

# **Inter-linkages of Forced Migration, Human Rights and Poverty: Application of the Socio-Legal Models**

**By**

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## **Abstract**

This paper provides evidence of migration-vulnerability-poverty linkages. The paper begins by (i) Section one highlighting the background, data and methodology (ii) Section two discusses Refugees-Human Rights-Poverty Inter-Linkages by analysing appropriate: theoretical and conceptual frameworks; conceptualisation of forced migration, and; forced migration models, namely: The Social Development Model and The Legal Institutional Model (iii) Section three analyses refugee situation in Kenya (iv) Section four discusses policy implications (v) Section five provides a conclusion and proposes recommendations on how to alleviate poverty among refugees.

The paper has established that majority of refugees are from Kenya's contiguous states of Somalia, Sudan and Ethiopia; the majority hosted in North Eastern and Rift Valley provinces in Kenya. It further notes that age, sex, educational attainment, marital status and economic status impact in heightening refugees' vulnerability thereby increasing their risk to poverty in Kenya. It has also established that there is migration policy incoherence in Kenya that partially explains violation of refugees' human rights, which contributes to poverty.

The principal recommendation is for Kenya to ratify the international conventions and treaties on the rights of refugees and develop strategies, guidelines and policies that protect the rights of refugees to try and reduce poverty among refugees.

## **1.0 Introduction**

### **1.1 Background**

There is increasing evidence on key questions around the extent and nature of selectivity in migration, remittances and impact on inequality. However, the general difficulty is lack of the evidence pertaining to the particular contexts of poor refugees' lives. The Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the Organization of African Unity in 1969 (thereafter the OAU Convention), employs a definition expanded from the Convention's, including people who left their countries of origin not only because of persecution but also due to acts of external aggression, occupation, domination by foreign powers or serious disturbances of public order.

This paper explores the links between refugees and poverty, in the realm of human rights. Thus, it discusses refugees and poverty linkages in Kenya applying the Social Development Approach, and; refugees and human rights linkages in Kenya applying the Legal Institutions Model. It argues that research on linkages between migration and poverty can, and should, start with knowledge about poverty itself: what it is, what causes it, what reduces it, poor people's agency as well as constraints, and so on. Poverty research offers several established understandings on the natures, structures and processes driving poverty, and these should be central to how the issues are framed in migration research and policy. The paper argues that context dependency, rather than generalized conclusions, is the main way forward. This could help develop migration research that is more strongly poor-centric, and consequently, move migration debates and policies toward

issues more favourable and relevant to the poor. This paper uses the Kenya 2009 Census data on refugee population. It was collected using the household questionnaire. Like the previous censuses, it adopted the de facto as opposed to de jure approach, and the canvasser as opposed to the householder method. Additional question in the questionnaire was included to identify whether each individual was a usual resident in the household of enumeration, which helped to compile the de jure population.

The paper is sub-divided into the following section: (i) Section one highlighting the background, data and methodology (ii) Section two discusses Refugees-Human Rights-Poverty Inter-Linkages by analysing appropriate: theoretical and conceptual frameworks; conceptualisation of forced migration, and; forced migration models, namely: The Social Development Model and The Legal Institutional Model (iii) Section three analyses refugee situation in Kenya (iv) Section four discusses policy implications (v) Section five provides a conclusion and proposes recommendations on how to alleviate poverty among refugees.

The paper focuses on refugee migration, human rights and poverty linkages. The reason for this focus is that there is evidence that “forced migrants” tend to experience human rights abuse and unsatisfactory social welfare. Studying migration with insights from poverty research broadens the focus in terms of types of migration and migrants. Much of the migration of the poorest is not seriously recognized, and nor are major categories of the poorest migrants. It is often asserted that the poorest do not want to or cannot migrate, or migrate only in exceptional circumstances and crises, as is the case of refugees in Kenya. Empirical research has tended to apply limited definitions of migration (such as to high income countries), or be based on sources of information that tend to describe better-off or skilled migration more than others, potentially omitting the many other types of migration that the poorest do undertake. Moreover, migration tends to be defined as an adult activity, thus underplaying how migration affects—and is undertaken by the vulnerable segment of the mobile populations— children, women, and refugees. Migration research needs to include the types of migration the poor do undertake; better situate migration in the complex socioeconomic structures and family strategies through which migrants secure their livelihoods; and unpack the socio-economic welfare status of refugees.

## **1.2 Data and Methodology**

The study uses refugees data collected during the 2009 Kenya Census. The information was collected using the household questionnaire and the emigrant short questionnaire. The key migration variables were place of birth, previous residence, duration of residence, and place of enumeration (P18, P19, P20 and P21 and the place of enumeration). Members of the households were also asked to provide information on emigrants in the last fifteen years (H 29). The short questionnaire captured information on educational attainment, professional training, country of destination, country of current residence, year of departure, reason for emigration and remittances, among other variables. Key questions were: (i) What was <NAME> Place of

birth? (ii) What is <NAME> current place of residence? (iii) What is <NAME> duration of stay in current place of residence? (iv) What was <NAME> place of residence in the previous year?

