hierarchy of visible and invisible refugees. The visible are the refugees who have the opportunity to come to Europe, in contrast to the invisible individuals that remains in the Global South. In fact, out of the 65.6 million displaced people in the world, 84% are in the Global South(Bøås 2017:1).

The reason why these countries in the Global South¹ host so many refugees is because they are situated in “bad” neighborhoods meaning the countries around them are countries that produce refugees. In addition, the absence of a well-established framework around burden-sharing, it is politics and power rather than norms that dictates the responsibility for protection. There have not been many IR scholars researching under which conditions international cooperation takes place in the context of refugees, but one that has is Alexander Betts (2009). As he points to in his book “protection by persuasion”- if state A is guaranteed that other states will do a corresponding action, i.e. to offer and contribute to protection, then state A will follow the same path and contribute to refugee protection. If some states reject to this, other states may also take the same action, they will then have an incentive not to contribute. This may seem as the situation today. Many of the European countries have responded to this refugee influx by closing their doors to a large numbers of refugees rather than coming together and cooperate to stand up for the right of asylum. This attitude has also reached the global south and may seem contagious. One country that has been rewarded by the UNHCR as a frontline state, Kenya, stated in 2016 to close its biggest refugee camp, and

¹ Different categories have been used to categorizing and divide the world into simple, but seldom very accurate classification; Developed and underdeveloped countries, the first, second and the third world, Global South Vs. Global North. Many of these categories are vague and broad categories, however, the Global South, together with Global North, has a more neutral sound to it as it is not pointing to progress or given leaps countries are supposed to follow, that is probably also why this dichotomy has continued to be used in academia, politics and by NGOs. This is the preferred conventional term, though not perfect (See e.g. Potter et.al 2008).

repatriate their refugees. They claim that their restriction on refugees is not so different from what Europe is doing, which may seem plausible according to Betts assumptions. However, there are those not letting themselves be affected. Kenya's neighboring country, also regarded a frontline state, host many of the same refugee groups continue to promote its refugee policy. This is Ethiopia. Ethiopia's response appears to contradict his assumption as they continue to have their door open when numerous countries have shut their. At first sight it may seem that Ethiopia and Kenya has positioned themselves differently with regards to the recent refugee crisis and their response appears puzzling. On an overarching level, they are both African states, with large refugee population from their neighboring countries and have earned recognition as one of the UNHCR's top ten refugee host countries. They are subjected to the same international pressures and a part of the same global political picture. Interesting questions regarding this is which factors have affected them to take different positions and what has influenced their political choices?

1.1. The North/South Impasse and the changing Refugee Regime Game

Since there is not well-established normative or legal framework around burden-sharing, it is politics, more specifically power, rather than law or principles, that mainly determines which states have the primary responsibility for providing refuge (Betts and Collier 2017:47). As the refugee regime has very clear norms regarding asylum, the majority of the countries that ends up to adhere to the norm of refuge, i.e. responsibility for refugee protection, are the countries in the Global South as they are located in an uneasy neighborhood surrounded by fragile and conflict affected states. As Betts and Collier (2017) explains "*In the absence of a clear allocation mechanism for spreading responsibility, proximity has de facto shaped its distribution*" (Betts and Collier 2017:48). Even though getting to Europe or Northern America may be the favored destination for many refugees, the majority does not have the resources needed to travel there, so they end up seeking refuge in one of their neighboring countries. This allows countries in the Global North to hide behind territory and water and avoid responsibility and free-ride on the contributions of states that is located in rough neighborhoods.

Astri Suhrke (Suhrke 1998) have used the analogy "The prisoners Dilemma" to explain collective action failure. This analogy assumes that both actors in the model have symmetrical

interests and power relations, but this is not the case in the global refugee regime (Betts 2009:32). As Betts states, an important aspect of understanding the international politics of refugee protection is North-South relations. On one hand, you have the southern states that are more likely to be located next to states that is experiencing conflict and abuse of human rights. The southern states borders are likely to be porous and their bargaining power in the international system is weak. On the other hand you have the Northern countries that, as mentioned earlier, is – usually – far away from these conflict-ridden and human-right abusing states, have a significant better border management and have a strong position in international negotiations (Betts 2009:32). This means that the structural positions are different where the Global South had little power to influence the states in the Global North. On the basis of this, Betts describe the relationship between Global North and Global South as asymmetrical and refers to it as a “suasion game”, where African states loses on every possibility they have to convince and influence the Global North to contribute. The states in South have the choice to accept what they have been offered or to reject a small contribution from the North which again will harm themselves. The “suasion game” is an analogy and should not be taken literally, but according to Betts, it highlights the significance of North-South relations in explaining the under-provisioning of refugee protection (Betts 2009:33).

If we move away from the “suasion game”, the condition of collective action failure in the international refugee regime can also be characterize as a *North-South impasse*. Betts defines this term as “a situation in which a problem primarily originates in and remains relatively confined to the South while the economic and political means to address the problem are largely held by the North” (Betts 2009:33-34). This North-South impasse has been a political hurdle to provide refugees with effective international protection (Betts 2009:19). The states in the Global North have previously remained outside of the refugees’ region of origin and had very little motivation and obligation to cooperate on burden-sharing, as the contribution to burden-sharing is optional and voluntary (Betts 2009:13). Since the Northern states do not have a binding legal or normative framework that “force” them to cooperate or have a perceived interest in subscribing the problem for its own interest, Southern states will have very little bargaining power to persuade the Northern countries to contribute with refugee protection.

The refugee situation have changed since Betts wrote this in 2009, and needs further research. With the Syrian refugee crisis refugees started showing up in the Global North, so-called

“spontaneous arrival asylum”. The distribution of refugees was now in the hands of the refugees themselves as the service of human smugglers helped them be more mobile getting to their favored destination. Because of the Libyan state collapse and no government, there was a lack of control of the coast creating an opening in the Mediterranean southern border. This combined with a relatively wealthy Libyan population with no need it-self for refuge opened up the possibility for a large-scale people smuggling of refugees from Sahel as long as they managed to enter Libya on their own. (Betts and Collier 2017:67-68). Not only was Europe confronted with the unexpected large number of asylum seekers crossing the borders of the European Union (EU), the inflow was also distributed in an uneven way across Europe. Germany welcomed the refugees, and started to pressure on other EU states to upgrade their asylum systems. This would have led to a better distribution of refugees and the accompanying burden across Europe. The main tool to ease this burden for countries such as Italy and Greece was the so-called relocation package of September 2015, redistributing refugees from high recognition rate. However, this seemed to be a political failure. This was mainly due to lack of cooperation from other EU member states, especially the Czech Republic and Hungary. They strongly opposed the decision. . As Rawan Arar (2017) writes,

...not only did Europe see a breakdown of established Asylum institutions, they also faced the breakdown of established global refugee management mechanisms, mechanism built on systems of interdependence between donor states in the Global North and major refugee host states in the Global South (Arar 2017:299).

The failure of these internal responses in Europe pushed the EU towards more emphasis on external responses as they had problems of handling the issue internally. The idea now was that refugees should be protected near their country of origin instead of taking on independent journeys to Global North (Betts and Collier 2017:51). A range of new practices has been created to fulfill this. Among these practices are introduction of the “safe third country” concept, the idea “that refugees should seek asylum and remain in the first safe country they reach and if they have passed through such a country they can be subject to removal. Another example is the idea of “outsourcing” with countries seeking bilateral agreements in which they pay another country to admit spontaneous-arrival asylum seekers and process their claims” (Betts and Collier 2017:51).

Arar writes that this European strategy turned to “burden shifting” as EU sought to transit countries in stemming the refugee flows (Arar 2017:304). The most noticeable action was the EU-Turkey agreement in 2016 where the EU and the international community pledged billions of dollars. The momentum of stemming the refugees flows in to Europe lead to a significant increase in Aid-dollars. As Arar (2017) argues, this can illustrate that being host states for refugees is a good that donor states are willing to pay large sums for, especially if you are a gatekeeper for troubled regions of instability, for example, the Sahel and the Horn of Africa (Arar 2017:305). Bøås (2017) also argues in these lines where he writes that the refugees that have the ability to travel to Europe have three routes to choose. He explains that the dynamics in the traffic along these routes, e.g. who travels, when they travel and not to mentioned who can decide how many that can come, has become an important source of political and economic power for the states near Europe, the so-called transit countries. This may cause a shift in the power relations depending on the situation, and how it is defined. If a refugee situation is classified as a crisis in some states, or even a threat, states on the route to these areas and have the capability to stop the flow, will experience an increased amount of political power due to this. Bøås considers the EU-Turkey deal to represent a new aspect of international politics that defines the relationship between the two parties. He writes that this, in the future, will also define relationships between Europe and other states close to Europe, in the same situation (Bøås 2017).

EU’s good reputation of refugees is now gone, where they previously had the ability to criticize and shame countries in the Global South rejecting refugees, they have now lost this moral authority.

1.2. Research Questions

Interesting question in this regard is; is this North-South impasse about to change, has it escaped the suasion and strengthened the leverage of the countries in the Global South? Can this account for the positions Kenya and Ethiopia have taken?

With the highlighted tendencies in mind, this thesis will address Ethiopia's and Kenya's response to refugee crisis. I seek to answer the following questions.

Given they are similar countries seemingly facing similar incentives why do their responses diverge? What can explain their responses?

1.3. Why study the response?

This is crucial because to improve cooperation in the global refugee regimes requires an understanding what factors are the most important for countries to make their decisions. This is of great importance today as we live in a time where we are reaching the highest number of displacement, and these numbers seem to increase. It is very difficult to find solutions because the crises in the countries that produces refugees are ongoing, mainly politically and the lack of stability, and they cannot offer the basic minimum for people to return home. This leads to a protracted situation and the numbers increase while the funding decreases. There is a need for new solutions for refugees, solutions that call for local integration, empowering refugees, as they cannot live in camps forever. With that said, there is clearly a need for more open asylum policies. This calls for major political will on the part of the governments in general to handle the burden in a balanced and equitable manner. As Milner (2009) points to in his book *Refugees, the State and the Politics of Asylum in Africa*, host states in Africa do not formulate their asylum policy in a political vacuum, asylum policies is affected by a variety of economic, political and historical factors, and they are not always related to the presence of refugees. The policies are incorporated into a broader political calculus. As Milner states, representatives of African host states have recognized these factors, however, the factors have not gotten the attention they deserve in the literature and research on refugees in Africa. If we want to engage more effectively in questions regarding asylum in Africa, we need to have an understanding of these factors, and they need to be addressed if the wish is more open asylum policies (Milner 2009:162). Having a more critical understanding of state behavior can reveal

the interests behind the rhetoric of African states and may also contribute to effective responses to issues regarding refugees in Africa (Milner 2009).

2. Theoretical framework

In order to answer the research questions, I use what is commonly referred to as analytical eclecticism where different theoretical approaches are deployed to answer the questions of concern (Sil and Katzenstein, 2010). More specifically, I extract the core of different theories central to answer the research questions.

Betts' conception of a persuasion game is helpful as it provides a framing of the problem in the international refugee regime. The situation seems to have changed, and that needs further explaining. By only using this framework, I do not get a nuanced understanding of what inputs goes in to the pay-offs, the cost-of benefits of pursuing a particular policy. Within Betts' framework the actors are seemed to be rational unified actors, a simplified assumption that dominate the classical international relations theories. In these theories, we often ignore that no state is a unitary actor, especially with foreign policy we often tend to think we do not have to worry about the domestic factors, as the external factors is what matters. This simplified assumption is especially difficult to sustain when studying African states. Bøås and Dokken (2002) highlights how the states in Africa relates with each other and by doing this they emphasize the close connection between the states on a cultural, ethnic, geographical and political level. They argue that these phenomenon contribute to shape African states' foreign policy, said in other words, the current conditions in Africa is impossible to understand without seeing the broader context (Bøås and Dokken, 2002:11). This also applies for asylum policies, as Milner (2009) argues, that a state's asylum policy is only partly the result of the number of refugees, the response from the donor community and the security concerns perceived to be connected with refugees. According to him, asylum policies are also a result of factors unrelated to the presence of refugees, originating from broader changes in the African political landscape since the 1980s. The changes, including democratization, economic liberalization and increased imbalance in power relations between African states have caused new constraints, both internal and external, on the state in Africa. African states' motivation for adopting a particular asylum/refugee policy is a combination of the factors relating to the presence of refugee and factors that are unrelated of their presence (Milner, 2009:4-3). Considering this, if I only used Betts conception of persuasion game, the analysis would fall short.

According to Bøås and Dokken (2002), most scientist working with international politics and relations (IR) in Africa today, utilize tools and theories developed for completely different circumstances. Nevertheless, the main approaches in IR have one thing in common; they are developed within an Anglo-American context and the central unit of analysis is the state. The challenge with these theories is that they make certain assumptions about the state; the state these theories envisage is an ideal model of the state, the Westphalian state. That is a state having full control over its borders, monopoly of legitimate use of physical force/violence within a given territory and the capacity to collect tax.

This ideal model is inconsistent with the type of states we find in Africa. These states are constructed in a different way. As Bøås and Dokken write, it is a big difference between the state we find in Africa and the assumption about state as a rational unified actor as the realism and institutionalism theories underlies. They claim that it is impossible to consider the states in Africa as a unified and a rational actor, rather the interplay between the national and international in Africa needs to be analyzed based on a wide range of governmental and non-governmental actors with different interest (Bøås and Dokken 2002:36-37). Likewise, Clapham (1996) and Milner (2009) argues that an approach that takes Africa's perceived place on the periphery of the international system as its point of departure demonstrate how several sub-Saharan African states are vulnerable to internal and external challenges. This fragility causes many regimes to consider the influx of refugees as an additional threat, increasing their vulnerability and further threatening their survival (Milner 2009:4). The domestic factors, the differences they are going through, can often account for the pay-offs they receive from this pursue in the particular foreign policy. This is not to say that classical theories in international relations is useless to study African states, but we also need to look beyond Betts and take it down a level to the leadership of the government assuming they are trying to stay in office.

Research conducted by Gibney (2014:13) on asylum policies in western states, argues that what a state can do for its refugee population is mainly a result of its domestic political environment. A various "selection" of social, economic and institutional forces will again mold this environment. These forces may be both domestic and foreign. To understand asylum policies in Africa, Milner suggests taking on a similar approach (Milner 2009:5).

Subsequently, Betts' game theoretical conception can help us explain the challenges in the refugee regime relating to cooperation over refugee protection, but the conception do not allow us to understand or get a hold of the domestic factors or pressures facing African governments. Thus a supplement and a useful framework to unpack the pay-offs facing the government of African states is precisely using Karen Jacobsen's framework. This framework present a set of pay-offs influencing host states response to refugees and allows us to capture or take in to account international and domestic pressures facing the states that decides how to respond to a refugee crisis. The factors in Jacobsen's framework gives a more nuanced breakdown of the domestic and international incentives and is considered inputs to the "game" that Betts describes. The characteristic of the African state and Jacobsen theoretical framework will in the following section be explained

2.1. The African State

The starting point for the modern state is the Peace of Westphalia of 1648, and the national state as sovereign is often associated to this event. It is presumed that the state, which consists of a territory and a population that resides in the territory, control autonomously. The state has monopoly on use of force and coercion, but the military capacity is directed outwards, against external threats and not internal. The state should also have the ability to defend itself and in addition have an economic resource base. Max Weber emphasized several criteria for a political organisation to call itself a state. This organisation needs to have, in addition to monopoly on coercive force, control over the state borders. It is costly to run a weberian state with military and police; therefore the ability to collect tax is required. Besides, it is important with administration of justice. The inhabitants in a state needs to have a certain idea, a certain expectation of what is going to happen, what kind of sanctions you can get if you do action X. In other words, you need to have a set of procedures. Ultimately, one criterion Weber underlines is legitimacy and representativeness. The form of government does not need to be democratic, but you need to have fixed procedures for power overturn. As an example, what happens if a ruler dies? Then it has to be an established order (Clapham 1996:8-9).

A question that emerges in this regard is, what happens to states, such as several of the African states, that do not fulfils these criteria, are they by these means "failed states" or no state at all? That being said it is important to remember that in "failed states" (if we are going to use that term) the imagination of what a state is and what it is going to deliver stands very

strong (Bøås and Dunn 2007:21). The notion of unchangeable borders stands really strong in the African states. Considering their history, it is not strange.

Although the weberian state is dominant in International Relations, we need to think different when it comes to African states, as the practice of these are not governed by a bureaucratic-rational framework as we know from Weber's ideal state. When talking about Africa today we have a tendency to talk about the states on the continent as fragile states and the focus and concerns are on the states shortcomings. If we want to understand the African state we have to take a look at what they are and the dominant logic within these state. If the units the state system constitutes of are different, the logic of interactions within the state system is not necessarily as assumed in the Anglo-American IR-tradition where the state and its logic is taken for granted, here it is about rational-legal authority in a Weberian sense. The logic of interactions is not the same as in a Weberian based state. In African states the interaction is shaped of other types of rationality than the one we will expect if we look at a state as a state. The point is that there are many forms of rationality. Thus, the way the state functions and is built will have consequences on how it relates to different groups within its own borders and neighbouring countries (Dokken 2008:17).

Before starting to elaborate on the characteristic of the modern African state it is important to stress out that you cannot find one adequate description of the modern African state. However, even though the different countries have had different post-colonial experiences, we can find some commonalities among several of the countries that are important to emphasize.

There is a discussion of the meaning "the African state", and there are numerous contributions of concept to explain the state's characteristics. One contribution is from Christopher Clapham where he writes about "degrees of statehood". Through this concept Clapham emphasize that the state does not possess the ability to follow up their affairs as a state, where other groups such as guerrilla groups, militia groups and non-state actors behaves more or less as a state. He takes basis in the fact that many groups have similarities with what we associate with statehood, such as controlling natural resources, arms and trade routes (Dokken 2008: 33).

Robert H. Jackson talks about the quasi-state where he distinguishes between positive and negative sovereignty. He argues that states are acknowledged by the international community and given sovereignty, but since the state does not manage to exercise effective power within its territory and the opportunity to defend itself from external threats, the state possess negative sovereignty. Positive sovereignty is having effective control (Dokken 2008:33).