## **2.0 Refugees-Human Rights-Poverty Inter-Linkages**

### **2.1 Overview**

Poverty is recognized to be multidimensional, dynamic over time and different among household members. Placed within the context of migration research, these basic understandings of poverty generate some unknowns in migration-poverty linkages. While research on migration-poverty linkages is multidisciplinary, most of it has focused on one dimension of poverty—its material dimension—in income, consumption, remittances, assets and so on. Household dynamics, risks and intergenerational effects have received some theoretical attention but empirical research in this area is limited. Intra-household variations have been mainly motivated in terms of gender. A particular intra-household and generations issue raised in this paper relates to the demographic characteristic – age dimension; thereby children are mirrored. On this issue, many of the perceptions that exist are often wrong, not very useful and bedevilled by faulty assumptions, starting with the idea that children’s well-being in the context of migration can be lumped together with adults’ in a phenomenon almost always conceptualized as an adult enterprise. More so, the refugee issues are little paid attention to, particularly, the extent to which their demographic and socio-economic characteristic play in determining their wellbeing status – poverty or riches. Most so, earlier researches have paid little attention to the human rights aspects of refugees.

### **2.2 Theory and Conceptual Frameworks**

Social policy on migration should be both protective and supportive. But at best, current thinking is focused on the protective issues, mainly in terms of social policies that compensate for the failures of markets (in terms of safety nets), as distinct from how social policies enable migrants to contribute to development. Of course, as can be seen in international migration literature, social policies are often a core mechanism of exclusion, and migrants are often depicted as abusers of social systems. In areas of destinations, migrants are often excluded from access to many public provisions, and people on the move often have to struggle to carry over previously accumulated benefits. Non-state actors—such as families, churches, migrant organizations and the private sector—often make up for the failure of state policies (Hall, 2005). An important aspect of this is that refugees are denied access to social services because they, or their parents, are irregular migrants.

A study in the United States suggests that having one irregular migrant parent increases the chances of a child living in poverty by three times, and having two irregular migrant parents increases it by seven times (Kanaiaupuni, 2000). The Council of Europe has noted the marked variation across governments in the treatment of migrant children in accessing even very basic services in health and education (Council of Europe, 2003). However, a study in South Africa found that 70 per cent of Somali refugee children were not registered in schools (GCIM, 2005). Without doubt, similar disadvantages exist for children of migrants within national borders, where access to services in places of destination is limited.

The two hemispheres of migration studies (causes and consequences) have been presented in Figure 1 in the form of 'voluntary-forced' to the 'destination' and impacts of both to the 'destination'.