Jean Francois Medard has written about the post-colonial African state, characterized as a neo-patrimonial state. The rule in such a state is characterized of a personal rule. We can think of the African state as a two-folded state; you have a formal state and a shadow state. The African states have the same structure as for example western states; the states have presidents, prime ministers, ministries etc. They have a legal and bureaucratic rational framework, but they also have a person-based framework. It is important to note that the legal and bureaucratic rational framework does not stand as strong as the person-based framework. It does not necessarily mean that what is written (as in the law or the constitution) are followed. It is in the informal sphere where most of the things happens, and the division between the states and your money is often non-existent. Things merge in one another, in different form of trades, patron-client relationships etc. The public and private sphere overlaps each other. The Big men are the hub for this intricate network around and it is in these intricate network decisions are taken. This is a lot about personal enrichment, and position you possess in a government is also decisive for business (Bøås and Dunn 2013:22-23). There have been some incidents in Norway where the divide between formal and informal sphere have appeared interchangeably, but the point is that in Norway there is a solid and clear institutional framework that captures this. The institutions in several of the African states are too weak. The distinction between the public and private sphere is only written down. The public sector is modified after the private interests of different actors that hold power.

Finally, the African state can be describes as both strong and weak at the same time. The African state is strong in that sense that a regime can hold on to power for many years, in several cases we talk about regimes surviving for decades in a weak state. The reason for this is, as Bøås and Dunn argues, these abovementioned neo-patrimonial characteristic of the African state (Bøås and Dunn 23-24). The African state is also strong in the sense that the international borders are unchanged after the colonial era. Then again, this state is weak as it lacks effective bureaucracy in a western sense and control over land that is outside of central areas. Implications that follows when you do not have control over your whole territory is

among other things that it can create informal trade, but it also gives an easier access to informal (and dissatisfied) groups and networks to operate and lead an armed struggle against the regime in their country within and near the states borders (Bøås and Dokken 2002:139).

2.2. Factors Influencing the Policy Responses of Host governments

States respond in various ways when experiencing refugee influx. Some respond in a generous and less restrictive way, while others tend to have a more restrictive approach. States of the global south react differently from states of the global north because these areas vary in terms of economic, political and military preconditions and factors. All countries receiving refugees will encounter, to some extent, similar challenges but the scale and intensity, and even impact, will diverge dependent on the state and its regional context. Karen Jacobsen (1996) has developed a framework to explain why the global south responds and approach the different situations the way they do. Again, this result of different factors shapes the various states responses. The framework classifies policy alternatives available for governments receiving refugees, and what factors influencing the states responses. In this framework, governments hosting refugees are primarily responsible for refugee policies. Governments are supposed to follow the legal framework for refugees developed by e.g. the UN, and prerequisites given by donor countries and other international organizations. They also possess some autonomy from these transnational forces and can decide for themselves how to react. They can open their doors, welcoming the refugees, or do the opposite and expel them the minute they arrive, even though this is against the will of the aforementioned forces. A prerequisite for this level of autonomy is control of their own borders, which is not the case for many African states. Many borders are porous, vague, and not controlled by the states own security forces i.e. Police or military. When a sudden rush of refugees are entering a country, this is often difficult to prevent (Jacobsen 1996:656).

In addition to the policy alternatives and the factors influencing them, governments also face pressure from different sources. Jacobsen (1996) presents three sources of pressure. The first source is the international refugee regime, i.e. institutions and individuals in the international community with the welfare of refugees on their agenda. The main actor here is UNHCR, but other international relief and refugee organizations, donor countries, media, voluntary agencies, and other individuals like academics and lawyers involved with refugees make up this group. These actors are the spearhead when it comes to assisting refugees by providing

immediate aid. They also possess the power to influence governments with negative publicity, diplomatic pressure and so on. According to Jacobsen, the second source is the local communities in the areas of the mass influx. They are the first in line to receive the refugees and therefore the ones affected the most by the presence of refugees. The reaction of these communities towards the newly arrived very much influences the government political and security reasons. The third source of pressure is the refugees themselves. Depending on the state of the refugees, and their resources, they can actually influence the government single handedly or other factors playing a part in policymaking (Jacobsen 1996:657).

2.2.1. Three types of policy choices

To compare the two countries of this thesis, I will first utilize the three types of policy choices Jacobsen presents. They are choices countries dealing with refugees must make. I will use these to assess to what extent their policies diverge, how they diverge, or whether the policies diverge at all. I am then able to map out similarities and divergences. This is a benchmarking tool with a policy spectrum, spanning from positive refugee policies, perfect compliance with international recommendations, to negative refugee policies representing noncompliance. It is important to note that this is only a measuring tool, with ideal values. Most countries find themselves in the middle of this spectrum, possessing both negative and positive elements (Jacobsen 1996:658).

Policy I – Legal bureaucratic response

Besides the international legal framework concerning refugees, every state has its own legal response (Jacobsen 1996:658). Many constitutions contain articles involving refugees and laws granting asylum to foreigners, but this is not the case for all countries. They must also define or classify the people arriving. This is fundamental for the rights the asylum seekers/refugees will have. These definitions may include “illegal aliens”, “asylum seekers” and “refugees”. Each with their own set of rights and privileges in the host country. How the government allocates responsibility for refugees is also an important decision as it determines how the newly arrived are being treated. The responsibility may be given to the military, civilian bureaucracy or an existing ministry (Jacobsen 1996:658).

Policy II – International refugee organizations

This part concerns the interaction between the government and international organizations, like UNHCR, and nongovernmental organizations (NGO) concerned with refugees. This

interaction revolves around organizations wanting to conduct work in the country, to what extent their operations are well received, and how much the government is willing to cooperate with these organizations. This decision must every government make when a mass influx has occurred. The organizations, if not already there, will most probably be the first ones seeking to aid the refugees as explained earlier(Jacobsen 1996:660).

Policy III – Admission and treatments of refugees

Facing the challenge of having refugees at the border, governments must choose how to react. Allow entrance and admitting them into the country, or respond negatively by preventing their entry, with or without force. Both decisions will lead to further decisions. A positive approach to the refugees, demands a follow-up. The government must choose whether or not to screen refugees, classifying which ones are “genuine” and who is not. They must also decide how to support and aid them after their arrival. Are they to be put in camps, be given land, or supported in another way. What are the consequences for people failing the screening test? Should they be turned back? UNHCR presents three durable solutions. These are repatriation, local integration in the asylum country and resettlement in a third country. As Jacobsen states, these solutions can be difficult to put to action. Repatriation is risky, because the conflicts may be enduring and there is no guaranteeing the safety of the returned refugees. It is also difficult to negotiate with the parties involved in the initial crisis. The receiving communities and the host governments are often reluctant to offer local integration for many reasons. Although it may seem that resettlement is the preferred solution among refugees, many resist this as their ultimate wish is to return to their home in their own country(Jacobsen 1996:660).

Table 1: Karen Jacobsen presentation of the UN Yardstick

U.N. Policy Yardstick: Refugee Policy Decisions and Possible State Responses		
Policy Type	Positive Response	Negative Response
United Nations Recommendations		
I. Legal-Bureaucratic response		
Accede to international instruments, conventions etc.	Yes, or accession equivalent	No accession
Defining asylum seekers as refugees?	Yes	No; define asylum seekers as 'aliens' etc.
Create separate bureaucratic authority responsible for refugees?	Yes	No, refugee affairs handled by army
Procedures for determination of refugee status?	Yes, proper procedures including legislation, appeal etc.	No proper procedures
II. International refugee organizations (IROs)		
Grant IROs permission to assist refugees?	IROs permitted into country	IROs excluded
Cooperate with or restrict IROs?	UNHCR permitted access to affected areas; cooperation	Restricted or no access; poor cooperation
III. Admission and treatment of refugees		
Admit asylum seekers appearing at the border?	Yes	No
Screen refugees?	No; or yes in accordance with UNHCR regulations	Yes; but not in accordance with UNHCR
Location of refugees?	Refugees allowed to choose camps or self-settlement	Refugees forced to live in camps
Rights of and restrictions of refugees?	More rights (including freedom of movement, employment), no discrimination	More restrictions (on movement and employment) and discrimination
Refugee protection?	Emphasize physical safety; camps at safe distance from border; civilian nature of camps is maintained	Protection of camps frequently violated; combatants in camps: military recruitment of refugees
Repatriation?	Voluntary, according to UNHCR recommendations	Involuntary or forced; violations of UNHCR recommendations
Treatment of long term refugees?	Potential for local settlement or permanent residence	No such local potential; refugees remain in camps

Jacobsen (1996) points to four broad factors affecting refugee policies. These can be understood as factors that explain why states respond the way they do. They will now be further examined and later used to explain Kenya's and Ethiopia's responses in my analysis. These four factors are *Bureaucratic choices*, *International relations*, *absorption capacity of the local host community* and *national security considerations*.

2.2.2. Domestic Factors

Bureaucratic Choices

In refugee policymaking, decisions made beforehand, will very much decide the outcome of the made decisions, as earlier outputs, and now becomes important and subsequent inputs. Whether the government regards the situation as "high" or "low" policy determines the outcome of how the refugee responsibility is allocated. This is an important legal-bureaucratic decision. If the situation is regarded "low", the responsibility can be given to a civilian state agency, normally a part of the Ministry of Interior or Social Welfare. These agencies set their own policy and usually answer to a department of a higher level. On the other hand, if the situation is "high" policy, that is, concerning national security or foreign policy agenda, the responsibility may be given to the army or departments with other main priorities. In these cases, the refugee welfare is not of personal interest to the officials involved, and is probably considered an extra burden, or even a threat to the national security. Ultimately Jacobsen suggests that this will probably result in negative refugee policies. The refugees will be treated differently, based on which agency the responsibility is allocated to (Jacobsen 1996:660-661).

2.2.3. External Factors

International Relations

Usually when considering comparative policy approaches, to explain domestic policies, one has often used domestic variables. I.e. political parties, political cultures, economic development and institutional arrangements. Some research has also included international relations as a factor and its impact on domestic policies. Refugee policies, is probably the matter in a domestic policy that is influenced by international events, structures and processes. Because this is a situation where people are crossing international borders, it affects governments of both countries, and other governments with some relations to the area or with interests in the region. Jacobsen divides the most influential international factors into

two blocks. The first being *the international refugee regime* while the other is the *sending countries*(Jacobsen 1996:661-662).

The international refugee regime

The influence exerted on governments from the international refugee regime is both for normative and practical reasons. As practical reasons, the international refugee regime provides the host countries with resources making them able to accept and handle a large amount of refugees. This may be by providing financial support, stimulating domestic markets and developing a country's infrastructure in relation to building refugee camps. Other actors, such as donor countries can threaten to cancel their support to the refugee regime if the host country does not treat the refugees in a favorable way. This makes UNHCR influential towards the host government, because the government are dependent of them and their resources. Resettlements to a third country helps ease the burden of the primary host country, and are therefore a powerful tool in the regimes wish of influencing governments.

Furthermore, the normative reasons for influence relies on the threat of bad international reputation. This is not desirable by any state, and so on gives the international refugee regimes another tool in their influencing toolbox. The desire to appear in a good light in the media, or the fear of appearing bad, steers the governments toward a more humane refugee policy. The always existing fear of bad coverage, and the wish to appear in a good light, are sources of social pressure, e.g. shaming and backpatting. Johnston (2001) defines backpatting as "a benefit incurred from being seen as a cooperator or an active pro-social member of a group" (Johnston 2001:503). This motivation means that a state does not always act as altruists, or solely for the good of the refugees, but rather for good media coverage, or to receive a pat on the back (Johnston 2001:501). This is what Johnston refers to as social influence, "...a class of microprocesses that elicit pro-norm behavior through the distribution of social rewards and punishments" (Johnston 2001:500). By rewards, meaning status, a sense of belonging and the fact that a country lives up to the expectations from the international refugee regime.

Punishments in this case might include shaming, exclusion and being avoided by the international community (Johnston 2001). The relevant microprocess of social influence in IR theory is "the desire to maximize status, honor, prestige-diffuse reputation or image, and the desire to avoid a loss of status, shaming, or humiliation and other social sanctions" (Johnston 2001:500). There are a range of motivations for why a state wish to maximize status. Status often brings power, wealth and deference. With consistent status behavior, comes image. Image is the public manifestation of status over time. By performing a series of

actions considered “good” and those are status consistent, one will achieve a “good” image ultimately, and vice versa (Johnston 2001:500). The result of achieving a good image may encourage actors to interact with you in other fields, as well as it is useful for building trust leading to reciprocity and cooperation (Johnston 2001:501).

Status will also in a broad extent determine whether backpatting and shaming is effective. A state will be more sensitive towards feedback from legitimate actors with high status and prestige, rather than from those with low status (Johnston 2001:501). In addition, the set of influence is not always applicable or effective. It may work with the “right” government, but it can also appear as a threat to a nation’s sovereignty. This is a touchy area in many states as it undermines their right to determine who crosses their borders, and gives the impression that they are not able to control and handle the mass influx themselves, making them look weak and poor in the eyes of the rest of the international community.

There are, on the other hand, other reasons not to overestimate the influence of the international refugee regime, and that is the host governments own form of leverage over international organizations. Without the host governments permission and access, the organizations are not capable of doing their work. In a blink of an eye, a government can expel organizations if they do not act as the government wants, making them constantly at the mercy of their hosts. They must take into consideration what kind of publicity they “give” the host country, as it may backfire on them. Another advantage for the host government is the linkage to the resettlement country (the third party). They can threaten to decrease admission for refugees to their own country if the resettlement countries does not increase their quotas or financial support. They manipulate the situation to their own advantage, making the refugees their bargaining card and resource for influence (Jacobsen 1996:662). Many host countries therefore benefits from having a large influx of refugees. The UNHCR is in general more capable of handling a refugee situation than many host countries. This is especially the case in large African states. This leads to the conclusion that both parties, meaning the organizations and the governments, benefit most from a well-functioning relationship and mutual respect. These assumptions come with caveats. Organizations are very much at the mercy of some governments. The power can solely be in the hands of the host country, as they can threaten to evict organizations working with the refugees (Jacobsen 1996:662).

The sending countries

Jacobsen and other researchers claims that geopolitical and ideological considerations play a role in refugee policymaking. How countries respond to refugees and their application of asylum depends on the relationship with the sending country. Zolberg, Suhrke and Aguayo calls this the “Haitian-Cuban syndrome”. They refer to the example with Cuban refugees seeking asylum in United States in the 1980s. These asylum seekers could not prove they were persecuted. Despite this; the US government welcomed them and was willing to define them as refugees. The situation was different for the refugees from non-communist Haiti; they did not qualify for a refugee status. Depending on the refugees’ country of origin, the hosts treats them differently. Sending countries can also use the refugee flow to pressure each other as they can provoke a refugee influx to another state. This is for many reasons. Some of these include destabilizing the host country, demand recognition, or perhaps to stop interference by the receiving state if they are meddling in the affairs of the sending country. On the other hand, the receiving countries are able to either embarrass, or prevent embarrassment of the sending countries. All this depends on relationship between the countries, and how the receiving country reacts. The host countries definition of the refugees, being “asylum seekers”, “refugees”, “illegal aliens” etc. indicates their opinion of the sending country. By defining people as “refugees”, they simultaneously portray the sending country in a bad way(Jacobsen 1996:664) .

2.2.4. Domestic Context

The internal or domestic factors split in two categories. First, we have the local absorption capacity, this includes social, economic and cultural factors. The second category is national security.

Local absorption capacity

This is, in short, a community’s ability and willingness to absorb an influx of refugees. These two are often distinct. Even though a community has the ability to absorb many refugees, they may not have the will to do so, and vice versa. The ability is defined by a community’s economic capacity and international aid, while the willingness is considered a result of a community’s beliefs and attitudes towards refugees. These elements of willingness may be a result of historical experiences with refugees and how they regard them. None of these are static and changes over time, and therefore, so will the local absorption capacity(Jacobsen 1996:666)

Economic capacity

What is considered the major determinant regarding government's refugee policies is the economic conditions. Economic decline will by some refugee policy analysts lead to negative policy response towards refugees. This was the case for many western countries in relation to the World Wars. What determines a host country's economic capacity is its availability of land, the land's carrying capacity, and its infrastructure and employment patterns. An influx of refugees will to some extent strain the ecosystem, and may create a shortage of basic resources like water, land and even firewood. This again might lead to new environmental degradation. If a community possesses high economic capacity, the refugees may not be perceived as such a threat to the locals. Refugees will bring resources of their own, such as skills, labor and capital. The more resourceful the host community is, the better they can cope with the influx of refugees. However, refugees' resources is not always beneficial to the entire local community. People with little or no resources, may be ousted by the newly arrived, as they may provide services etc. to a lower cost and maybe without the governments regulation and taxes. This situation is not optimal, as it leads to a hostile environment towards the refugees by some parts of the population (Jacobsen 1996:667).

Economic capacity is dynamic. The presence of refugees may lead to development of infrastructure and land capacity, both because of international aid or the refugees own contribution in the area. As international agencies establish themselves in an area of refugees, they provide economic opportunities by purchasing resources (food, clothes, medical supplies) from the local market. As a result, the presence of refugees can stimulate the local market to some extent, depending on their resources or the amount of aid provided. An example of this in an African context is a situation in East-Sudan where the presence of Eritrean refugees generated deliveries of food and medical supplies, created infrastructure and provided economic opportunities. This made the Sudanese fear that when the Eritreans were repatriated, the area would be neglected and impoverished, as the aid also would stop (Jacobsen 1996:667). The downside of the presence of refugees and international assistance given is that it can create differences between locals and refugees. Refugees may flourish and do a good piece of business and oust the local population, and in addition have different refugee agencies and their aid to fall back on, which is something the local community does not have. If they are ousted and are out of business, depending on country, they do not have any security(Jacobsen 1996:667).

Social receptiveness

The presence of refugees can lead to economic strains. How this leads to a change in attitude in the local communities is defined as their social receptiveness. If the refugees are staying for a long period, this receptiveness is likely to change. If a community were initially positive, it is less likely, or at least it will take longer, for them to resent the refugees even if times get tough. A question to ask is, what determines if a local community is initially positive – or negative – towards refugees? Jacobsen notes four factors influencing a state social receptiveness;

The cultural meaning of refugees: How refugees are being perceived and the response to them can be influenced by what the term “refugee” means. Factors such as religion, history and culture determines this(Jacobsen 1996:668).

Ethnicity and Kinship

Research on this topic suggest that ethnicity plays a big part whether refugees are accepted or not. Many communities on different side of borders have strong ties to each other. This may be both ethnic and kinship. If these ties are strong, it is likely for refugees from one side to be accepted when arriving to the other side. This may also lead to different responses of the host government as ethnic variations among the refugees occur. The government may favor one ethnic group over another(Jacobsen 1996: 669).

Historical experience

Earlier refugee experiences is an important factor in a community’s receptiveness. The experience can both apply to refugees and as refugees. With a bad historical experience with refugees, a community is less likely to welcome a new group of refugees. While a group that may have been refugees themselves one time and met with open arms and positive attitudes from the local community will most likely be positive to refugees if they are now to receive them. This have been the case for communities in Zimbabwe and Mozambique, Ethiopia and Sudan, Uganda and Sudan, Rwanda and Burundi, and Iran and Iraq (Jacobsen 1996:669).

Beliefs about refugees

The local community's beliefs regarding motivation of the refugees, is also an important factor to determine their receptiveness. If the community possess knowledge about the conditions the refugees are fleeing from and find this to be an adequate reason for seeking refuge, they will be more positive towards the refugees. Nevertheless, are they considered opportunist and leaving their country for economic reasons rather than safety reasons, they will not acquire the same level of sympathy. Negative beliefs about refugees may be the result of a sense of losing control, that your own community will be overwhelmed by refugees. Many also believe refugees are responsible for increased social problems. If these beliefs becomes strong enough, they may very well override the beliefs created by the aforementioned factors. The beliefs and attitudes can change. As an example, if peace has come to the sending country, the host community may think the refugees do not have a valid reason to stay any longer, and may consider it is time for the refugees to return home. It can also change through the work of voluntary organization and refugee lobbies that often seeks to change the way people perceive an issue, trying to get them to be more sympathetic and polite. The local community's response to refugees is very important as it can help refugees directly, but also influences what policies the host government pursue. If the local community is positive to refugees, there is a possibility that there will be less political resistance towards policies focusing on helping refugees. Against this background, it is not a guarantee that host government will adopt favorable policies towards refugees if there is high social receptiveness among the locals or vice versa. Host governments can implement positive refugee policies even though the local community has low economic capacity and is unwilling to welcome refugees. In many cases, governments only deals with the local community problems with refugees if the tension is high and may result in political disturbance, and if there are any linkages between the community and government (Jacobsen 1996:670).

The concept of state autonomy, or how open the government's decision-making is to outside pressures can tell us something about these linkages. The linkages between the state and civil society is more likely to be weak in military or personalistic regimes (Jacobsen 1996). This implies that it becomes hard and maybe does not make any sense for a civil society to use accountability politics. I.e. to get the government to act in the best interest of the society by protesting, strikes or demonstrating against the government, because the state in such regimes are less accountable and will decide their polices according to their own interests or other considerations. The situation is different in countries characterized by democratic rule. The

leverage and influence of the civil society will be stronger in such an environment, where the civil society have the ability to put pressure on the government and further make the government respond to their demands. The civil society can influence the policymaking. Host governments may also respond if they see political parties in opposition take advantage of the refugee situation by exploiting the local resentments for political purposes. The opposition parties can use the refugee issue to challenge the sitting government. Governments can decide upon positive policy issues when facing tensions. This is because other factors may have a higher degree of priority than domestic political considerations. This is in particular the case of security threats (Jacobsen 1996:671).

Security threats

When we think of threats, we often tend to think of external or internal military threats. This is not strange, as the conventional understanding of national security is based on this (Jacobsen 1996: 671). Even so, especially in the 21st century, other will also feature environmental and socioeconomic factors when talking about security threats. Military threats can threaten the stability of a government, but events such as a natural catastrophe or experiencing resource scarcities may also impose a threat to the government as it interferes with the citizen's essential commodities and governments face difficulties to cope with this. Many countries in the Global South are especially vulnerable to these kinds of threats. Another conception of national security combines these aforementioned conceptions by viewing national security in terms of three dimensions. First being a strategic dimension, i.e. if the state is able to defend itself militarily from external aggression. The second is a regime dimension that implies the state's ability to protect itself from internal threats resulting from domestic disorder and conflict in the country. The last dimension is a structural dimension that comes to grips with the balance between a state's population and its resource funding (being water, food and living space). This balance shifts when a government is not able to meet or manage the populations demand for resources. This again will lead to a decreased structural security, and a breakdown of a state follows and the regimes security is severely threatened (Jacobsen 1996:672).

A refugee influx threatens all of the abovementioned security dimensions of countries receiving them. It can also either provoke threats that are already present in the society, or bring in new ones. Jacobsen (1996) states that refugee camps often gives shelter to guerrillas by helping them directly or ease the guerrillas burden by helping their families so they are

free and can go out and fight. Because of this, the refugee camps are regarded as a safe place for combatants who may engage in raids in the host country (Jacobsen 1996: 672). This threat is especially worrying for the receiving country if there are an imbalance of power between them and the sending country. Conversely, refugees themselves may be considered a real or perceived threat. There have been incidents of refugees bringing arms in to the camp, which may have fatal consequences if the refugee camps become violent. A violent environment can arise among the long-term refugees, as refugees staying in a camp for several years are likely to be frustrated. This frustration can cause a spillover effect to the communities nearby as many refugee camps does not have a high level of security. Limited freedom of movement may add up and increase their frustration and so on create resentment towards the host country (Jacobsen 1996: 672). State borders in the global south divide many people belonging to the same ethnic group; an example is the Anuaks that inhabits Ethiopia and South-Sudan. Refugees can threaten the host government's regime security when seeking refuge in a region that has a high potential of ethnic conflict as it may likely change the ethnic proportions in these areas.

This is why many countries choose an encampment policy. This makes them able to separate the locals from the refugees, decreasing the possibility of a tense relationship. Host countries can also choose to have an encampment policy even though they do not face any ethnical problems. They choose this kind of policy because they will have more control of the situation and it will be easier to monitor the refugees, and because putting refugees in camp makes them less noticeable and reduces their political importance in the local communities nearby (Jacobsen 1996:673). As mentioned earlier, refugee's effect on the structural security is also a regime threat. A large number of refugees may strain the resources of a local community, increase job competition and making the fight for land even harder. The local community may take to the streets in demonstrations, perform strikes or even explode in riots and by that threaten the government's legitimacy(Jacobsen 1996:673).

Such security threats will have a negative impact on refugee policies for many reasons. When security threats occur, the army will get more involved, and be more influential in national affairs. The main priority for them is usually that of limiting possible security threats, rather than the welfare of refugees. It is more important for them to control refugees, denying them admission, restrict them to camps or send them back home (Jacobsen 1996:673).

3. Research design and Methodological Considerations

In this chapter, I will present the research method I have chosen, as well as the procedures I have followed. First, I will present an overview of the research design and why I have chosen the two cases. Then I present a justification of why the chosen method is suitable to connect the theory to the empirical findings of the thesis. I argue that qualitative method is suitable for this study, and give a presentation of my respondents and the challenges I faced during the fieldwork. I conclude this chapter discussing the methodological strengths and weaknesses of the thesis by analyzing the reliability and validity measures concerning the use of semi-structured interviews as a tool for data collection.

3.1. Research design – Theory Guided Comparative Case Studies

Case study methods are widely used in social science and is preferred when “how or why” questions are present (Yin, 1989:1). According to Campbell (1975), case studies are the basis of most comparative research. As David Collier (1993) states, comparison is an important tool of analysis as it improves our power of description. In the field of international studies, the practice of looking at few cases have been more widely recognized and achieved more legitimacy (Collier, 1993). The comparison used in this thesis is the examination of two cases in order to identify where they differ regarding refugee policies, and why they differ. Despite their similarities, such as being frontline states in the global south, hosting many of the same refugee groups and have security approach towards refugee they have recently chosen different paths. According to Collier, this is utilized on the more “interpretive” side of social sciences (Collier, 108:1993).

As Levy (2008) argues, a consensus on the definition of a case or a case study has not occurred. However, since there has been a growing focus on *how* case studies can contribute to the construction and validation of theoretical propositions, researchers doing qualitative methods think of case study as an instance of theoretically defined class of events. In this regard, George (1979) has argued that researchers conducting case studies should use the same method as historians – that is to “convert descriptive explanations of particular outcomes to analytical explanations based on variables” (Levy, 2008:2). George and Bennett use this conceptualization with their definition of a case as “an instance of class of events” and a case study as “the detailed examination of an aspect of a historical episode to develop or test historical explanations based on variables” (Levy, 2008:2). According to Levy (2008), an

initial central question is “what is this a case of?” (Levy 2008:2). He identifies different types of case studies in terms of their research objectives. In this thesis, I analyze African states’ (Global South) response to the recent refugee crisis, whereby I use Kenya and Ethiopia and their responses as two cases to better understand and increase the insight on the topic as an important part of understanding how we can improve the international refugee regime and get better outcomes on refugee policy. This research is contributing to a very relevant policy issue by answering the research question.

The practice of comparison is often used to compare similar or different countries (Tarrow 2010:231). When I first started off this thesis, my starting point was that Ethiopia and Kenya, two neighboring Sub-Saharan countries, had a divergence in policy regarding refugees, despite hosting many of the same refugee groups. They both experience a protracted refugee situation and face many of the same security threats. In addition, they are both recognized as frontline states when it comes to hosting refugees, in which they are also dealing and negotiating with the Global North. I identified Kenya as restrictive due to the government decision to refuse refugees from Somalia, and Ethiopia’s response as generous operating with an open door policy and still allowing refugees to enter despite their neighboring country’s decision. This can be seen as the reasoning behind, and justification of comparing the two countries; they were different on the dependent variable, “the state’s choice of policy responses”. In other words, I chose the cases based on what Przeworski and Tuene identify as most similar systems designs. This method identifies cases that are similar on many explanatory variables, but different on the value of the dependent variable (Levy, 2009:10).

However, when analyzing the data, I realized that the divergence between the countries was less than initially assumed. Both countries have a restrictive response to refugees in terms that they both have an encampment policy, restricting refugees’ freedom of movement and rights. They still have different outcomes when it comes to their respective strategies to the West, and the fact that Ethiopia is trying to find solutions to become less restrictive and allowing refugees to integrate into the society. Qualitative analysis and an interpretative research design are thus useful as my aims are to describe, explain and interpret the two cases. Nevertheless, using this kind of designs means that I have less generalized ability, but the strength with this kind of research is the ability to get a broader understanding of these particular cases in return. The in-depth approach, allowed me to spot both significant and understated divergences in the countries’ policy.

Justification of using Jacobsen's Framework

The two cases falls under Levy's typology of idiographic case studies (Levy, 2008: 3). Within idiographic case studies, we find inductive case studies and theory-guided case studies, two subtypes where the difference lies in the extent to which the analysis of the case is guided by an explicit theoretical framework. This thesis falls under the theory-guided case study as the cases are "explicitly structured by a well-developed conceptual framework to guide the empirical analysis that focuses attention on some theoretically specified aspects of reality and neglects others" (Levy, 2008:4). I have used Karen Jacobsen's framework "Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes" to guide the empirical analysis. The important thing in comparison is to structure the analysis systematically, the framework that I have chosen allows me to compare the two countries in a systematic way and on similar factors. Jacobsen's framework first identifies three sets of policy choices concerning the treatment and protection of refugees. A yardstick resulting from UN protocols and recommendations concerning refugees evaluates these policy choices. The framework presents broad categories of factors where I gain a systematic structure to facilitate an analysis of the two countries. The way I have structured the analysis is by comparing the two responses on the same factors, as it is insignificant to compare two cases without comparing them on the same factors. One must have comparable units, and not compare apples to pears.

A weakness with this kind of framework, in particular a most-similar design, is the problem with "over determination". This means that the design fails to eliminate many rival explanations, leaving me with no criteria for choosing among them (Collier 1993:111). On the other hand, this design have some advantages in terms of the method outlines in what way the cases differ. Results from one case can help to confirm the outcome of the other (Gerring 2007:133-135). There is not an ability to generalize beyond the data when conducting theory-guided case studies, it is rather based on the strengths of being able to interpret a particular phenomenon as Levy argues (Levy 2008:4-5).

3.2. Respondents

To better understand and attain in-depth knowledge on the Kenyan and Ethiopian refugee perspective, I conducted a fieldwork in Nairobi and Addis Ababa where I interviewed representatives from local and international Refugee Organizations. Since there is a lack of

research on the two countries' recent response to the refugee crisis, and the fact that I was interested in hearing the countries perspective on this, I found out that this was necessarily and relevant to answer my research questions. This results in an interpretive study where an understanding is obtained by accessing the meaning actors assign them.

3.2.1. Selection of respondents

The fieldwork was carried out in October and November of 2017 in Nairobi and Addis Ababa to gain deeper insight on the topic. Ideally, the fieldwork should have included some of the refugee camps. Due to ethical consideration, permits to enter the camps, and limitations of time and resources, I limited the fieldwork to Nairobi and Addis Ababa. Before leaving for the fieldwork, I sent out a request letter to 45 respondents I assumed to be relevant for this research. During the two weeks in the two countries, I managed to interview 22 respondents through semi-structured interviews. When I got back home, I conducted additional four interviews, of which two of them were through Skype. Since this thesis focus on a particular policy, I used purposive sampling as I chose respondents based on the relevancy to this research. This means that the population of relevant actors is narrow (Mosley, 2013:90). However, despite identifying the relevant population of actors, the respondents in this research are primarily from International relief and refugee organizations. I have also focused on different classes of actors within the general population; I managed to interview respondents from donor countries, voluntary agencies, media and academics involved in refugee work. These groups of respondents come from what is referred to as the international refugee regime and can be called key-respondents as they possess insight and opinions on the matter (Andersen, 2006:282). Drawing on all classes and types of actors relevant to this research has helped me ensure I get balanced information from widespread perspectives (Mosley, 2013:90). In addition to these interviews, I triangulated with other sources, such as reports, policy documents and articles. This was to substantiate the quotes and information given by my respondents.

I initially started the process of finding relevant actors using my network. As a former trainee in the Ministry of Foreign Affairs in Norway and the Norwegian Refugee Council, I contacted former colleagues and asked if they knew of relevant actors to my research and if they could put me in contact with them. This made the snowball slowly roll, and I got a positive response whereby the respondents contacted were willing to be interviewed and share my request letter

to other colleagues. However, I had only five scheduled interviews in Nairobi, the first country of fieldwork, before I left. By using snowball sampling, asking the interviewees if they knew others that could be relevant for my thesis, my schedule were rapidly filled up with new appointments (Bryman, 2012: 202). This sampling technique effectively revealed networks and actors previously unknown to me, and I thereby expanded the sample frame. The schedule became very tight in Nairobi, I got one less day of work than planned as I had missed out that October 20 was a public holiday. I also experienced that people I had an appointment with canceled on me or were out of office when we were supposed to meet. This was among other things the case with the Intergovernmental Authority on Development (IGAD), where I got informed that because of the upcoming election people had to vote and the voting station was often far away meaning they had to leave work early. I also scheduled meetings with two other journalists that never showed up. The only journalist I interviewed told me that one of the journalists, of Somali origin, were hesitant to speak to “strangers”. This led to many interviews on the last day in Kenya, and one incident where I did not manage to finish the questionnaire as I had to run to the one and only scheduled appointment with the Kenyan government.

Contacting other relevant actors was not without difficulties. Beside using my network, I also contacted relevant actors directly introducing the topic and myself. Some responded right away, others were more reluctant. This became evident with relevant respondents in Ethiopia. As Betts (2009) writes, the way states respond to refugees, whether they have crossed borders as refugees or remain within their country of origin, is highly political (Betts, 2009:14). Relevant respondents from UNHCR in Ethiopia were very challenging to reach. After sending out an email to several of the staff deployed in Ethiopia, regardless of their position, two responded and wanted to see the research question and my research proposal. One of the respondents were slightly concerned by some of the questions in my questionnaire, and I understood throughout the interviews in Ethiopia that some issues regarding refugees are of sensitive character. Some did not want to answer question such as “What is your perception of the government officials in this country”, or comment on the political situation in the country. During a lunch with the person of concern, I also got the opportunity to introduce myself and research in person. I assured that it was possible to refrain questions that were sensitive and got an interview. The other respondent agreed to talk to me after UNHCR in Kenya recommended me. However, I was not allowed to record anything, nor put the things the concerned respondent said in my thesis. Nevertheless, I quickly gained an understanding that

the environment was more open in Kenya than in Ethiopia. UNHCR is a mediator and works closely with the government, and I assume they want to be on good terms with them and avoid talking about such sensitive topic I raised in the questionnaire. As one of them stated “If this comes out to the government, I can be kicked out of the country and lose my job”.

Another respondent from a different organization in Ethiopia requested not to be affiliated with the organization and talked to me as a practitioner in general where the answers do not necessarily represent the organization that the respondent worked in. I agreed to that and conducted the interview. However, questions being too sensitive for some in Ethiopia, were answered openly by others, in the same organization.

Through the interviews I also got the question “where are you from”? Are you from Ethiopia? You look Ethiopian, although, in the request letter and in the beginning of the interview, I introduced my self as a Norwegian student. It seemed like a relief for some when I stated that I was not from Ethiopia, and they began to talk more critically. It can be imagined that my position as an inexperienced researcher and my background had to do with why some was hesitant to talk openly. They may have feared I was not confidential, or professional, enough. This may have influenced the answer given as they may have hold back on critical information on Ethiopia’s rationale behind its refugee policy.