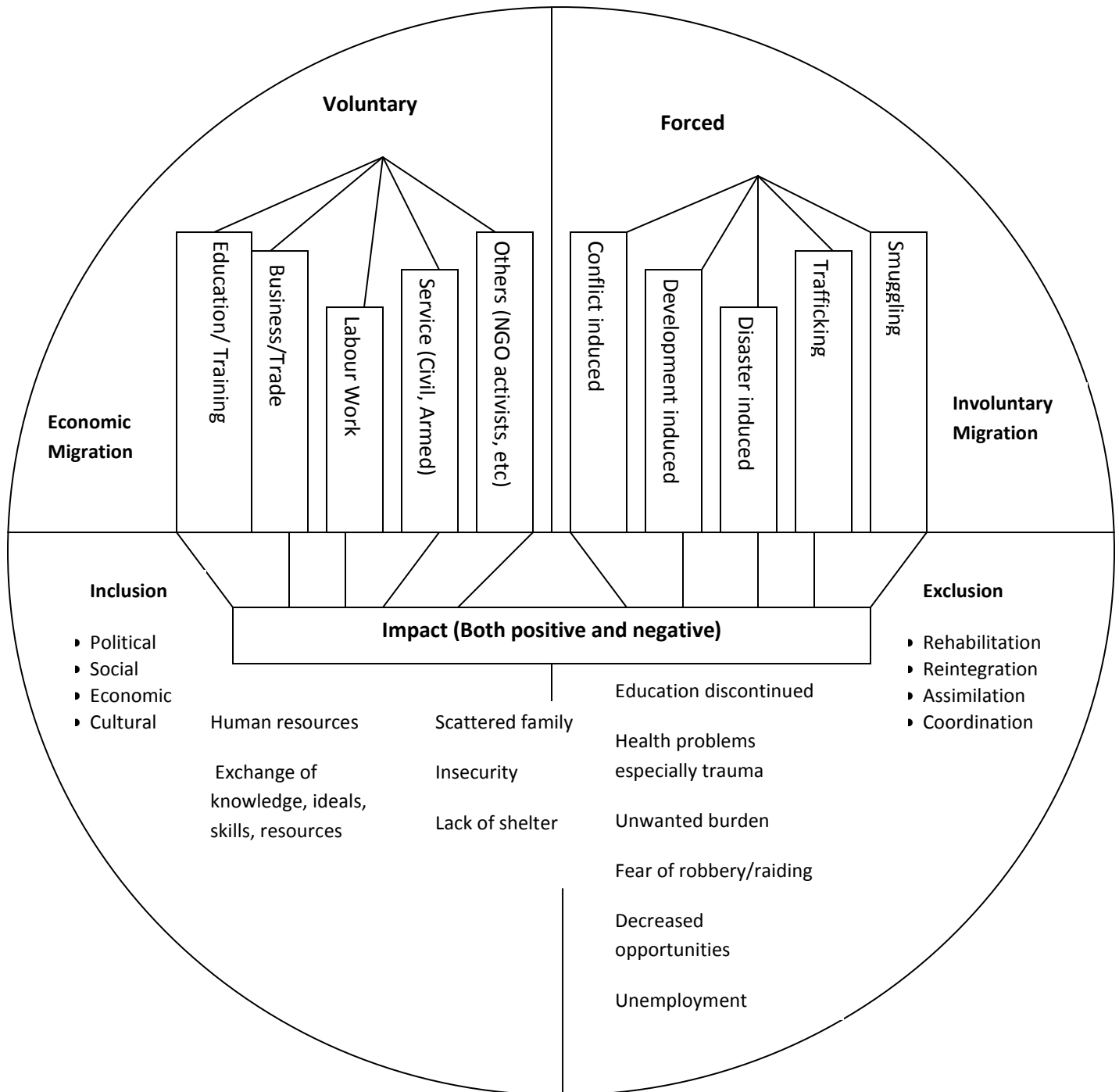


Figure 1: Concept of Migration and Its Impact

Source: Shanmugaratnam et al, 2003

The link between social policy and migration goes deeper than those important areas of exclusion alone. Social policy plays a key part on defining citizenship (Mamdani, 2005): not only can citizenship (or “permanent residency”) define access to social services, social policy in turn also defines citizenship, and the gender and age components of that citizenship: delivery of social services almost by definition defines eligibility in terms of nationality or residency—even within national borders. Education, health, social security, affirmative action—all these policies are deeply political projects, with implications for principles of solidarity, and who can or cannot contest the content and quality of state provisions.

The political nature of social policy is evident in terms of cross-border migrants, but is no less important internally. As mentioned, migration within China is restricted through the registration system, effectively making rural migrants second-class citizens in urban areas—even though their economic contribution is increasingly recognized, restrictions are gradually being removed, and local governments are starting to enable migrants’ access to services. Cross-state border migrants in India can effectively be foreigners in their own country, and the federal character of the Nigerian state similarly turns people from other states into “outsiders”.

Migration continues to challenge development thinking, and raises particular questions in social policy. Answers to these questions should be context-specific and take account of the diverse nature of migration and groups involved, and one should never underestimate their deeply political nature. A key priority for future social policy research lies in highlighting the mechanisms through which social policy can enhance access by discriminated migrant groups, and indeed include them as citizens. In the social policy literature, there is a strong emphasis on highlighting win-win situations of addressing equity and efficiency—there is a clear need to extend this to a discussion on migrants.

Voluntary migration for economic motives as defined first by Ravenstein as 'dominance of the economic motive' (Ravenstein, 1889) and elaborated and interpreted by various other scholars such as Lee (1966), Stouffer (1960), Todaro (1976), and others. Forced migration, although the very distinction between 'voluntary' and 'forced' is often blurred in the real world, is in growing trend worldwide after 1990s. Literatures on forced migration caused by armed conflicts, development projects involving big dams and land settlement schemes, and environmental disasters prove the scope of studying forced migration in recent decades. Trafficking nexus and human smuggling are other complex components of forced migration, one has to devote cautious and sincere mind to deal with.

Impacts of migration can or cannot be segregated as voluntary-forced. Definitely, voluntary migration has more positive impacts than the forced, but one should also bear in mind that voluntary migration turns into forced in the place of destination and forced migration to voluntary depending upon the nature of migration, resources available and environment the migrant gets in the places of destination. Trafficked girls from rural Rwanda to Mombasa seems to be voluntary in the place of origin because the girl is lured to providing good job and money in the place of destination and she falls prey of prostitution or sex-work in the place of destination and thus this process results in forced migration. Internally displaced persons (IDPs) from the rural hills in Mt. Rwenzoris slopes are settling in cities like Mbarara, Fort Portal and Kampala have now

comparatively better jobs in the places of destination and their migration process may turn into the voluntary one.