Although most interviews was with international NGOs, I will argue that it was a satisfactory mixture of respondents, that made it possible to answer my research question. I interviewed ethnic Kenyans, Ethiopians and expatriates that either had humanitarian or legal background. I will also argue that this provides the research a more nuanced picture and rich insights from different viewpoints. Moreover, I got the opportunity to interview government officials as well. Ideally, it would have been beneficial for the research to interview other government representatives as the aim for this thesis was to understand and explain their responses, but this proved to be difficult. The reason why I got to interview these government official in the first place was due to recommendations from other interviewees. When entering the door to the Kenyan government official he did not even bother to look up and say “welcome”. When I presented myself, he was more curious of why I am doing this research, rather than what my research was about. When noticing skepticism towards me, I explained that I wanted to hear the perspective from Kenyans themselves, and I was not there to criticize or point a finger. Also, I quickly learned to rephrase some of my statements and questions, like not calling it “a

European refugee crisis” as this was, in African context, a “bagatelle” compared to what they are experiencing.

3.3. Reliability

In social science, we discuss the credibility, the strength and transferability of knowledge usually in the concepts of reliability, validity and generalization (Kvale and Brinkmann, 2009:249). According to Lund (2002) we can never be absolutely sure of our conclusions and interpretations. Seeking to achieve best possible results, we have to be critical and systematic in our thinking and methods (Lund, 2002: 80). To assess this we can use the concepts reliability and validity.

A study is reliable if it can be replicated (Bryman, 2012: 46), i.e. a study is reliable if the same steps and analysis used to collect and interpret data gives the same results by other researcher (King, Keohane and Verba, 1994:25). If this is the case, we have satisfying reliability. The questions of reliability and validity are disputed in qualitative method as many see these as positivist concept that prevents creative liberating research, as qualitative research should be. In qualitative research, it may be better to talk about reliability meaning verifiability. More specifically, to attain openness and transparency is essential. It is about openness around the steps taken in this study so other can do the same and hopefully attain the same results (Boolsen, 2005:197)

I collected my data using what is called a semi-structured interview. I utilized this method as I was a newcomer to this topic of area and because I wanted to understand the respondent’s perspective. I had an interview guide ready before I conducted the interviews, and made sure that the questions of interest were covered. I developed the questions by using Jacobsen’s framework. I was flexible with the questions, using the interview guide, but also open for and encouraged digressions and follow-up questions when unexpected issues and themes appeared. Here it is also important to note that some questions in the interview guide was, as discussed above, sensitive for some respondents in Ethiopia. Some questions were thus omitted or not answered. This clearly affects the reliability.

The reason why I had structured question must be seen in relation to the selected research design. This study is theory-guided and therefore I need to connect the theory in the analysis.

This led to a comprehensive data material and enabled me to compare the responses. Many of the answers were also repeated. I will argue that semi-structured interview was a suitable tool for this study because of its flexibility to follow up questions and that it was structured by topics. For example, after the first couple of interviews, it became evident that the assumed divergent in policy did not represent a marked shift in Kenya, so I changed the question from “what can explain this marked shift?”, to “do you believe it is a marked shift?”. As mentioned above, I stopped using “the European refugee crisis” as an expression and substituted it with “the recent refugee crisis”. Despite the threat to reliability, semi-structured interview was necessary for me to obtain good understanding of Kenya’s and Ethiopia’s response to the refugee crisis. If I had utilized structured interviews, I would have missed out on valuable information, and if I had used an unstructured interview I would have weakened the connection to the theory.

I have made attempts to be open and transparent. A list of respondents and the interview guide is in the appendix, but as the topic is of sensitive character, and the majority of the respondents wanted to be anonymous, the reliability is further weakened. However, in order to catch all of the information given, I asked if I could record the interviews. With the exceptions of two respondents, I recorded all of them. This has given precise information where the respondents’ answer is not colored by my own beliefs. I will argue that this strengthens the reliability. The answers of the respondents that were not recorded are not quoted in the analysis.

4. The international legal framework

In short, the principle of refuge revolves around the right to flee and be able to obtain access to a safe haven when you face the possibility of serious harm at home. You have the right to do so until you can go home or be reintegrated in another local society (Betts and Collier 2017:4). Providing protection to people seeking refuge is one of humanity's most long-standing tradition and a shared value in many cultures and religions around the world. Likewise, it is now also an integral part of international law (UNHCR, 2017b).

The movement of people takes place in a context where sovereignty is of importance. States have the power to decide who should allow to access and be granted asylum, and who should be expelled and returned back among their non-citizens. Nonetheless, this has to be exerted within and according to a legal international framework. Every sovereign state is entitled to control its own borders, and refuse entrance to non-citizens. However, there are some exceptions to this rule. One such exception is when people are fleeing and seeks refuge. The duty of protecting refugees, is one of the things written in the international law of refugee protection. This law comprises of a range of universal and regional conventions, rules of customary international law, general principles of law, national laws, and the work of states and international organizations, led by the High Commissioner for Refugees. These laws guarantees that all refugees are – at least *de jure* – given the same rights and benefits they are entitled to. No state may expel or refoul refugees in search of asylum, by these laws, and are even obligated to ensure these rights are attended (Goodwin-Gill 2014:36-37).

Following will be a presentation of these principal norms and the challenges related to them.

4.1. What is the legal framework around refugees?

4.1.1. The 1951 Convention

The modern refugee regime as we know it today emerged after the Second World War, in the onset of the Cold War in the late 1940s, in order to guarantee people seeking refuge would from now on have the right to seek international protection and asylum (Betts 2013:12). This regime has two core elements, a multilateral treaty, the 1951 Convention on the Status of Refugees (1951 Convention) and an international organization, the office of the United Nations High Commissioner for refugees (UNHCR). The 1951 Convention is referred to as the international cornerstone of international refugee law as it provides a legal and normative framework for protecting and assisting refugees. Furthermore, it sets out a definition on who a refugee is and the rights the people who fall in to this category is entitled. It also sets forth the obligation states that have signed this convention have towards refugees on their territory (Betts 12: 2013).

In Article 1(A)2 of this Convention, the term refugee is applied to any person who

(a) as a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country.

Initially, The 1951 Convention was limited to protecting European refugees in the aftermath of World War II. However, the scope of displaced people spread around the world, and as a result of this, the convention got modified by the 1967 Protocol Relating to the Status of Refugees (1967 Protocol). A refugee regime that was initially designed for Europe was now extended to the rest of the world (Collier and Betts 2017: 39). The protocol removed the temporal and geographic limitations of the definition whereby it become more universally applicable (Milner 2009:6). Together, these are the cornerstones of refugee protection and the most comprehensive instruments which have been adopted to apply on a universal level to protect the fundamental rights of refugees (UNHCR, 2017b). In these documents, it is specified clearly who has the right to receive legal protection, other assistance and social right in the name of being a refugee (UNHCR, 1989).

The instruments regarding international legal protection of refugees at the universal level are accompanied with regional treaties and declarations more specific and targeted to political and social realities (Goodwin-Gill, 2014: 41).

All though the 1967 Protocol modified the limitations of the 1951 Convention, the definition of a refugee concerned only those who individually could demonstrate they were victims of persecution; it did not apply to people who were fleeing generalized violence due to ongoing wars and of national liberation or conflicts. This was the situation in many of the newly independent African countries in the 1960s. For many African states the individual refugee status determination that the 1951 Convention obliges were too resource-and time-intensive. To overcome these concerns the African states agreed on an additional refugee definition that was directed by The Organization for African Unity (OAU). In The OAU's 1969 Convention on the Specific Aspects of Refuge Problems in Africa (1969 OAU Convention) we find two definitions of the term 'refugee'. The first definition is the same definition to be find in Article 1(A)2 of the 1951 Convention. The second definition, Article I(2) of the 1969 OAU Convention, states that;

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

This definition of a 'refugee' now includes individuals that are fleeing from both persecution and generalized violence. This gave African countries the possibility to give entire groups of people refuge, defining them as refugees, because they all fled for the same reason. This procedure is called *prima facie* refugee status determination (Milner 2009:7).

This Convention, besides giving a clear definition of who a refugee is, also determines when the refugee status is no longer valid (Goodwin-Gill 2014:38). This may happen in the case of voluntary return or if the situation in the country of origin has changed (to the better) (see Article 1C) (Goodwin-Gill 2014:38).

4.1.2. UNHCR

The UNHCR is through The 1950 Statute of the Office of the United Nations High Commissioner for Refugees given the global mandate to protect and upheld this framework (Loescher, Betts and Milner, 2012:14). UNHCR has a global mandate in two principal areas; the first is providing protection by working with states to ensure that refugees have access to this international protection. After the refugee status has been determined and protection is secured, UNHCR's next step is to work towards a long-term, permanent solution, also called a durable solution, to refugee's difficulties with the parties involved. This is what the second principal area revolves around (Goodwin-Gill 2014: 37).

Working towards a durable solution is to prevent refugees getting to state of limbo without citizenship or residency. The UNHCR promotes three durable solutions to ensure that refugees are reintegrated into a state; refugees would either be reintegrated within their country of origin (repatriation) or permanently integrated within a new country (local integration), or integrated in a third country (resettlement) (Betts 2009).

UNHCR was intended to be a temporary agency, but the General Assembly reintroduced its mandate "until the refugee problem is solved" and was in 2003 put on a permanent basis (Goodwin-Gill:37). This agency has developed from having a temporary mandate, a very small staff, to become an important international organization with a large permanent bureaucracy (Betts 2009). UNHCR was not only created for altruistic reasons, it was also created to promote regional and international stability. As Loescher, Betts and Milner writes "states wanted to create a regime to support functions that served their interests regarding sharing the costs of granting asylum and coordinating policies regarding the treatment of refugees" (Loescher, Betts and Milner 2012:2).

This clearly defined refugee regime in general govern states response to refugees. More specifically, these two main elements of the refugee regime gives host countries and the international community a legal obligation to protect refugees when their own states are unable or unwilling to do so (Loescher, Betts and Milner 2012:2). In fact, UNHCR has a supervisory responsibility for safeguarding that states meet their obligations under the 1951 Convention (Betts 2009). The states obligation to provide protection is set out by two norms, i.e. asylum and burden-sharing. In addition to these norms you have the core principle underpinning the regime, non-refoulement (Loescher, Betts and Milner 2012:2). Following

section will be a presentation of these principles/norms and challenges related to (uphold) them.

4.2. Norms in the refugee regime

It is expected that sovereign states have the primary responsibility to ensure that their citizens have access to civil, political, economic and social rights. Unfortunately, this responsibility is not always fulfilled as some states violate human rights making the inhabitants flee to other states seeking the protection their state fails to give them. The refugee regime was, as mentioned above, created to regulate the responses of states, but also to ensure that all states equitably share responsibility for providing protection. When talking about international protection, we often allude to two different sets of needs that refugees have. Refugees have a right to *asylum* and access to human rights while in refuge. They also need access to durable solutions, meaning they should be fully integrated in one state.

The 1951 Convention set forth specific norms that relate to states' obligations to provide protection to refugees that is located in their territory (Betts 2009). States can contribute to refugee protection by providing asylum. States may also contribute to burden sharing, i.e. financial support to states hosting refugees. When refugees have access to international protection it contributes to a form of stability. Despite their country of origin failing to give them the protection and rights they need, they are able to receive this from another state. This way, international protection serves as a corrective to the state that fails to give them this. Without international protection, access to rights and reintegration to another society, the risk of persons falling outside the state system is high, as they would become stateless. This can become a source of instability and even a threat to state security as they could be recruited by radical organizations and spread conflict. Collective actions to address refugees' needs would be a way to avoid this kind of insecurity and instability. However, we cannot take for granted that every state is willing to contribute to refugee protection. The costs related to refugee protection are high and despite a refugee regime in place to monitor states' obligations, and these norms the 1951 Convention sets forth some states will be reluctant to either contribute with asylum or burden sharing. This makes international cooperation on protection problematic. As argued in the introduction chapter, it is rather politics and power that dictate cooperation.

4.2.1. Asylum and non-refoulement

The 1951 Convention does not only give a clear definition of who a refugee is, it also emphasizes specific obligations to the states that are a part and in fact not part of the 1951 Convention. The 1951 Conventions were the foundation on which to further build and develop the International refugee law. Every state has a duty to contribute to refugee protection for refugee protection to be sustainable (Suhrke and Hans 1997). Asylum is a well established, widely accepted, and clearly defined norm based on a strong legal and normative framework. Being granted asylum means that refugees are admitted to the states territory and given rights. When a person in need of protection enters another states territory, most states acknowledge that they have an obligation towards them. According to the legal framework, refugees have a right to asylum and to access to human rights while in exile (Betts 2009, and Loescher, Betts and Milner 2012).

Another principle that also is widely accepted and in fact the most fundamental in protection is Article 33 of the convention, the prevention of *refoulement* (Feller 2006:523). According to this principle, states cannot by any means forcibly return a refugee back to his or her country of origin where he or she is at risk of being persecuted (Goodwin-Gill 2014:38). The state should instead provide refuge to that person in form of asylum, until a long-term solution can be found. The principle of non-refoulement is now argued and considered a customary international law every state has to follow (Loescher, Betts and Milner 2014:16).

4.2.2. Burden-sharing

Most of the world refugees today come from states affected by conflicts or civil war, or states of human rights abuse. These states are mainly located in the Global South. Many refugees do not have many resources to travel long distances, meaning they normally end up staying in the global south. As mentioned above, when a person enter another state's territory, the refugee regime tells us that the state have a duty to accept them and ensure that they are protected (Betts 2009). This is what makes the distribution of refugee's unequal as the country in the South are the ones that will receive more refugees because of their geographical location. To correct these inequities among states in admitting refugees, a collective action is needed. This is stated in the preamble of the 1951 Convention "the grant of asylum may place unduly heavy burdens on certain countries, and... "A satisfactory solution....cannot therefore be achieved without international cooperation" (Milner 2009).

One way to address this unequal distribution is that states in the North may contribute to support states in the South that host a large amount of refugees. They can contribute in two ways; contribute financially, burden sharing, or by proposing resettlement places for the refugees, also referred to as *physical* burden sharing. This is often referred to as international solidarity or responsibility sharing (Betts 2009, Milner 2009). Financial burden sharing with the countries of first asylum can happen in a number of ways. The financial and material assistance can be given through international agencies helping them provide for refugees situated in the Global South. The financial aid can be channeled bilaterally or multilateral through World Bank or UNHCR. UNHCR has received billions of dollars, in that way we can say that financial burden sharing takes place (Milner 2009:46).

Supporting host countries in the South through financial aid has for a very long time been regarded as essential and necessary. As Astrid Suhrke (1998) writes, the concept of burden sharing is essential to create equity and to secure asylum to refugees (Suhrke 1998). There have been efforts to create a system to safeguard collective action to share the responsibility towards refugees. This system was supposed to function as an insurance; states came to an agreement to accept certain amount of refugees during mass influx of refugees, so that one single state would not end up to share the responsibility/burden alone in a refugee emergence (Suhrke 1998).

Whereas asylum and the principle of non-refoulement have a clearly defined normative framework, this is not the case for burden sharing. As illustrated above, the desirability of burden sharing is there, but these statements do not represent binding obligations on states and international law (Hurwitz, 2003: 191-193). There is no well-established normative or legal framework around refugees, and according to Betts (2009: 3) this makes it the weakest aspects of the refugee regime.

4.2.3. Limitation of the existing refugee framework

Although a legal framework around refugees in place, there are some serious limitations to this framework, and also problems with committing to the 1951 Convention. The latter have become more obvious in recent times, especially with Europe's response to refugees.

The legal framework around refugees was created as a response to the refugee crisis Europe experienced in the 1940s and 1950s. Said in other words, it was created for a particular era and geographical context. The definition on who a refugee is, stated in the 1951 Convention, is a definition that met the driver for displacement at that time, namely persecution. By taking a look at today's drivers for displacement, we can confidently say that this definition is narrow and outdated. The regime only lives up to its underlying function as it only protects people who had to flee the same situation that required protection in Europe in the 1940s and 1950s. The new drivers for displacement today is environmental change, state fragility and food insecurity, and by only focusing on persecution when giving individuals protection, the regime falls short in providing protection to what the majority of people in the Global South flee today (Betts 2013:12). As a result these people are denied access to international protection.

As Betts (2013) writes, when the 1951 Convention was drafted, it was imagined that a meaning of a refugee would change over time, but these changes have been slow and inconsistent (Betts 2013:12, Betts and Collier 2017:43). Moreover, the changes have been dependent on decisions in particular regions or by individual countries leading to a number of consequences. This means that the meaning of refugee varies in different countries and regions. This is made clear in recent times. For example, the recognition rate for Eritreans was 26 per cent in France and 100 per cent in Sweden (Betts and Collier 2017: 47). This indicates that some countries have a more open interpretation while other countries have adopted restrictive interpretations. The definition of refugee has evolved, but it has rather been adapted conservatively and slowly (Goodwin-Gill and McAdam 2007, 74). For example, and as mentioned earlier, the refugee regime has adapted some changes to better fit the regions circumstances, one example is the 1969 Convention on Refugee Problems in Africa. The Convention incorporates "people fleeing external aggression, occupation, and foreign domination or events seriously disturbing public order". However, this is not often applied in practice although it is incorporated in national legislation (Betts 2013:14). In general, this has led to the 1951 Convention being poorly adapted (Betts and Collier 2017: 43).

The absence of a binding legal or normative framework when it comes to burden sharing raises a lot of challenges beside that the majority of the world refugees are situated in the Global South. One aspect is related to the principle of non-refoulement. Despite that the principle of non-refoulement and asylum is widely accepted, a lot of challenges arise. If we first take a

look at the principle of non-refoulment; the application of this principle requires a recognized refugee status. Not all states are members to the 1951 Convention and may not have established formal procedures for determining refugee status (Goodwin-Gill:40). Milner (2009) points out there has been a lack of global burden sharing in the recent years, and this has been cited by several states in the Global South for why they have been restrictive and put limitations in the asylum they offer to refugees. Many of these states in the Global South sees burden sharing as a precondition of hosting refugees, and given the growing scale of displaced people, burden sharing has been one of the fundamental challenges for international refugee protection (Milner 2009: 39). When states that have a large refugee population feels that there is not enough international support in terms of financial contribution or resettlement opportunities to the Northern countries, they are more likely to engage in cases such as non-refoulment.

5. Analysis

In this chapter, I start with a brief, but necessary context on refugees in Kenya. After doing this, I explore the relevancy of Jacobsens factors for the three policy areas identified in table 1. Although there are many refugee groups in Kenya, I examine the development of the policies between 2011-2016 with respect to the Somali refugees. The reason for this is that this refugee group is the largest in Kenya and based on my interviews with International organizations and NGOs in Nairobi it became evident that the Somali refugee population is of big concern for Kenya. Following Kenya, I do the same thing for Ethiopia. Ultimately, I compare and summarize the two countries responses and the factors that may cause them.

5.1. Introduction to the case study – Kenya

Kenya has since its independence in the 1960s been receiving refugees from the whole East African region as these countries has experienced civil conflict; Rwandese, Burundian, Ugandan, Ethiopian, South Sudanese and Somalis have all sought refuge in Kenya. The country has close to 500.000 refugees now and remains one of the countries in Africa with the largest population of refugees, and for the longest period of time (UNHCR (2018c).

The refugee situation has through the decades evolved both positively and negatively. In the 1980s Kenya received a lot of refugees from Uganda and Rwanda and they were fairly well integrated. They enjoyed freedom of movement, had access to employment and the benefits of the social rights specified in the 1951 Convention. Many of these refugees were well educated, had skills such as doctors and teachers and were therefore hired and employed in Kenya. Kenya simply took advantage of the refugees' competence and improved its education system tremendously. Since the refugees from Uganda and Rwanda contributed to Kenya's development and prosperity and because the number of refugees was relatively low, around 10.000, Kenya pursued an open asylum policy. The responsibility of refugees was allocated in a government agency that granted individual refugee status. In this period, Kenya's priority was to integrate these refugees both socially and economically, however they had not formalized a refugee policy or national refugee legislation. Kenya's open door policy was operated on an ad hoc basis (Milner 2009:86).

Abdication and containment

The picture was completely different in the early 1990s; Kenya went from hosting a refugee population of maximum 14.500 refugees to hosting 130.000 refugees in 1991. A year later, the numbers of refugees had escalated to 400.000 due to the refugee influx from the collapsing neighbor Somalia, and significant number of Ethiopian refugees fleeing the collapse of the Mengistu regime (Betts 2013:145). Instead of detaining and deporting refugees that did not fall under the definition of refugee in the 1951 Convention, Kenya recognized all Somalis as prima facie refugees. This was partly due to the inefficiencies to provide individual refugee status determination to the huge numbers of refugees coming in. Kenya put many restrictions on the refugees in terms of freedom of movement and access to livelihoods (Betts 2013:143). Arap Moi looked to the international community for help and UNHCR emergency appeal came in with \$15 million facilitating refugees to settle in the seven refugee camps that were established in northeast Kenya (Betts 2013:144).

The emergency was announced over in June 1993, but challenges regarding the refugees still remained; the insecurity around the camps, concerns regarding security in general and dwindling international support. Due to this, there was a shift in the Kenyan government policy towards refugees whereby the government stopped the process of individual status determination interviews for new asylum seekers. Refugee affairs were now the responsibility of UNHCR, which established and managed camps in designated areas. In the beginning, the camps were temporary shelters for those fleeing the Somalian civil war, but as one of my respondents recalls;

I first went to Dadaab and Kakuma in 1996 on official mission and I never saw that 21 years later coming back to this country I would see the same camps there. When the war ended in South Sudan and peace negotiation took place everybody thought that Kakuma, the camp we have near South Sudan, will close and people will return. It has not happened. Same thing in Somalia, there has been areas, cycles of peace and it was always a believe, or an expectation, or a hope that this situation will allow people to go back. But that has not happened (UNHCR1).

Kenya adopted an encampment policy following the influx of refugees from Somalia and Sudan. The Somali refugee population was relocated from other camps in the country to the Dadaab camps; Dagahaley, Ifo, Ifo2 and Hagadera (UNHCR, 2018d), and the Sudanese

refugees were placed in the Kakuma camp (UNHCR, 2018e). For many years, the Kenyan government has been saying that refugees are an issue that the international community needs to deal with and in particular UNHCR. Kenya has only allocated land to UNHCR, for them to build camps (Betts, 2013: 143). This policy is what James Milner has called “abdication and containment” and has endured until recently (Milner 2009:88).

Today’s policy- Containment and removal of refugees?

Dissatisfaction due to presence of refugees in Kenya occurs. Both in the public and in the government. Factors such as reduced international support and increased influx of refugees, increases the dissatisfaction, leading to a peak in 2011. This was the year Kenya experienced the last influx of Somali refugees due to the drought and famine in Somalia. At the height of this humanitarian crisis, the number of Somali refugees in Kenya was 519,411 (UNHCR, 2015). As one of my respondent puts it, “Unfortunately this influx was accompanied by a lot of insecurity” (UNHCR1).

In the period 2011-2012, a police officer in Dadaab was killed, and another wounded near the Dadaab refugee camp (Al-Jazeera, 2014). There were several hostage-taking incidents. In October 2011, two nurses, working for Médecins sans Frontières, was kidnapped by two gunmen targeting the Dadaab camp (The Guardian, 2011). A new incident occurred in 2012 where the former secretary general of Norwegian Refugee Council was the victim of a failed kidnapping attempt. A Kenyan driver was killed and four aid workers from the same organization were kidnapped and kept for two days in Somalia (BBC, 2012a). In December 2012 another police officer was killed and 13 wounded. This time in a grenade attack during riots linked to the killing of an influential Cleric, Sheikh Aboud Rogo Mohammed in Mombasa. He was accused, by the US and UN of funding and recruiting for Al-Shabab (The New York Times, 2012).

Other similar incidents followed, and according to several respondents, from this time, the tone of the Kenyan government started to change. The attacks had been carried out in areas with a large ethnic Somali population, and after the last mentioned attack, Badu Katelo, Kenya’s acting commissioner for refugee affairs, stated, “the government of Kenya has decided to stop reception, registration and to close down all registration centers in the urban areas with immediate effect” (BBC, 2012b). The refugees staying in the cities were ordered to leave urban areas and go to the refugee camps. The head of Kenya’s refugee agency also

stated that those who remained in the urban areas would no longer get access to aid (BBC, 2012b). The refugees residing in the urban areas were blamed for contributing to insecurity in the country. Abuse and blackmailing by the police towards the Somali refugees in Nairobi were reported. However, the aforementioned restrictions, and the December 2012 refugee relocation plan proposed by the Kenyan government, got legally challenged by the NGO Kitu Cha Seria as they filed a petition questioning this. Kenya's High Court reversed the government plan, justifying it by asserting it would be a violation to refugee's dignity and free movement rights. In addition, the restrictions could have forced the refugees to go back to Somalia. There was in fact no evidence that this solution would help protect national security (Human Rights Watch, 2013).

In November 2013, UNHCR together with the government of Kenya and Somalia signed a tri-partite agreement. According to the UNHCR officials interviewed in Nairobi, the purpose of this agreement was to reaffirm international law regarding repatriation (UNHCR1). The idea was to consider the fact that spontaneous returns were taking place. Here it is important to note that many of the Somalian refugees that came to Kenya in 2011 came due to famine and drought, not conflict. According to the UNHCR, many wanted to go back, and what the tripartite agreement did was to provide support to those who wished to return to Somalia. The repatriation continued for some time, and UNHCR continued to support the returns taking place (UNHCR1). However, in 2016 the Kenyan government took a new and surprising turn according to my respondents. One respondent says "And out of the blue, out of nowhere our refugee bill is in parliament and voila the permanent secretary decide I am issuing a declaration on closure of Dadaab and Disbandment of refugees." (Protection officer NGO4). Another respondent working for the UNHCR at the time similarly asserted, "...that was a strange thing, it took everybody by surprise because there has not been terrorist attack, the repatriation was actually taking place, people were going back, but suddenly the government of Kenya said enough! Refugees should go" (UNHCR2).

As we have seen, Kenya continued its strict encampment policy regarding refugees (Milner, 2009:84), but in 2016 they took this even further. In April 2016 the Kenyan government announced that they would no longer recognize asylum-seekers from Somalia as prima facie refugees. This means that those fleeing from Somalia needs to apply for asylum on a case by case basis (Knoll and de Weijer 2016:16). One month later, the Kenyan government made a statement to close the world's biggest refugee camp, Dadaab. It is important to mention that

this is not the first time they have threatened to close the camp. They have for many years wanted to repatriate the Somali refugees (The Washington Post, 2015), but what was different this time, was the actual deadline for the closing, 30th November 2016. Parallel to this statement they did shut down The Department of Refugee Affairs. The statement and policy actions since April 2016 have reflected a hardening of the government's position (Refugee officer NGO1). The Kenyan government has argued that the reason they intend to end the hosting of refugees and close the camp is due to international security concerns and says that Kenya has fulfilled its international obligation and commitments regarding humanitarian aid. According to the Kenyan government no country should carry this burden at the expense of its own national security. Terrorism and terrorist recruitment among Somali refugees in the refugee camps are the government's arguments for why they need to shut down the camps and repatriate its inhabitants (Independent, 2016). Yet this argument is puzzling. Indeed, there is no proof that refugees from Somalia have been behind the terrorist attacks. Moreover, by sending people to where they initially came from, in this case, a very unstable state like Somalia, and where the situation has not improved since they fled, they are actually taking a bigger risk. Given Somalia has a very limited capacity to provide protection, food, shelter, and legal entitlements, and has little ability to revoking these elements which was given to them in some extent through the refugee camp, one does now run the risk of falling outside the state system and so become a potential source of threat. It will only increase the risk of instability and displacement in the region (Betts 2009:2). You can ask the question if the Kenyan government really believed that they would close a camp and repatriate hundreds of thousands of refugees within a span of three months? As one respondent stressed:

I think certain officials absolutely believed that the camp would close within three month- like there was this massive disconnect between reality. And there were definitely certain officials, including the new people in RAS that were committed to getting that camp closed. But that kind of ebbed now. Even if you forcefully close the camp, the repatriation exercise that can be only be done with some resemblance of minimum standards around it, even if you take out the voluntary, but the just logistics of it, can not happen the way they wanted to (Specialist NGO).

Another one, an officer for the UNHCR, stated;

The plan of the government, I have to admit, was not very clear. The plan that was put together would not have, in any case, lead to the closure of Dadaab within six months. Because the plan was to facilitate the returns, increasing the return package, increasing the areas of return to Somalia, relocating the non-somalis to Kakuma, making sure that those in resettlement would be resettled, but it was ignoring delays any resettlement country has. I mean it takes years in any given resettlement country to resettle Somali refugees, it can not happen within six months (UNHCR2).

Kenya's stated aim to close the camp was not followed through; they are, more than two years in, still running. So why did Kenya pursue these restrictive policies and made the statement to close the world biggest refugee camp? What can explain this response? Has there been a change in policy, or is it an escalation of existing policy?

5.1.1. Policy I: The legal Bureaucratic response – accession to international refugee conventions

Kenya is signatory to several international treaties when it comes to refugees seeking asylum and protection. Kenya acceded to the 1951 UN Refugee Convention Relating to the Status of Refugees on May 16 1966 and its 1967 Protocol in 1981. Kenya also signed the 1969 OAU Convention Governing The Specific Aspects of Refugee Problems in Africa in September 1969 and ratified it in June 1992 (Hyndman & Nylund, 1998: 9). Together with this Kenya acceded to the 1984 Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment in February 1997. In this convention there is a provision with relevance to refugee issues that states that “[n]o State Party shall expel, return (‘refouler’) or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture” (OHCHR, 1984). These instruments have later been adopted by the Kenyan Parliament through the 2006 Refugee Act (Refugee consortium of Kenya (2017)).

The 2006 Refugee Act created a comprehensive legal framework for the Kenyan government on management of refugee affairs. Four years later Kenya adopted a new Constitution. This constitution provides a range of rights to all persons, including refugees, in Kenya. The 2010 Constitution also put Kenya's international legal obligations directly in to Kenyan law (Norwegian refugee council, 2017)

The definition of asylum seekers

The Kenyan law makes a distinction between “statutory” refugees and “prima facie” refugees. People who face justifiable fear of being persecuted if they return back to their countries of origin are statutory refugees. These conditions are reflected in the 1951 Convention. Prima facie refugees on the other hand are people that have been forced to leave their country due to external aggression, occupation, foreign domination or events so serious that it disturbs public order. This is a definition we find in the 1969 OAU Convention. According to Kenyan Law, the Minister that is responsible for refugee affairs can appoint specific groups of people as prima facie refugees. On background of the 2006 legislation, Somalian refugees have been granted this status. Kenya is the only African state with a political framework allowing recognition of prima facie refugees based on the refugee definition of the regional OAU Refugee Convention (Betts 2013;36). As Betts describe: “The refugee definition has been inclusive, but the standards available to all Somalis have been extremely minimal” (Betts 2013:37).

Institutional responsibilities for refugees:

When Kenya experienced the first influx of refugees in the 1980s, it was the government of Kenya that gave refugee status and had the responsibilities for refugees. The situation changed when Kenya got the big movements of Somali refugees coming in due to the dissolution of the Siad Barre regime in 1991. The numbers became overwhelming together with the increasing numbers of Ethiopians coming in the early 1990s. The government of Kenya asked for help and gave the responsibility to UNHCR, and for a long time the Kenyan government has been saying that the refugees is an issue that the international community needs to deal with and in particular UNHCR. However, the 2006 Refugee ACT established the Department of Refugee Affairs (DRA), which became responsible for the administrative matters concerning refugees in Kenya (Norwegian refugee council, 2017). The DRA is a function of the ministry of interior and prior to 2010 there was not much in terms of institutional capacity that had been developed at government level, UNHCR held the primary responsibility for refugee status determination. As a result of the last refugee influx in 2011, some efforts were made by the government to have a greater role in refugee management. For example, in 2014 the Department of Refugee Affairs (DRA) were involved in the refugee status determination (RSD), even though they did not have the capacity. A parallel system occurred, where DRA denied a person status, the same person still got recognition using the UNHCR mandate. The management was undertaken very poorly as there were no databases

and the follow up was poor (Advocacy officer NGO2). The government tried to use the new power they got to constrict the refugee space.

The DRA was disbanded overnight in 2016, and based on my interviews it is difficult to understand why they shut down the department. The official reason given was no more need for a department if refugees are to be sent back. However, from an administrative standpoint, you could see a shift in government arrangement where DRA got reconstituted in a different form. The DRA, which previously was manned by persons certified by NGOs to do protection work, were replaced by a new secretariat called the Refugee Affairs Secretariat (RAS). The RAS hired more individuals with intelligence and security background (Advocacy officer NGO2). According to several of my respondents the DRA was plagued by corruption in every level. There was so much corruption resulting in the security led part of the government not being able to verify who was a refugee and not. Several of my respondent stated that it had been numerous incidents where refugees had to pay for documentation and paying for services (Program officer local NGO, Advocacy officer NGO2, Protection officer NGO 4)

The people in power had made sure their own people were situated in powerful positions as well. The security arm of the government was provided by the second party to the coalition that won the 2013 election. A lot of the people working in refugee and security management had links to the United Republican Party (URP). However, when the failures in security happened, everyone from the top minister was shifted. The changes at top level led to changes all the way, in all departments, and the departments of refugee affairs being under ministry of interior was also affected. It was no longer justifiable to support your friends, and thus the patronage system collapsed (Advocacy Officer NGO2). The respondents believed that the patronage system was the reason for disbanding the department as a whole and replaced with new staff. Many of my respondent also believed that this institutional change could be seen in connection to the insecurity that Kenya had been facing as they started questioning the background of the refugees and their potential security risk to the country.

When it comes to the institutional responsibilities for refugees, there has been a shift in terms of how the department became a secretariat employing and recruiting from the security sector. The government has taken a stricter security approach toward refugees and there has been a decline in the quality of asylum, as one respondent expresses: "...there is very limited capacity

for protection and the focus right now is more security and less protection, or rather protection for the citizens as opposed to the refugees” (Advocacy Officer NGO2)

RAS is still a new institution, and is not sufficiently supported nor sufficiently funded by the central government. However, it is significantly funded by the UNHCR. Despite the department still being a weak institution, it is getting more involved, because the security issue has at least triggered an interest from the Kenyan government to be more involved in management of refugees. This transition started in 2016, when the RSD were officially handed by UNHCR to the government. The idea was to do it together, with UNHCR still very much involved as they educate the Kenyan staff to perform their tasks on behalf of the government. This means they, the government, are now the ones issuing refugee cards and provides asylum (UNHCR 2). UNHCR’s role on the other hand is to support the government and to mobilize the resources from the international community. The Kenyan government wants control, in particular regarding the decision to give people refugee status or not. Anything that has to do with documentation is primarily the government, as they are the ones that issues refugee cards. In the years to come UNHCR’s role will change from being directly involved, to having a monitoring role whereby it observes to make sure these processes are compliant with the international standards. UNHCR will do more of a quality control type of work than doing the job itself (UNHCR 1, UNHCR 2).

The Kenyan government has done something and are trying to take responsibility. But there are also gaps, in terms of how refugees will be able to access their rights moving forwards.

5.1.2. Policy II: International refugee organizations

UNHCR has worked in Kenya in accordance with its international mandate for over fifty years. When Kenya experienced the large refugee influx from Somalia in the beginning of the 1990s, Arap Moi looked for something else than the country’s ad hoc refugee system. He asked the international community for help and opened the door to UNHCR and other refugee organizations to respond to the refugee crisis (Milner 2009:87). UNHCR had for a very long time the responsibility of refugee management. For many years, the Kenyan government posture has been saying that refugees are an issue that the international community needs to deal with, and in particular UNHCR (UNHCR2). They have given UNHCR the responsibility, land and space, so UNHCR works closely with Ministry of Interior and RAS, and cooperate

with NGO's According to the UNHCR officials I have interviewed, UNHCR have the ability to express their opinions and take initiative, and despite the radical stance the government has taken, UNHCR has been able to maintain a high level and good quality of dialogue with the Kenyan government. The respondents from UNHCR expressed that the government saw the organization as a credible partner who has expertise and knowledge of refugee issues from whom they can learn. When the statement to limit the numbers of refugees, and the closure of Dadaab came, UNHCR was still able to participate in discussion with the government, as the government of Kenya made room for UNHCR to contribute to discussion and have a say in the discussion (UNHCR2). However, following the terrorist attacks, the government has made statements that UNHCR has not taken care of the refugees properly (suggesting that there are some terrorist operating in the refugee camp), meaning the responsibility over refugees should be taken over by the Kenyan government (UNHCR1).