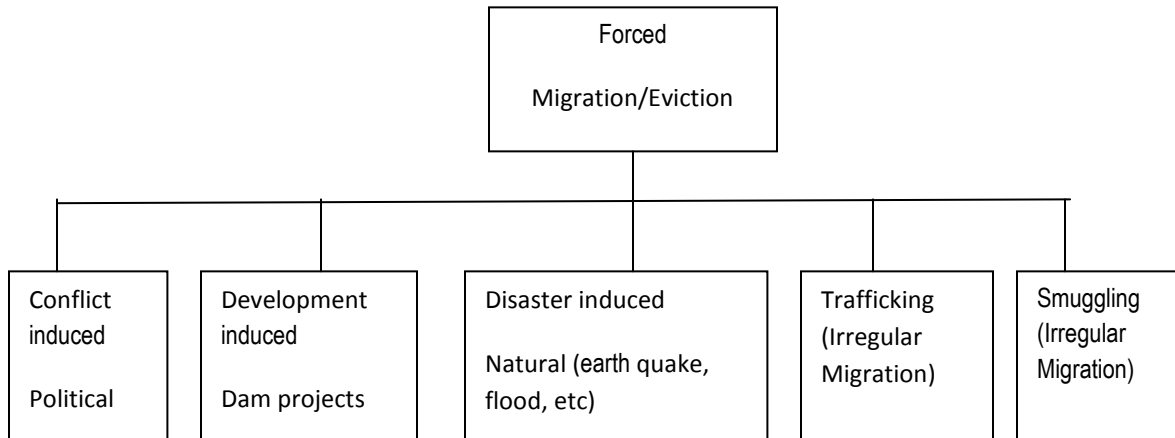
There are many impact level issues to deal with, both voluntary and forced migration. They are both positive and negative ones. This write-up mainly concentrates on the forced migration. It starts with conceptualisation of forced migration in which mainly two models of conceptualisation are presented. They are legal-institutional conceptualisation and social-developmental conceptualisation. There are other conceptualisations too such as political economy model and security models.

Often, migration is seen as a form of income and asset diversification by families, with families investing in migrants, migrants in families, and both expecting returns from that. Even in circumstances of poverty, migration responses are not simple responses driven by economic incentives, but informed by ideas of appropriate actions in a particular context, as is usually the case in times of turmoil, natural calamities, epidemics, and initiation of large development projects, such as dams and real estates construction. Research focusing on migrant networks has played a very important role in helping to see movements of people as part, not only of traditions of migration and interpreted in a cumulative migration theory, but also of wider processes of social and economic development. Finally, gender analysis has contributed greatly, not only in understanding differentiated motivations for, and impacts of, migration, but also in the way migration processes are structured, emphasizing power and exploitation: gender is an essential tool for unpicking the migration process (Chant and Redcliffe 1992; Wright 1995).

With respect to international migration, this tradition has emphasized the exploitation of migrant workers as beneficial to capital and richer nations at the cost of labour and poorer nations and regions, and individuals – refugees and labour migrants. Moreover, similar to neoclassical approaches to migration, Marxist models focus exclusively on economic factors. Migration processes can be understood adequately only as the outcome of interaction of a diversity of factors, including socio-cultural and economic forces, and gendered and childhood norms and rules—and how migration in turn alters these factors. Theoretical diversity and the structuring of fields of study may to a great extent explain the persistence of diverging views on how migration links to poverty, between those who see migration as a key poverty reduction strategy and those who argue no clear empirical links can be established (de Haan 2006). The theoretical diversity has shaped empirical research, and the following section discusses what is known about the linkages between migration and poverty.

### **2.3 Conceptualisation of Forced Migration**

It is necessary to know about the concept of forced migration before dealing with the conceptualisation itself. Figure 2 presents the concept of forced migration as the product or counter product of conflict, development projects, disaster, trafficking or smuggling.



**Figure 2: Concept of Forced Migration**

## 2.4 Forced Migration Models

According to Oxford University (2006) there are four models of forced migration, namely: Legal institutional model; Social development model; Political economy model; and Security model. However, this paper discusses the relevance and application of the Social Development and the Legal Institutional models, as is exemplified in the inter-linkages of forced migration, human rights and poverty.

### 2.4.1 The Social Development Model

Many issues of the refugees are related to social, economic and cultural ones are not possible to solve only through legal-institutional supports. Therefore, social-development is an alternative approach. In this context, Cox (1999) argues that there are several major limitations of the legal conceptualisation of forced migration. As he claims,

"...the legal conceptualisation tends to be predominantly a response to an existing limited situation, with a clearly defined beginning and end. This means that it is unlikely that agencies will think either in terms of root causes or of long-term reintegration and other needs, and their absorption into on-going development".