The other international refugee organizations I have interview to in Nairobi expresses that the government response to their activity has been overall good and that the discussion of refugee management is open. There are fewer restrictions on humanitarian workers in Kenya, meaning organizations do not have to get government approval for their programming and projects, compared to a country like Ethiopia. Many of the organizations work together on different issues and through the urban refugee protection network they meet every month to update each other and share experiences (Program officer local NGO). The government is also a significant partner for many NGOs. Yet, there is no coordination architecture with the government, the protection sector for example is not co-chaired by RAS.

Smaller civil society space

The civil society in Kenya is known to be strong and vibrant compared to other African countries. It plays an active and important role in Kenya such that when a national civil society organization from Kenya talks to the Kenyan society, it is not regarded as an intrusion by the government. However, some respondents report that due to changing political dynamics there has been a decline in civil society's ability to engage the government on accountability. In 2012 there were the ICC trials against Uhuru Kenyatta, who was at that time the deputy prime minister and finance minister. ICC judges had charged Kenyatta with crimes against humanity for his alleged role in organizing and financing murder, displacement and rape during the violence that followed Kenya's 2007 president election. The prosecutor withdrew charges against Kenyatta ("ICC: Countries Should Press Kenya on Obstruction",

2016), but the ICC trials across the country were seen as an effort by civil society to push a particular western agenda. This spilled over to the civil societies that worked with governance and civil society in general. Therefore, any organization that received western funding were put in that basket. It put several organizations in a difficult situation in terms of advocating with the government. In addition, it also became difficult to start holding the government accountable to particular standards as the refugee situation is for the government a security matter seen as a part of 9/11 agenda. As mentioned earlier, many staff members in the refugee agency have a security and intelligence background. This poses a challenge for humanitarian organizations to build capacity around protection to a greater degree than for example one with a social worker background as this staff has been institutionalized to thinking everything is a threat. This has led to some NGOs taken to humanitarian diplomacy rather than actually holding the government to account (Advocacy Officer NGO2).

5.1.3. Policy III: The admission and treatment of refugees

All refugees go through an initial registration and screened for their eligibility to seek asylum. After this, the next step is interview (UNHCR2, Betts 2013:37). The fundamental principle in the 1951 Convention, that a refugee should be protected and not be sent back to a situation where it is conflict, is in essence enforced in Kenya. Seen in this way, refugees are protected. It is important to mention that there have been some concerns regarding returns to Somalia in violation of the 1951 Convention. Despite an inclusive refugee definition, the standards of protection available to the Somalis refugees have been at the extreme minimum (Betts 2013: 37). Kenya has chosen a path in which they do not intend to integrate refugees in the Kenyan society. For example, the refugee policy has not allowed the refugees to be in big cities. Kenya has had a policy that all resources should be transported to Dadaab, rather than facilitating the Somali refugees ability to cultivate their own food. Of course, there are many refugees that have travelled to Nairobi and made a living of unreported employment, but overall Kenya have pursued an encampment policy placing refugees in camps in designated areas. The Somali refugees are placed in Dadaab, a rural area one hour away from Somalia. Even though the camps are not fenced-in physically, refugees need an authorization to leave the camp. If a refugee does not hold this authorization and is spotted outside the camp, he or she will be arrested. In 2014, the government implemented the encampment policy more firmly, whereby it became more difficult for those living outside the camp to remain there they are and access rights. Before 2014, a refugee could not be charged of residing outside designated areas, because there was not given notice. In addition, refugees have also been

facing difficulties to access asylum and to obtain documentation in Kenya as the DRA has had the office closed for months (NRC 2017). According to respondents working for NGOs, registration in Dadaab was also suspended for a period, so people returning from Somalia found themselves in a legal limbo as they were not considered new arrivals. The mode of recognition of the Somali refugees has also changed. In April 2016 the Kenyan government announced they would no longer recognize asylum-seekers from Somalia as *prima facie* refugees. This means that each Somali individual needs to go for an individual status determination (Knoll and de Weijer 2016:16).

Based on my interviews, the treatment of refugees does not really depend on whether they have been in Kenya for a long time or not. Refugee groups are treated the same, but they are looked at from a different angle. As for the Somalis they are looked at from a security point of view. Many of the Somali refugees have been in Kenya for generations, however, there are restrictions on durable solutions. When the law was drafted in 2006 there were some provision in the draft that would (if passed in that form) entitle some refugees local integration. However, according to my respondents that line was deleted in the parliamentary process. The Somali refugees remain in camps.

5.2. Introduction to the case study – Ethiopia

Ethiopia's history with people seeking asylum is long, as one of my respondent stated, it is *“dating back to when prophet Mohammed sought asylum here centuries ago”* (UNHCR3) Ethiopia is located in a conflict-ridden region sharing borders with Somalia, South Sudan, Sudan and Eritrea (Fakude, 2017). The government of Ethiopia has maintained open doors for refugees seeking protection, which has resulted in Ethiopia being one of the biggest refugee hosting countries in the world. The number of registered refugees is now over 883,000 (UNHCR 2018b) from more than 20 countries. A large amount of these refugees is mainly from the three neighboring countries Eritrea, Somalia and South Sudan. Some have been there since the early 1990s, while others have just arrived. Thus, the refugee context in Ethiopia is characterized by both protracted and emergency situation (UNHCR 2018b) There are in addition a huge number of internal displaced people in Ethiopia that due to unrest along the border between the Oromia and Somali regions. According to NRC more than 1.5 million people is internally displaced in Ethiopia today (UNHCR (2018b)).

The Horn of Africa region is characterized by terrorism and endless wars rather than peace and progress. Looking at each and every country surrounding Ethiopia, the security threats are in fact very real. Ethiopia shares border with South Sudan and this border is almost falling apart. Ethiopia's border with South Sudan hosts cross-border communities, the same ethnic group reside in both countries. The refugee flows from South Sudan to the Gambella region of Ethiopia have led to tensions in the border regions, and this will more likely lead to violence (Clapham 2017)

Ethiopia, same as Kenya, has struggled with security challenges concerning Al-Shabab. When it comes to Somalia, the political situation in the country is volatile. Despite a new government in place, the country still face conflict with Al-Shabab. According to Aljazeera Centre for Studies, Ethiopian troops in Somalia, backed by African Union Mission in Somalia (AMISOM) has made the border fragile, and led to decreased stability. Ethiopia has also faced retaliation from Al-Shabab and experienced several clashes with the Ogaden National Liberation Front (ONLF). This is a separatist organization from the Somali region of Ethiopia that has fought to secede since the 1980s. Recently, the Gulf and Turkey has contributed to military and logistic investment in Somalia, making Ethiopia more concerned, assuming that

if the Somalian government collapses, the gear provided may in turn end up in the wrong hands, Al-Shabab or ONLF, and again being used against Ethiopia (Fakude 2017).

Despite these security challenges, Ethiopia continues to receive refugees. At first glance, it may seem that Ethiopia has positioned itself differently than Kenya and other European countries threatening to return refugees or have closed the doors for them. Instead, Ethiopia has defined its refugee policy as an open door policy allowing humanitarian access and protection. As one of the respondent explained:

You cannot say only, you cannot say more. Open door policy means that we will not reject refugees, we will not force them to leave, that is what it means. And the minute you are giving the safe heaven, that you are safe if you are running from conflict, then that is what open door policy means. But it also practically means that with assisting through a coordination that will translate by the government. It means the government is providing support and it means that the government is enabling them to survive in the country (Country director INGO).

Although there is an open door policy, it has limitations, as another respondent clarified:

The open door policy is a policy for entrance and once that happens it starts getting vague. You have an open door, but you have a very restrictive house, so it is that a good thing? Sure it is reasons why it is that way, but is not always a good thing. So for example newly arriving Somali refugees can get in the country, but the government decides where it is that they live. The fact that the door is open is good, but the fact that these refugees are put in a place where they are unable to access opportunities, services and as a result kind of stuck in these camps where they are not able to develop their selves or improve their lives of their families that is not a good thing. Yes, there is an open door policy, refugees are accepted, I think a lot of the time, but that does not mean that the remaining policies are as generous (Migration officer INGO).

In spite of the open door policy, Ethiopia has not had an environment integrating refugees into their society. This is partly because of the large number of refugees, and partly the hope that refugees will eventually return home (UNHCR3). The country has, same as Kenya, had an encampment policy, and prior to 2016, the refugees did not have the right to work, and the

freedom of movement for refugees was very limited. In 2016 however, the same year Kenya announces to close Dadaab, it occurred a new policy shift in Ethiopia where they voluntarily have undertaken new initiatives to improve the lives of refugees (UNHCR 2017c) Ethiopia's commitment to protect refugees were strengthened when the prime minister made 9 radical pledges at the Summit on Refugees and Migrants hosted by the United Nations General Assembly in September 2016. As NRC writes "Ethiopia was one of the most progressive countries in pledging that they would do more to enhance local integration of refugees" (Jensen 2018). These nine pledges serves to give refugees more rights, such as work permits to qualified refugees, enable local integration where it is possible, and accommodate for jobs within industrial parks to be possessed by refugees (Abebe 2017). In addition, refugees that have lived in Ethiopia for more than 20 years will be granted citizenship. These pledges present potential for positive changes to refugee policy in the country, however, as one of the respondent said: "But whether that will be legislated or not is a different thing, we will see how it works" (Country director INGO).

Here it is important to note that these are only pledges, the Ethiopian government has not made these pledges law. Several of the respondent raised question if this could be taken at face valid. Having severe security challenges, and from having a refugee policy with restrictions on movements and employment, what can explain this progressive position?

5.2.1. Policy I: The legal Bureaucratic response – accession to international refugee conventions

Ethiopia has, same as Kenya, signed the 1951 Convention (UNHCR 1951)) and its 1967 Protocol. On 10 November 1969, Ethiopia agreed on the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (ARRA 2018). Other international legal instruments, such as the International Convention on Economic, Social and cultural rights, The Convention on The Elimination of Discrimination against Women and the International Convention on Torture Inhuman and Degrading Treatment, compliment and is a part of the Ethiopian Human rights and refugee laws.

On a regional level, Ethiopia has ratified the African Charter on Human and People’s Rights and is also signatory to the 1969 OAU Convention Governing the specific Aspect of Refugee Problem in Africa.

The Constitution of the Federal Republic of Ethiopia and the Refugee Proclamation number 409 of 2004 is the main domestic legal instrument when it comes to refugees in Ethiopia. Ethiopia has made reservations regarding the 1951 Convention because that the economic conditions necessary are not present in the country.

Defining asylum seekers as refugees?

The definition of refugees from the 1951 Convention and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa is incorporated in the 2004 proclamation (UNHCR 2017C).

Institutional responsibilities for refugees:

The way Ethiopia handles the refugee situation is through their own governmental organization called Administration for Refugee & Returnee Affairs (ARRA). ARRA is the body that has the overarching responsibility for the refugee response in the country. This organization is UNHCR main government counterpart and has the primary responsibility to give refugees in Ethiopia safety and protection. It has also the responsibility of camp management (ARRA 2018b) ARRA is a security agency that reports directly to the security intelligence in Ethiopia. As one of the respondents put it: “They stand for security, as in their terminology is protection” (NGO 3B Programme coordinator).

The way the Ethiopian authorities defines protection is about the security of the refugees and the security around the refugee camps. It is a lot of police activity in the camps; they look after who is going in and out of the refugee camps. They do this to have control, and make sure no armed people can go in and out of the camps; using camps as a resting place before they head back to continue fighting. The staff in this governmental body is a combination of people that come from local NGOs, that has humanitarian background and people with military and security/intelligence background (NGO 3B Programme Coordinator).

5.2.2. Policy II: International Refugee Organization

International Refugee Organizations is permitted in the country and according to ARRA, they are working with 48 national and international organization (ARRA 2018b). NGOs works closely with UNHCR and it is ARRA that is the host for UNHCR in Ethiopia. UNHCR is a central part of the refugee response in the sense that they stand for the registration of refugees and the coordination (ARRA 2018B). As one respondent explained: “UNHCR represent the other part of protection that we know as protection from a humanitarian perspective” (NGO 3B Programme Coordinator). All traffic however, both in, and out of the camps, and all activities by the NGOs must ARRA approve. Through my interviews, it became evident that the refugee organizations in Ethiopia is very much at the mercy of the government. The organizations had a good relationship with the Ethiopian government, as long as they played by their rules. As one respondent answered to the question regarding their relationship with the Ethiopian government;

It is fine as long as you respect the government relations. Coming from countries like Sudan you will enjoy being here. They are strict, but it is possible to work with them. I always say that the Ethiopian model is unique on its own. No restriction to our work, XXX is an organization that has managed to work with the government very closely, we do not complain. If you go and make noises in the meetings, you will have a lot of problems (Country director INGO).

Another respondent answered the same question (translated):

I believe the Ethiopian government dictates what we do. But things are becoming better with this new guy Jemal, but I think that UNHCR is at the mercy of what ARRA says and are willing to do. I think so. They allocate land, here you can build, if

it doesn't suit UNHCR, well, too bad. It is not much they can do about it. I think it is very much that needs to be cleared and processed by the Ethiopian government, which takes time, and when the decision comes, UNHCR doesn't have much to say. It's challenging, but it is becoming better (Diplomat 4).

These two quotes show that the power can solely be in the hands of the host country, as they can threaten to evict organizations working with the refugees. Many respondent expressed the NGOs that relates to ARRA is having an easier job than other NGOs working with different issues that is linked to Ethiopia, for example human rights.

5.2.3. Policy III: Admission and treatment of refugees

Ethiopia welcomes refugees through its open door policy whereby they grant a safe haven for people who are in need of protection regardless of their nationality (ARRA 2018c). Ethiopia is currently providing refugee protection for people from 21 countries. Refugees, mainly from Eritrea, South Sudan, Somalia, the Sudan, Yemen and the Great Lakes Region are given recognition as prima facie, as well as individual screening and registration. This means they do not perform a RSD, they rather get refugee status automatically when they register. Everyone arriving has been able to register for refugee status according to several of the respondents. ARRA has the primary responsibility for registration of refugees, but due to limited capacity, UNHCR possesses the databases for every individual living in the camps (ARRA 2018). The refugee status means they will not be deported back to a country where they are at risk of being harmed. Seen in this way, Ethiopia gives that protection, and in that sense, Ethiopia is a front line state. According to ARRA, protection is available in the camps in all its forms, meaning that is not only the physical protection that ARRA and UNHCR provides. There are also other organizations engaged in protection; International Medical Corps and Plan International ensure that women and children are protected emotionally (ARRA 2018b). However, by considering the next steps, Ethiopia is not ahead.

In essence, Ethiopia operates with an encampment policy, which means refugees coming in are housed in camps in which they experience limited freedom of movement. As of now, there are 26 camps around the country (UNHCR 2018b) and there are limited opportunities to reside outside the camps. A refugee can apply for a travel permit issued by ARRA, but have to return to the camp within three days. According to NRC this travel permit can be difficult

to obtain. Still, there are some exceptions; you can leave the camp for specific medical or humanitarian need. Some respondent stated that compared to other countries with encampment policy they have worked in, Ethiopia is more open as it is easier to leave the camp. Partly due to it not being fenced. As one respondent uttered:

So, in Iraq it was actually incredible restrictive on terms of gain the permission to leave the camp, it was very difficult to do that - you have basically been sort of dying before they will let you leave the camp. In Ethiopia, it is a lot more open, it is easier to leave the camp, partly because it is not fenced. Which is great for accessing hospitals, going to market if you need to get something (NGO 3E).

Nonetheless, there are restrictions on how far they can move away from the camps as it is many checkpoints. Besides restriction on movement, it is also restriction on employment; refugees do not have the right to work outside the camps. These factors have a significant effect on refugee's life, and many see secondary migration as a solution. They migrate further to Sudan and Libya and from there trying to make it to Europe. This applies especially for the Eritrean refugees. NRC estimates that almost 40% of these refugees are leaving the camps within 3 months, 80% leave within the first year (Beston and Azoulay 2017). Besides being a receiving country, Ethiopia is also a transit country.

The potential of local settlement or permanent residence have come with the pledges, but whether this will be implemented or not is a "wait-and-see" condition. Eritrean refugees are in a special position as some of them can apply for an out-of-camp-policy (OCP) status. Since 2016, there has been, although a limited number, close to 15.000 refugees, that have been registered under this scheme. This involves that you can claim to the authorities you are self-sufficient. Currently no refugees in Ethiopia have work permits or license to do business. A claim that you are self-sufficient only means that you can survive on the funds you may have or support from relatives that are in Ethiopia or anywhere else in the world. Many of the Eritrean refugees have relatives in Ethiopia and many get this application approved. The Ethiopian government has also allowed some of them under the OCP scheme to go to universities. The situation is different for other nationalities, such as the South Sudanese, as they have very few compatriots living in Addis Ababa. The reason given for why Eritreans gets this special treatment (OCP status), is that Eritrea and Ethiopia have cultural ties(Beston and Azoulay 2017).

Traditionally, you have encampment of refugees, and it has been very much a traditional refugee response, keep in camp, provide services. Whereas in the past years there have been a lot of attempts trying to learn from the Ugandan situation, i.e. giving people more access to services, and more rights. As of now, refugees remain in camp and some of the Eritrean refugees receive the OCP status. Looking at Ethiopia from the perspective of its domestic issues, land is a very touchy issue and even if you are a refugee or not, you do not necessarily have access to land (AU). As several of the respondents stated, in relation to the big shift in 2016 regarding the nine pledges, the director of ARRA stated that within ten years Ethiopia should not have any refugee camps. This is very ambitious and many respondents questioned if this was feasible, but this statement gives an indication that refugees in Ethiopia will get the opportunity to continue to stay in Ethiopia, and not only in camps. This is in contrast with Kenya, as they want to repatriate the refugees.

Many respondents expressed that Ethiopia has a positive attitude towards refugees, but they believed this is linked to the fact that refugee response is fully funded by international organizations and donors. ARRA is also fully funded by the international community.

5.3. A divergence or a convergence?

For the main comparison I start by working through Jacobsens table where I wish to clarify the similarities and differences based on their response to the policy types.

I. Legal-Bureaucratic response

As for the first policy type, both countries respond positively in accordance to the UN recommendations. They both accede to international conventions, they define asylum seekers as refugees and they have a separate bureaucratic authority handling refugee affairs, and both countries have a security approach on top. They both have proper procedures for determining the status of the refugees. For policy type I there are no major divergences.

II. International refugee organizations

Both countries grant permissions and cooperate with IRO. Although the way they cooperate differs somewhat in the two countries. In Kenya, they have traditionally given UNHCR all

responsibility when it comes to refugee affairs and how the camps operates. While Ethiopia remains in full control and so on have a more restrictive approach to IRO, the overall response according to UN recommendations are positive.

III. Admission and Treatment of refugees

Both countries have an inclusive refugee definition. Ethiopia grants automatic refugee status to people from more countries than Kenya. Kenya used to give the Somalis this status, but in April 2016, they changed the mode of the recognition of Somali refugees. Registration in Dadaab is also suspended. In Ethiopia, everybody that has arrived has been able to register for refugee status.

Regarding the location of refugees, both countries respond negatively by forcing refugees to stay in camps. Despite this, this is a policy where the two countries now diverge, as Kenya makes the encampment policy stricter, Ethiopia loosens up, and wish to discontinue the practice of refugee camps within a span of ten years, steering towards a more positive response.

Both countries are still very restrictive on giving rights to refugees, although some Eritreans – already achieved the right to live out of camps – may go to universities.

Despite refugee protection is given to all, situations have occurred where armed combatants have entered camps in Kenya, showing that protection is not sufficient, may be regarded as a negative response.

An area they seem to differ the most is the case of repatriation. Ethiopia has not stated any objective to repatriate its refugee while Kenya, as mentioned, have actually stated all Somalis to return and in general pushing for repatriation. Although, some NGOs have questioned whether the repatriation is voluntary or forced, but UNHCR together with Somalia and Kenya, have signed a three-partite agreement where they wish to accommodate safe return for all Somalian refugees wanting to go home.

Divergence is very little or even non-existent for the first two policy types, i.e. Legal-Bureaucratic response and IROs. It is strict, but it is still a positive response, which again gives both countries acknowledgement as frontline states in receiving refugees.

As a conclusion to the headline, they converge in more ways than they diverge. They do in general operate with many similarities regarding refugee policy. Where they do seem to differ is in the third policy type. Where Ethiopia still – at least more than Kenya – responds positively, gaining even more international recognition, and a status as “the good guy”, Kenya

now obtains responses that are more negative, operates stricter and maybe receives less goodwill from the international community, based on this alone. This is according to UN Policy Yardstick. This does not necessarily mean the reality is that Ethiopia is “better” or “nicer” than Kenya, but they present themselves as a “nicer guy”. It is also interesting to note that the appearance of a divergence in policies is of newer date. Traditionally, they have been very similar, but in recent years, Kenya has made statements of closing and repatriation while Ethiopia promotes its open door refugee policy. The actual refugee policy remains more or less the same.

5.4. Kenya – Domestic Factors

The Government’s Story

The discussion about Dadaab, and whether to close it or not, has been around for several years, but what is new now is that some politicians consider it a matter of national security. Kenya has experienced serious terrorist attacks the last couple of years, Westgate, Garissa, and the security challenges Al-Shabab represent in Kenya are by all means real. The terrorist attack was automatically linked to Somalia. As one of the respondents stated; “... there was a kind of conclusion saying it came from Somalia, the refugees are from Somalia, so therefore they are terrorists” (UNHCR1).

A report of a joint parliamentary committee indicated that the planning of these attacks had been conducted with the support of individuals residing in Kakuma and Dadaab refugee camps. This intelligence report also stated that telephone conversations who originated from the refugee camps were related to the attacks. The conversation shifted from refugees themselves being a security threat to the refugee camps being a security threat.

As Milner (2009) points out, the 1951 Convention was drawn up with security as an important topic. The circumstances in Europe at that time (post WW2) were the reason for this. Fragile and unstable countries made agreement upon the refoulement case. But there were exceptions. Article 33(2) states that the principle of non-refoulement does not apply for “a refugee whom there are reasonable grounds for regarding as danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country”. Article 1(F) of the 1951 Convention states that “any person with respect to whom there are serious reasons for considering that he had committed a crime against peace, a war crime, or a crime against humanity, had committed a serious non-political crime, or had been found guilty of acts

contrary to the purposes of the United Nations” does not keep the refugee status (Milner 2009:63). This means that international law recognize that national security comes before protection, meaning states can deviate from the obligation of non-refoulment if they identify refugees as threat.

The Kenyan government conclusion of defining Somali refugees as a security threat might not have been proven in Kenya, but on the other hand, it is not completely fabricated. Refugees can, as Karen Jacobsen (1996) stated (see Chapter 2), possess a threat as they throughout history have made it easier for guerrilla soldiers to execute their work. However, there has not been any evidence that any refugees were behind or involved in these attacks.

So why do the Kenyan government make these statements? The public demanded action after several terrorist attacks. Most likely, all these were planned and performed by al-Shabab, not Somali refugees. It also showed that the Kenyan government did not have control, not over its borders, nor its peripheral areas. Poor border management was cited by many of the respondents as the main challenge for the government, and the major contributor to insecurity. This is exactly what characterize “The African State”. If the government were to state this, they would automatically admit that they do not have control over its entire country and thereby appear weak. Instead, they claim that the problem is the refugee camp, presenting this as the cause of the threat, which is again something they can handle, and by that please the unsatisfied population. They fabricated a solvable problem. It was a lot of populism in this. They had failed to act and to prevent the attacks on Westgate and Garissa, which led to rumors of an incompetent and weak police, military and intelligence (Diplomat 1). By doing this, they made an important statement. The Kenyan government now prioritized the security of its own citizens, rather than the refugee’s. This was no coincident as there were an election coming up. As one respondent stated; “They had to win back the hearts and minds of the public and show them “Hey! Look at what we are doing!” And it is you the public under the opposition that are criticizing us for not doing anything” ...They wanted to be seen working” (Journalist). Another respondent said; “This is something that also resonated well in the population, and which can be favorable when it comes to collecting votes. Kenyans are not unfamiliar with politicians living and breathing for their population” (Diplomat 1). When asking the respondents, if the Kenyans had any resentments towards refugees, many answered there will always exist some dissatisfaction, but this you will find everywhere, in every country. What they are concerned with is the fear of terrorist attack, and they are tired of that constant fear.

Security is by Huysmans (2000) defined as a social construction. Many states takes advantage of this and claims refugees are a threat to their national security. According to Huysmans, security is an important aspect of governing. If there is a fear among the population, that they feel something bad may happen to them, as in this case, the imminent fear of a terrorist attack, even though this threat is not realistic, the fact that it resides among the inhabitants, the insecurity and fear is real. As a governments responsibility is to protects its people, there will be expectations among the population that protective measures will be taken. The people want the government to guarantee their safety. By performing such actions, the government achieves two important things. They confirm their power, showing they are still there, and able to conduct those measures, but also, they show that they act on behalf of the people, listening to their concerns. Primarily, this is a technique of political action, they can act themselves, rather than asking actions to be done (Huysmans 2000:179-180). Another important aspect of considering the refugees as security threat is the possibility of utilizing harsher methods than usual, without the risk of being denounced. This may include refolement, arrests and encampment. All to gain the favor of its existing population (Milner 2009:64).

A Somalia problem?

There is however, more to the story. The reason for the security approach towards refugees from Somalia is linked to national interests rather refugee's interests. A statement made by one respondent, and which several of my other respondents told and agreed upon; "Kenya has a Somalia problem". This means – as one other respondent said – the Somalis are perceived through the lens of history. No matter if you are Kenyan Somali, or a Somali refugee, you are considered a Somali (UNHCR1). The Kenyan society is ethnically divided, and the political elite is historically people from the rift valley and the central parts of Kenya (Nilotic and Bantu people). The peripheral population (which includes the Somalis) have traditionally belonged to the opposition. With an increased Somali population, both in the peripheral areas, but also in general, this balance may be disturbed. For those ruling Kenya, nothing good comes of an increased Somali population.

Since its independence, Kenya has played the ethnicity card. Your belonging to an ethnic group have always been important. As opposite to Tanzania, where they have encouraged to break down the ethnical barriers. The reason for this is probably tied to their colonial past. The British favored the Kikuyus, the largest ethnic group, a favoring they took advantage of

and sort of inherited the power from the colonial rule. Also, immediately after the independence, in 1963, the Somalis inhabiting the Northeastern Region (a region almost homogenous Somali) declared allegiance to Somalia and started a secessionist movement, which was put down harshly, and shaped the central government's view of the Somalis and the Region in general. This is known as the Shifta war. The Shifta war was unsuccessful for the Somalis, and the borders remained as they were. The result of this was that the same community existed on both sides of the border. Many of the respondents claimed that this was one of the biggest challenges. Despite being affiliated to different clans, they still were similar in terms of culture, language and religion and they shared the Somali identity. As one respondent puts it; "there is really no way to tell one is Somali-Somali or Kenyan-Somali". Based on my interviews it appeared that it was a fear of a domino effect. If the Somalis in Dadaab were granted Kenyan citizenship, they feared that "all" Somalis crossing the border could claim the same (Advocacy Office NGO 2).

Kenya find itself in a situation where almost everyone votes based on his or her ethnic affiliation. If you were a Luo, traditionally, you would vote for the Orange Democratic Party, while Kikuyus votes for Jubilee Party. That being said, with new generations, especially those residing in the major cities, this is starting to somewhat shatter as they consider themselves Kenyan, not Kikuyu or another ethnic group. This is how the political landscape in Kenya is, and this is how the voting and the party affiliation works. In addition to this, how to "scoop" up the rest of the population, the bigger parties are entering alliances with representatives from other ethnic groups to also get their votes in the elections.

As mentioned, the Somalis have always resided in the peripheral parts of Kenya, the Northeastern Region. This is also how the government have coped with the "problem". They have literally kept them outside the central areas and the bigger cities and paid little attention to what is going on in their area. The neglecting of the Northeastern Region by the Kenyan government have resulted in a sort of autonomous area. By this, it means that the region "...got their own economy, and they had an opportunity to execute their own politics" (Norwegian Diplomat 2).

There are many domestic factors influencing the Kenyan government's decision, or at least the statement, of closing Dadaab and refoulement of refugees. There is in this chapter identified two main incentives. One is where the government "listen" to its people and their worries regarding the increased fear of terrorism, and the accusations of not performing

enough action to prevent it. While the other is more egoistic motivated, and is about personal enrichment for staying in power. For the ruling party, there are no benefits of an increased Somali population, when considering historical, ethnical and political, and economical reasons. While earlier research has pointed to that ethnicity and kinship can result in a positive response to the refugee influx, and even though there are Somali people entering a Somali region in the receiving country, this is not the case. It can be imagined that the reason for this is the government's encampment policy.

As presented in Jacobsen's (1996) framework (chapter 2), state borders in the global south divide similar ethnic groups, as they reside on different sides of several borders. This is also the case of Kenya. The population-splitting border relates back to the colonial past (Milner 2009:101). Why is this a challenge? Mainly due to the poor border management and the porous border. All of this characterize the African state (Bøås and Dokken 2002:139). What also characterize the African state is the strong regimes that may survive for decades, but also the lack of control over land that is outside of central areas (Bøås and Dokken 2002).

All these elements are security threats in their own way. The lack of border control means the government is not able to control the influx of people, both the amount coming in, but also what might hide among them. Al-Shabab members (or other unwanted personnel) might enter disguised as refugees. They may as well also hide in the camps and the region in general, as there are weak monitoring, a theory supported by Jacobsen (1996). This is the main argument used by the government to close the camp and repatriate refugees to Somalia, the security threat that concerns the population most. At the same time, they are with this statement talking directly to the highland Kikuyus with promises of Somalis are to go home. This is vote harvesting. What might be the actual concern for the government, and their main incentive, is that the ethnic composition in their country changes dramatically with a large influx of Somali people, which again threatens their survival in relation to votes and ethnic allegiances, and kindles the autonomous economy in the region. It is a reputation in the Kenyan society that the Somalis are the ones with money and are very much influencing the economy. This discontent, together with the fact that a strong economical region, is a strong political region, is not beneficial for a central government wishing to hold on to its power.

The problem is not the camp, even the government itself knows. The government has said so many times that the border between Kenya and Somalia is porous, so we do

not know who is coming in. Which in my opinion is government failure right there (Program officer local NGO).

The statement of closing Dadaab was more a rhetoric than an action in order to get political points ahead of the election in 2017.

5.5. Kenya – External Factors

The underlying external factors causing Kenya's decisions, and statements, revolves more around the unfair burden sharing, the political climate and current events at the time of the statement.

Ahead of their statement, Kenya experienced dwindling international financial support, together with limited resettlement opportunities from western countries. This includes reduction of resettlement quotas from the new US administration, which traditionally have received many refugees from Somalia. A direct consequence of this for Kenya is that more refugees had no other option than staying in Kenya, causing further constrains. As states in the global south often rely on support from the international community to provide emergency relief (Arrar 2017:301), it is important for them to maintain the emergency status. In the case of Kenya, it had become more of a protracted situation. Meaning there was no immediate urgent crisis, but an ongoing long-term situation. This caused international funding to dwindle.

The Syrian Refugee Crisis

The Syrian refugee crisis represented a big change in the worldwide refugee management. Suddenly, the numbers of refugees were vast, many were resourceful middle class people with money and cellphones they used to move through Europe, always updated and aware of current issues in your country of destination. This influx of people to Europe caused panic. Never before had they manage such a situation. As mentioned in the background chapter, restrictive measures, all over Europe towards these refugees were taken. Borders were closed, fences and barbed wire was put up all along European borders, and a right wing populist movement arose. As one respondent said; "So suddenly the moral stand that some countries in the global north could express or could use has disappeared. Is not longer there!" (UNHCR1). Europe had lost its moral high ground. Other researchers, such as Arar (2017), argues similarly, "Nationalistic concerns collided with moral imperatives" (Arar 2017:303).

Not only did Europe showed a less humanitarian side of itself, they were also willing to spend a huge amount of money to make the problem “disappear”. Not only did they fund UNHCR working in the countries hosting Syrian refugees, they gave money directly to the host countries. The EU-Turkey deal may be considered as the culmination of this. EU paid the Turkish government 6 billion euros. Hosting refugees suddenly became a lucrative good, and big business.

Kenya’s Opportunity – a Well Choreographed Move

All these incidents resulted in Kenya’s statement. They were in dire need of additional funding to sustain the camps and their refugee work. The protracted situation made the overall interest and involvement decline, so did the funding. Kenya’s frustration grew as they experienced donor fatigue. Their arguments were worn out. Even though it is very inappropriate to state this, the Syrian crisis became a blessing in disguise for Kenya, as it shifted the political climate in the global north. Suddenly Kenya had many new arguments, motives and increased leverage. Where they previously were in danger of shaming from the international community by presenting threats of closing Dadaab and repatriate Somali refugees, this was not the case now, as Europe and the global north were in no position to judge. What Johnston (2001) called social influence, had lost its power. They were never candidates for what he refers to as a reward with that threat, but the what he defines as punishment was not enough to prevent them from making that specific statement. Loss of status and shaming was nothing Kenya feared in the current climate. Kenya also considered the EU-Turkey deal as unfair to them, as they were in the same situation as Turkey. With that threat they showed that they also could be seen as a transit country, easily make the refugees pass through and continue north towards Europe (UNHCR1). This would have been the last thing Europe needed at the time. Another refugee wave. Many of my respondents share this perception. As nicely explained by one of them; “Europe has already revealed that it is freaking out of refugees”. Here is another from one of the high-ranking officers in the UNHCR expressing Kenya’s reasoning;

So I am a frontline state when it comes to refugees, and some other bilateral issues, commercial agreements and the rest I am being taken for a ride, so I am going to put that on the table. I am not going to continue receiving refugees if you are not prepared to (UNHCR1).

Kenya would on the other hand still have the danger of being shamed by organizations such as UNHCR. But, the fact that they operate on funding from donor countries global north and on the behalf of them and their host government. Their shaming does not carry the same weight, as everyone knows that they just have to continue their work if that is what the donor countries demand, which in this case is the countries Kenya have negotiated directly to. Kenya has perfectly benefited their refugees as international bargaining chips to obtain more funding and better deals.

So what causes the Kenyan government's statement? It is clearly that the domestic factors are more important to the current government of Kenya. It is part of a political game, which is about who holds power, how the balance of power in the country is distributed, allegiances among groups and ethnicities and of course money and funding. This statement shows that they have no intention of integrating the somali refugee population, and are not very interested in a further refugee influx (also here, Somalis). An increased somali population comes the fear of a dramatic shift in the balance of power. Through field work conducted in Nairobi, it became evident that this attitude reside among the Kenyan population. The external factor, were more in favor of the statement, necessary for even making it possible. The statement made the money faucet open, and the current european situation gave them "freedom of movement" and not fearing shaming.

5.6. Ethiopia – Domestic Factors

Ethiopia has, as Kenya, a population of ethnic groups residing on their, as well as their neighbor's side of the border. Many of these are also the ones seeking refuge in Ethiopia. As for Ethiopia, like Kenya, they have an ethnic Somali population, residing in the Somali Regional State, known as Ogaden, together with a somali refugee population. Earlier in the analysis, it was stated that Al-Shabab constituted a security threat. Which automatically relates to the Somali population. Some of my respondent said both countries have a "Somalia problem", but they have solved it differently. The "Somalia Problem" is by the respondent explained as; " the fear of somali expansion and the strong Somali identity". This is, according to my respondent present in both countries. However, Ethiopia has solved this "problem", roughly speaking, by letting the ethnic Somali population govern the Ogaden region. This is a type of indirect control, a model one can find in the Oromo region, Tigray region and Amhara region. This is viewed by many as the basis for economic growth in these

areas. At the same time, take the Somalis, do not have the same access to the market, and to conduct business in Addis Abeba, as they do in Nairobi, Kenya. This reflects some of the differences between Kenya and Ethiopia as states and societies. The Ethiopian government controls and restrict their population to a much larger extent than the Kenyan. As an example one of the respondents came up with, was that “the security in the Ogaden region, is far stricter than the Gambella region, for historical reasons and all that, so it is as simple as that” (African Union 2). It is more a matter of capacity in governance rather than just looking at ethnic groups and the threat they may possess.