A focus on root causes of conflict is, however, inevitably a focus on social development'. There are many root causes behind a conflict such as poor governance, atrocities, discrimination, marginalisation, and so on. The legal conceptualisation of forced migration has several difficulties associated with the categorisation of a population experiencing forced migration. This categorisation, which may in fact be possible only through social-development approach, can establish the rights and entitlements of the various categories identified. Another main disadvantage of legal-institutional approach is that 'categorising various aspects of the population through legal or formal definitions and responding differently to the defined categories is likely to result in the fragmentation of both the response to the aftermath of conflict and forced migration and of a society'. Secondly, as Cox argues, 'an official creation of categorical boundaries inevitably means that some groups are officially eligible for assistance and others bypassed. '



The legal definition of a category of people will revolve around a specific aspect of their situation, such as the fact of flight from persecution. Rights and entitlements then flow from the narrow concept of need, and the response is organised accordingly. Hence, the need may be technically removed once the particular situation has been rectified. Finally, Cox argues that the legal conceptualisation of any situation implies boundaries. He is of the opinion that 'just as it [legal conceptualisation] identifies a starting point, rather than incorporating the importance of root causes, so it identifies a point of termination - the cessation of intervention' .

Concept and understanding about social development have a long history but it is peripheral in the work of development scientists. Economic development approach which emerged especially after World War 2 dominated the mindset of the intellectuals prior to 1970. After the 1970s, however, analysis went beyond economic development. Furthermore, social scientist began to conclude that economic development is virtually impossible to achieve unless and until social, political, cultural and so many other cross-cutting issues are addressed at once.

The thinking of the Social development approach changed, not only development, but also migration. Although forced migration is not a new concept, it was unknown as a discourse for many centuries among the minds of the intellectuals. Although it is claimed that forced migration is not a new phenomenon, intervention was limited to refugees for long past. This may be one of the main reasons why there came up 'Refugee Convention in 1951, and not the Forced Migrants' Convention as such which could cover the overall issues related to forced migrants. When forced migration was realised in terms of internally displaced persons (IDPs), and trafficked and smuggled people, it was realised the importance of social development.

#### **2.4.2 The Legal Institutions model**

The Legal Institutional Model underscores that migration is a rights-based approach. However, in case of forced migration, the very rights are violated mostly. Therefore, the legal-institutional model can better help the forced migrants to reduce their levels of violations either in places of origin or destination. In this context, Gibney (1999) claims that the legal institutional conceptualisation of forced migration is characterised by three major features:

- a. An emphasis on demarcating and categorising different groups of forced migrants (e.g. refugees, internally displaced persons, de facto refugees, etc).
- b. A concern with either the *legal entitlements* of these groups in relation to states and as determined by national and international law, or the mandated *responsibilities* of various international agencies and NGOs to these forced migrants; and

A focus on dealing with forced migration as primarily a matter of *humanitarian* concern for status, international organisations and NGOs. This focus helps explain the overwhelming concern in the legal-institutional approach responding to the results of forced migration situations, rather than the deeper political, economic and social causes of human displacement.

## 3.0 Refugees Situation in Kenya

### 3.1 Refugees by Country of Origin

Table 1 illustrates distribution of refugees by country of origin; whereby the identified countries of refugees' origin are Somalia, Sudan, Ethiopia, Uganda, Democratic Republic of Congo, Rwanda, Burundi and Eritrea among others. The analysis shows that over fifty percent of refugees are from Somalia, and out of the total 53.4 percent, 52.9 percent were males, while 53.9 percent were female. The data also shows that Sudan is the second major source of refugees in Kenya, with 4.0 percent of the total refugees. The desegregation by sex shows that of the refugees from Sudan, 4.5 percent were male, while 3.4 percent were female. Nonetheless, the number of refugees from Sudan falls far below those from Somalia. In the third rank is Ethiopia, which makes up 2 percent of the refugees (of which 2.2 percent are male, while 1.8 percent is female).

**Table 1: Refugees by Sex and Country of Birth Place**

	Refugee country of birth								
	Somalia	Sudan	Ethiopia	Uganda	DRC	Eritrea	Rwanda	Burundi	Other African Countries
	No.	No.	No.	No.	No.	No.	No.	No.	No.
Total	103345	7657	3832	405	706	32	238	236	77230
Male	53452	4523	2186	221	400	20	119	125	40085
Female	49893	3134	1646	184	306	12	119	111	37145

Source: computed by author using KPHC (2009) dataset

### 3.2 Distribution of Refugees in Kenya

Table 2 depicts refugee distribution in Kenya by provinces. The data shows that there were 193,681 refugees in Kenya in the year 2009. It is also noted that of the total refugees, there were 101,131 (52.2 percent) male and 92550 (47.8 percent) female refugees. Majority of the refugees (140,806) were reported in North Eastern province. Of these, reported in North eastern province, 73,593 (72.8 percent) were male, while 67,213 (72.6 percent) were female.