According to many of the respondents, national security is of great importance to Ethiopia. The security is very strict, and this is one of the areas they spend the most money. The government is very afraid that Al-Shabab may enter the country, today or tomorrow, as there have been plans of terrorist attacks. Those attacks have been revealed and stopped. The reason for this might very well be thanks to the Ethiopian intelligence. Ethiopia can allow themselves to have an open door refugee policy, because they have such a good security apparatus, and an extreme level of control over those entering, and the amount entering. Where we have seen Kenya’s poor border management, with a low level of border control, Ethiopia has the opposite. When asking one of the respondent why there has not been an Al-Shabab attack in Ethiopia, he simply replied “That will never happen!”. When asking why, he stated “Because the security is very tight. Forget police and military. If someone living in a specific area and see something different, they will report” (IOM). While in Kenya there has been concern that a huge Somali population would threaten to change the politics of the area, according to another respondent “You won’t have that in Ogaden. Huger number of Somalis, but the way the Somalis of that part perceived this place they know better to keep quiet. You know what I mean” (African Union 2). This attitude can be explained by the informal report culture known as the “one-to-five” system (Freytas-Tamura 2017). This means that every party member is assigned five people to monitor. As one of the respondents explained;

If you travel to the border of the Somali Region and Somalia, there is no formal patrolling of that border. They do not have fence. There is no physical border, it is just wilderness. So it is incredible that Al-Shabab has been present near the border for many years with an objective to settle in Ethiopia, and there is only that mentioned border that lies in the desert. Why haven’t they succeeded? It is because there is a lot of people helping out to monitor that border. If someone suspicious comes walking

across that border, and don't have any cattle or is coming in an odd point of time, there will be a man sitting by the border with his sheep with a telephone calling a number and reports that something suspicious is happening (Norwegian Diplomat 4).

In addition, Ethiopia is to a much lesser extent a democratic country than what Kenya is. As we saw, the statement of closing Dadaab was as much about political survival for the Kenyan government, in the terms of gaining favor from its population ahead of the election, than an actual ambition to close it due to other reasons. Ethiopia is not dependent on such "stunts" to survive as a regime.

5.7. Ethiopia – External Factors

Similar to Kenya, and all other countries, the external factors relates to the ongoing international political situations. While Kenya utilized the ongoing situation in Europe and the world to avoid shaming with their decisions and statement. Ethiopia is doing the opposite. Johnston's (2001) backpatting is easier to achieve in this kind of environment. When the "rest of the world" is closing their borders and doors to refugees, Ethiopia lit up as a beacon of hope for refugees in the area, and to the international community. Also, relative to Ethiopia itself, the promotion of an open door policy stands out from an traditionally authoritarian state, with not a great image. Even though this is fronted as a change, the actual policy change is probably little to none. As several of the respondents said, the refugee situation in Ethiopia has not really changed much in recent years, not as much as it has perceived to have changed. What has really changed is the onward movement of refugees just generally, and this also changed the political response, both from donors as well as governments. The New York declaration on refugees and migrants is an adequate reflection on that.

The onward movement of mainly Eritrean and Somali refugees out of Ethiopia and the response from Europe in regards to that has also changed the incentives around refugee response in Ethiopia for the government as well as partners. This is not to say that the Ethiopian government has not been extremely generous or has not progressively been doing better for refugees. It has. Even before the onward movement of Eritrean refugees, they received more freedom, and the out of camp policy is a reflection on that.

The fear of bad coverage can explain why Ethiopia has chosen a different strategy than Kenya. They both use refugees as a bargaining chips, but Ethiopia uses them to appear in a good light. The reasons for this are many. While Kenya could afford – in reputational terms – to make the move they did, the "tough guy" move, Ethiopia is in the position of building a better reputation, and keeping the one they have, and have much more to lose in that sense. As one respondent puts it; "Ethiopia have good diplomats, they are aware of their international reputation". This is also stated in the report from the Nordic Africa Institute. In addition to being a military and economic power, Ethiopia is considered "the home of African diplomacy" (Beyene and Adetula 2017). By that, it means that Addis Ababa hosts the African Union Commission and other international and regional institutions. In retrospect, a good reputations probably helped Ethiopia gaining a seat in the United Nations Security Council for the third time and the United Nations Human Rights Council.

On the other hand, Ethiopia does not have anything near only a good reputation. They are among many organizations, such as Amnesty International, considered a delinquent. This is mainly in regards to political prisoners, where they are suspected of using torture and ill-treatment on people accused of terrorism and they are restraining freedom of speech in general. Also, regarding refugees, they have with their encampment policy been perceived as restrictive, also adding up to the delinquent status. The solution to ease up on that reputation, they chose to loosen up in an area not very costly for the government. Meaning that there are not very strong interests speaking against, and causing turmoil. “Why be a delinquent, when it is easy to not be” (Diplomat 1).

As Johnston (2001) outlines, with consistent status behavior comes image. And for Ethiopia, with a consistent series of good status actions, they hope to achieve a good image. With that good image comes many advantages. Those being actors interacting with Ethiopia in other fields (not only aid and refugee donation) and cooperation, as it is easier for independent investment and private negotiations. Ethiopia needs foreign currency, and Ethiopia needs development. Furthermore, Ethiopia needs a way to fund its development agenda for the wellbeing of its own population. By doing those alterations in the presentation of their refugee policy, they utilize their refugee population as an asset, and is not bothered with them as a burden. The current situation in Europe, together with their own status as transit country, made it easier for Ethiopia to use refugees as a bargaining chip as many other countries in the global south do. But compared to Kenya, they used it in the opposite way. Ethiopia used the platform they got to prove to Europe how crucial it can be as a transit country.

In sum, the second part of the analysis has identified the factors, both domestic and external, where Kenya and Ethiopia differ. These factors are explained in Jacobsens framework. Through the analysis it has become clear that Kenya is concerned about their domestic factors, such as security threat and the government survival. The statement of closing the refugee camp is more a rhetoric than actual actions, to get what they wanted. While in Ethiopia I argue that are more concerned with their reputation and image and can allow themselves to defines there policy as open door policy as they have much greater control over their borders.

6. Conclusion

This study has discussed why Ethiopia and Kenya have taken apparent different approaches towards their refugees. I compared them looking at their responses to the three policy types, according to the UN policy Yardstick. I found out that divergence was minimal or non-existent for the first two policy types, legal-Bureaucratic response and IROs. Where they differ, is in the third policy type. Ethiopia responds positively, while Kenya obtain more negative responses. Causing a “good guy” and “bad guy” perception. This made me dig further into what factors that may explain that divergence. I have looked at both domestic and external factors influencing their response and explained the factors that can account for this. In this chapter I will summarize the main findings of this study and answer the main research question.

6.1. Main Findings

Kenya’s rhetoric and statement towards refugees may be explained by domestic and external. It became clear during my field work and desk study that it is the domestic factors that gives the strongest incentives for the Kenyan government to behave this way. The fact that Kenya is a democratic country means the government must act on behalf its people’s demands to gain votes and stay in power. Discontent after several terrorist attacks, together with a rising insecurity towards the presence of refugees, the government had to demonstrate they could handle the situation and not appear weak or passive. In addition the ethnic composition in the country due to refugee influx, and their potential citizenship (if they ever were to obtain it) may also alter the power balance as the Kenyan population traditionally votes on basis of ethnicity and allegiances. As the Kenyan government sees it, they are not benefited of an increased Somali population, due to historical, political and economic reasons.

The external factor are also decisive, as Kenya wanted to regain attention towards their situation. However, the hostile rhetoric towards the somali refugees has always been present in Kenya, but due to the current and ongoing situation in especially Europe (Syrian refugee crisis). The statement suddenly gained momentum as Europe did not want more refugees (potentially coming from Kenya) as the global refugee situation, viewed from Europe, now was an emergency, and not the usual protracted situation.

Shaming is usually a social influence many states work hard to prevent, but now when the European countries had lost their moral authority, Kenya did not have this concern when

making the statement, and dared to emphasize it even more, without the fear of sanctions. One can call it a series of “fortunate” events viewed from the eyes of the Kenyan government.

Ethiopia has defined its refugee approach as “open door policy”. Their strict surveillance, border control and their type of governance, being non democratic, allow them to possess this rhetoric. Despite the “open door”, the door is heavily patrolled. This result in a security situation were the threat of a terrorist attack, is present, but to a much lesser extent than in Kenya with the poor border control.

Ethiopia’s external factors are their strongest motivation behind the open door rhetoric. It gives them much needed good publicity and goodwill making the international community somewhat forget other areas they are considered more of a delinquent. A good image attracts international investments, deals and foreign currency they are in dire need of.

Through this study, it is apparent that the refugees have become a convenient bargaining chip. Both countries utilize it efficiently, though, differently because of the circumstances in the respective countries, but they both use it well to achieve their goals. Those being additional international funding, pleasing own population, and nurturing their international image to take focus away from e.g. human rights violations. Also, regards to the ongoing refugee situation in the rest of world, the bargaining power for these countries have increased significantly. They are both in a position where they can negotiate more funding. They did not have the opportunity to this before

6.2. Other remarks

According to Betts the global north has traditionally had few incentives to cooperate with the global south over refugee protection. Mainly due to they not being in a region where there are a lot of refugees. Until now. Betts have described the relationship between global north and south as asymmetrical and defines this as a “suasion game” where the African state lose in every aspect of the game. However, my findings suggests that the global south now are in a position where they are able to aid the global north. As we have seen in both these cases, Kenya and Ethiopia, can instead of being a transit country and guide the refugees north, be a host country, dam up the refugee flow, and ease the pressure on Europe. This however, is not for altruistic reasons, this is an opportunity. The global north must in order for this, do what the global south demands. This can be direct funding, turning a blind eye to human rights violation or other favors. One can discuss if this is a case of the patron-client relationship we saw during the cold war.

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Appendix 1: List of Respondents

Respondent Reference	Date	Place
Respondent 1: Diplomat 1	10.10.2017	Oslo
Respondent 2: Diplomat 2	10.10.2017	Oslo
Respondent 3: UNHCR1	18.10.2017	Nairobi
Respondent 4: Refugee officer NGO 1	18.10.2017	Nairobi
Respondent 5: Advocacy officer NGO 2	19.10.2017	Nairobi
Respondent 6: UNHCR 2	19.10.2017	Nairobi
Respondent 7: Journalist	22.10.2017	Nairobi
Respondent 8: Specialist NGO 3A	23.10.2017	Nairobi
Respondent 9:RAS	23.10.2017	Nairobi
Respondent 10:Program officer Local NGO	23.10.2017	Nairobi
Respondent 11:Norwegian diplomat	23.10.2017	Nairobi
Respondent 12: Protection officer NGO 4	24.10.2017	Nairobi
Respondent 13:African Union 1	26.10.2017	Addis Ababa
Respondent 14: NGO 3B Programme coordinator	26.10.2017	Addis Ababa
Respondent 15:African Union 2	27.10.2017	Addis Ababa
Respondent 16: Country Director NGO 4	30.10.2017	Addis Ababa
Respondent 17:NGO 3C	31.10.2017	Addis Ababa
Respondent 18:UNHCR3	31.10.2017	Addis Ababa
Respondent 19:NGO 3D	1.11.2017	Addis Ababa
Respondent 20: NGO 3E	1.11.2017	
Respondent 21:Country Director NGO 3F	1.11.2017	Addis Ababa
Respondent 22:IOM	2.11.2017	Addis Ababa
Respondent 23:ARRA	2.11.2017	Addis Ababa
Respondent 24:NGO G	2.11.2017	Addis Ababa
Respondent 25:INGO	7.11.2017	Oslo (skype)
Respondent 26:Diplomat 3	15.11.2017	Oslo
Respondent 27: Diplomat 4	1.12.2017	Oslo
Respondent 28:Researcher	18.1.2018	Oslo (skype)

* The letters A-G are used to separate between respondents from the same organization

Appendix 2: Request

Request for your participation in a research project:

The Global South's response to the refugee crisis

October 5, 2017

Dear Sir or Madam,

With this letter, I invite you to participate as a respondent in my research project about Global South's response on the refugee crisis.

I'm a student at the Norwegian University of Life Sciences, currently writing my master's thesis in International Relations. The focus of my research is the Global South's response to the refugee crisis, particularly Kenya and Ethiopia. It would be of great help to me if I would be able to interview employees in your organization. I am primarily interested in talking to employees with relevant experiences and knowledge on asylum and refugee policies in Ethiopia. I will be in Addis Ababa 24th October to 2nd November.

The countries in the Global South are seen as frontline states when it comes to receiving refugees, but recently there has been some change, and it is this change I am interested in explaining. For researching this I am focusing on domestic discourses of two African states, Ethiopia and Kenya that have recently diverged in policy towards refugees. I want to investigate in why two similar and neighboring countries in the global south have taken two completely different directions. I am interested in understanding the Kenyan and Ethiopian perspective on this refugee crisis.

This is a qualitative study, where I initially will analyze policy documents, but in order to strengthen the credibility of the thesis I want to interview different NGOs, government officials and researchers working on refugees and refugees' issues.

I really appreciate any help you can give me.

If you have any further questions I can be contacted by email: judith87@hotmail.no, or by mobile phone +47 99 23 4348, or my supervisor Paul David Beaumont at p.d.beaumont@gmail.com

Sincerely,

Judith Tesfaghiorghis

Appendix 3: Consent Form for Research Project

The Global South Response on the Refugee Crisis

Please consider this information carefully before deciding whether to participate in this research.

Purpose of the research: To better understand the Global South response to the refugee crisis and the Kenyan perspective in particular. In order to study this I am dependent on different actors working with refugees and refugee issues. The research is part of my master thesis in International Relations at the Norwegian University of Life Science.

What you will do in this research: If you decide to volunteer, you will be asked to participate in a semi-structural interview. You will be asked several questions. Some of them will be about the refugee situation in Kenya, other will be about your organizations interactions with refugees, other NGOs and the government. With your permission, I will tape record interviews. You will not be asked to state your name on the recording.

Time required: The interview will take approximately 1 hour

Risks: No risks are anticipated

Confidentiality: Your answers to interview questions are confidential and will be processed anonymously. This means that nothing will be reported that is traceable to individuals, your name will not be recorded in any of the research material. The recording will be erased as soon as it has been transcribed. The transcript, without your name, will be kept until the research is complete.

Participation and withdrawal: Your participation in this study is completely voluntary. Please note that you at any time may refuse to participate or withdraw from the study. You may skip any question during the interview, but continue to participate in the rest of the study.

Contact: If you have questions or remarks, you can contact me:
Judith87@hotmail.no.

I would very much appreciate your cooperation, thank you for your time.

Agreement:

The nature and purpose of this research have been sufficiently explained and I agree to participate in this study. I understand that I am free to withdraw at any time.

Signature: _____

Date: _____

Name: _____

Appendix 4: Interview guide

On the respondent

1. Full name (only seen by me before anonymization)
2. Work place, title/position, tasks
3. How long have you worked on refugees/ in this field?
4. Can you describe your work here in Kenya/Ethiopia.

Context

5. How do you perceive the refugee situation today?
6. What are your thoughts around Kenyan/Ethiopian refugee policy today?
7. How would you describe the situation/ context around refugees and refugee protection?
8. Kenya has undergone a marked shift since 2016, how will you describe this shift?
9. Since April 2016 it has been a marked shift in Kenya's response to refugees, especially refugees from Somalia, what do you think led to that change in policy?
10. Do you believe a certain event triggered this shift?
11. How has this affected your work? (Influence, bargaining power)

Political and social situations

12. Can you describe how you perceived the social situation when this shift emerged?
13. Can you describe how you perceived the political situation when this shift emerged?
14. How do you perceive the situation in Somalia?
15. Do you believe the refugee issue has been exploited by the political opposition?

Admission and Treatment of Refugees?

16. How will you describe the admission and treatment of Refugees?
17. How will you describe the right of and restrictions on refugees?
18. How do you perceive the Repatriation?
19. How would you describe the treatment of long-term refugees?

Bureaucratic choices

20. How is the responsibility of refugees allocated in the country? Is there a logical division of labor? Is it allocated to one or several agencies? (Under the care of social workers or the care of army etc.?)
21. What are your perceptions on the refugee agency in the country?
22. How has the government's bureaucratic response been? Any variations to different refugee groups?
23. What are your thoughts around the disbandment of the Department of refugee Affairs? What do you think led to this?
24. The definition of Somali refugees has changed, why do you think this is the case?
25. How do you perceive the personnel in this/these agencies? Is it a big interest for refugees?
26. How has the treatment of refugees been?

International Refugee organizations

27. How will you describe the government's response to your activity in the country?
28. How will you describe the relationship/ cooperation between your organization and the government? (Access to affected areas, cooperation?)
29. Do you share the same understanding of the problems?

30. Do you have a common way to solve it?
31. To what extent do you cooperate?
32. Has there been any restriction to your activity in the country? Why do you think this is the case?
33. How will you describe the international (financial) assistance? Any difference from now and before?
34. How will you describe the relations between the host government and the sending countries?
35. How do you perceive the situation around resettlement programs?
36. Will you say that this is an important solution to the refugee problem here?
37. Is this the refugees preferred option?
38. How will you describe the governments concern around international publicity?
39. What is your perception of the government officials in this country?
40. How will you describe the relations between UNHCR, the host government and voluntary agencies?

Beliefs about refugees

41. How will you describe beliefs and attitudes towards different refugee groups here?
42. What will you say is the common perception of refugees in the country?
43. Has the attitude changed over time?
44. How will you describe civil society participation around refugees and refugee rights?

Security Threats

45. Has there been any resentment towards the hosts? If so, what do you think is the reason for this?



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