The province with the second largest number of refugees was Rift Valley, with 42,324 refugees. Of these, 22,238 (22.0 percent) of the total male refugees were male, while female were 20,086 (i.e. 21.7 percent of the total female refugees). Nairobi had the lowest number of refugees (686 i.e. 0.4 percent of the total refugees); of these 361 (i.e. 0.4 percent of the total male refugees were male, while 0.4 percent were female. Coast province follows Nairobi, with the second lowest number of refugees (Total, 762; Male, 406; Female, 356), i.e. 0.4 percent of the total refugees.

**Table 2: Refugees Distribution by Province, 2009**

Region	Total		Male		Female	
	Number	Per cent	Number	Per cent	Number	Per cent
KENYA	193681		101131	52.2	92550	47.8
Nairobi	686	0.4	361	0.4	325	0.4
Central	1189	0.6	607	0.6	582	0.6
Coast	762	0.4	406	0.4	356	0.4
Eastern	4191	2.2	2157	2.1	2034	2.2
North Eastern	140806	72.7	73593	72.8	67213	72.6
Nyanza	1534	0.8	742	0.7	792	0.9
Rift Valley	42324	21.9	22238	22.0	20086	21.7
Western	2189	1.1	1027	1.0	1162	1.3

Source: computed by author using KPHC (2009) dataset

The analysis also notes that, in all the provinces, male refugees were the majority, apart from Nyanza (Male, 742; Female, 792) and Western (Male, 1027; Female, 1162) provinces that had more female refugees than their male counterparts.

### 3.3 Refugee Educational Attainment

Analysis of refugee educational attainment by sex is depicted in Table 3. The analysis shows that there was a significant population (62.6 percent) without any educational attainment. Of this population, 58.1 percent were male and 67.5 percent were female. This could be correlated to the unfavourable circumstances in which the refugees found themselves in, as they were fleeing their countries of origin. This is because, whenever a country in civil strife, the most priority is survival (escaping from the war-torn environment).

**Table 3: Refugees Educational Attainment by Sex, 2009**

Sex	Total	Education for the refugees													
		Pre-Primary		Primary		Secondary		Tertiary		University		None		Others	
		%	No	%	No	%	No	%	No	%	No	%	No	%	No
Total	165628	3.8	6329	27.4	45421	5.2	8571	0.4	648	0.2	312	62.6	103664	0.4	683
Male	86457	3.9	3375	30.3	26159	6.5	5649	0.5	412	0.3	234	58.1	50205	0.5	423
Female	79171	3.7	2954	24.3	19262	3.7	2922	0.3	236	0.1	78	67.5	53459	0.3	260

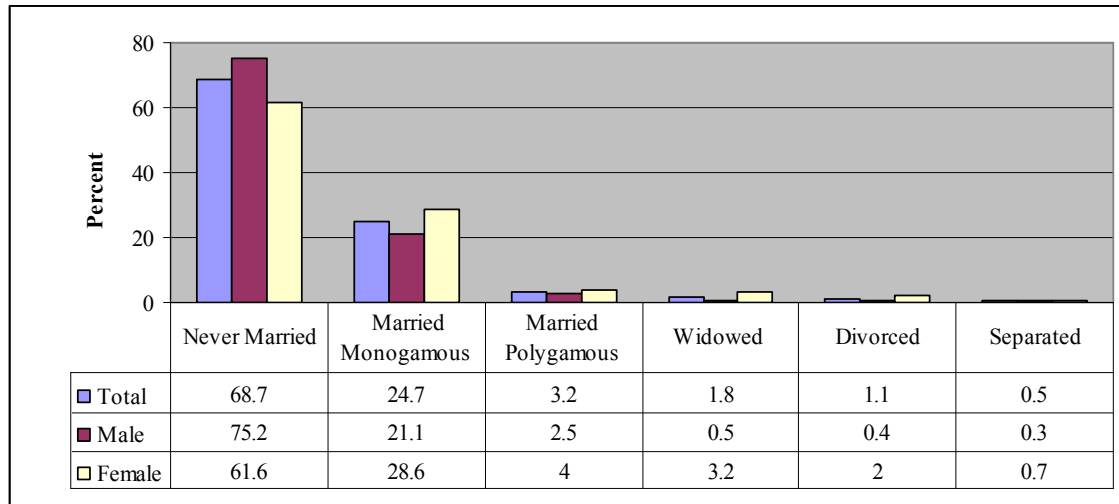
Source: computed by author using KPHC (2009) dataset

It is also observed that, for those with some education, the majority had attained primary education (27.4 percent); of this, 30.3 percent were male, while 24.3 percent were female. Primary level of education is basic; however, as noted above, the prevailing circumstance could explain that. It is worthy noting that there were also refugees who had attained secondary+ level of education. For instance, those with secondary level attainment were 5.2 percent (Male, 6.5 percent; Female, 3.7

percent). At tertiary level, there were 0.4 percent (Male, 0.5 percent; Female, 0.3 percent), and at university level attainment, there were 0.2 percent (Male, 0.3 percent; Female, 0.1 percent).

### 3.4 Refugees by Marital Status

Figure 1 depicts analysis of refugees by marital status and sex. It shows that majority of the refugees (132,995 out of 193,681) were unmarried (68.7 percent); of which 75.2 percent were male, and 61.6 percent were female. It was also noted that 47,861 (24.7 percent) were married; of which 21,367 (21.1 percent) were male and 26,494 (28.6 percent) were female.



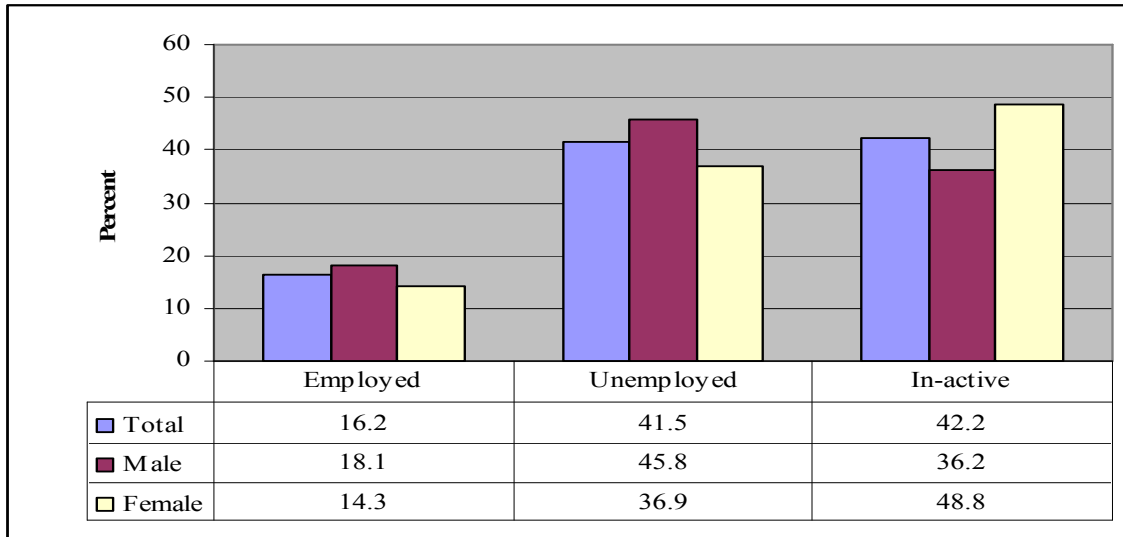
**Figure 1: Percent Refugee Marital Status by Sex, 2009**

Source: computed by author using KPHC (2009) dataset

Those in widowhood marital status, it could be due to their partners having died of natural phenomena, or due to conflicts in their countries of origin or due to harsh environmental conditions that they encountered on their way as they were fleeing their countries of origin. This could also be the reasons behind those who were separated, because some could have lost touch with their partners due to conflicts, such that they have not been able to trace the whereabouts of their partners. However, for those who were divorced, it could be because of the acceptance of the norm under traditional marriage, or it was decided in a court of law, or it was a faith-based divorce as is usually among the Moslem.

### 3.5 Refugees by Economic Activity

Figure 2 depicts the analysis of refugees by sex and economic activity. It is noted that less than 20 percent of the refugees were employed (i.e. 16.2 percent). On the other hand, by sex, it is observed that the male refugees (Male, 18.1) were employed, whereas 14.3 percent of the female were employed.



**Figure 2: Percent Refugee Economic Activity by Sex, 2009**

Source: computed using KPHC (2009) dataset

Nonetheless, the majority of the refugees were either unemployed or inactive. For instance, the analysis shows that 41.5 percent of the refugees were unemployed; of which 45.8 percent were male, whereas 36.9 percent were female. This means that of the unemployed, the male refugees were more than their female counterparts. Analysis also shows that there was significant number of in-active refugees (42.2 percent). Of the in-active refugees, 36.2 percent were male, while 48.8 percent were female.

The level of unemployed and in-active refugees could be plausibly explained by correlating it to their level of education attainment, whereby a significant percentage have no education (62.6 percent); and of these 67.5 percent of the female had no education. The economic activity of the refugees could also be correlated to the circumstances under which they are living (that, subjected to the rules of being a refugee). However, it is worthy noting that the Government of Kenya had ratified the Convention on the Rights of Refugees, whereby they are allowed to access education and employment activities, just like any Kenyan citizen.

## 4.0 Policy Implications

### 4.1 Social Development Perspective

Development in isolation has no meaning in fact. It is a relational one. In terms of goal, UI Haq (1997) defines development as 'to build human capabilities and enlarge human opportunities'. In terms of coverage, Midgley defines development as a 'process of planned social change designed to promote well-being of the population as a whole in conjunction with the dynamic process of economic development.' UNDP, virtually the largest institution of the United Nations to advocate for development in its 1993 Human Development Report defines development as 'of the people, by the

people, and for the people'. The first *of the people* signifies enhancing people's capabilities, both directly and providing an environment in which people's potential can be realised to the maximum degree possible. The second *by the people* aims to involve as many of the people as possible, and as fully as possible, in the development process at all levels. Finally, *for the people* aims to ensure that as many of the people as possible are beneficiaries of all aspects of the development process (UNDP, 1993).

To quote Cox,

"When civil conflict does occur, displacement or forced migration is invariably one outcome of the situation and an extremely important one. The precise causes of the flight are more complex than immediate danger, often reflecting one's ethnicity, religion, economic level, political links and so on."

To conclude from Gasarasi, 1996, 'social development model of conflict is the application of the basic social development model to the conflict-forced migration situation, on the basis that both the conflict and the forced migration are, in their totality and in their detail, largely an outcome of social development trends, whatever those trends are economic or political in nature or some combination of the two (Gasarasi, 1996).

## 4.2 Legal Perspective

Migration is a rights-based approach. However, in case of forced migration, the very rights are violated mostly. Therefore, the legal-institutional model can better help the forced migrants to reduce their levels of violations either in places of origin or destination. In this context, Gibney (1999) claims that the legal institutional conceptualisation of forced migration is characterised by three major features:

- c. An emphasis on demarcating and categorising different groups of forced migrants (e.g. refugees, internally displaced persons, de facto refugees, etc).
- d. A concern with either the *legal entitlements* of these groups in relation to states and as determined by national and international law, or the mandated *responsibilities* of various international agencies and NGOs to these forced migrants; and
- e. A focus on dealing with forced migration as primarily a matter of *humanitarian* concern for status, international organisations and NGOs. This focus helps explain the overwhelming concern in the legal-institutional approach responding to the results of forced migration situations, rather than the deeper political, economic and social causes of human displacement.

Legal institutional model of forced migration came with the initiation of United Nations in order to address the growing number of refugees world-wide. The formation of United Nations High Commissioner for Refugees (UNHCR) in 1950 and the 'key international legal document' on UN Convention Relating to Status of Refugees, 1951 are the milestones to shape the legal institutional models in forced migration.

Gibney (1999) further claims that the legal institutional model of forced migration is the 'joint product of legal definitions and institutional mandates'. The model defines who forced migrants are and sometimes what a forced migration is. Forced migrants are definitely the products of the nature

of forced migration, which is by conflict, development projects, disaster, trafficking or human smuggling. Unless these forced migrants are defined by any institution such as the State, UN, etc, they may not be entitled to their rights. Therefore there lies a very close relationship between institutions and laws in addressing the problems of forced migrants. The state also makes some hard or soft laws to define forced migrants, such as refugees or IDPs. Sometimes such a definition becomes biased too which may depend on various political or other so many constraints.

The legal institutional conceptualisation of forced migration retains four major strengths (Gibney, 1999):

- a. State commitment: This conceptualisation is a standard that states have explicitly agreed to and committed to abide by. As for example more than majority of the countries have signed and majority have ratified the Convention Relating to Refugees, and Geneva Conventions.
- b. Reinforcement of law: The international law conception has stood the 'test of time'. It has been now customary practice for states to participate in the conferences and conventions, understand the cases of the various parts of the world and take a decision to address by laws or policies. As a result, 'a substantial number of the world's states have been signatories to main instruments of refugee laws for many years, lending the weight of established practice and custom to that of written law. Kenya cannot be to its exception; many international conventions on HR instruments have been ratified.
- c. Strengthened states: The dominant international law conception of forced migration can, paradoxically, claim an advantage which derives from its narrowness. While more inclusive accounts of forced migration ignore the relevance of territorial location, the international law approach recognises only those forced migrants *outside* their country of origin. This latter conceptualisation has the benefit of being easier to square with the key organising principle of international society: the sovereign independence of states. By accepting responsibilities only to those forced migrants who have fled their country, the international law conceptualisation avoids committing states to intervening in the domestic affairs of other states.
- d. Strengthened forced migrants: It is undeniable that the legal-institutional approach has been highly beneficial to great numbers of forced migrants over the last fifty years, even if only to a fraction of the world's population of forced migrants as a whole. Millions of
- e. Refugees have been protected from *refoulement*, and millions have been able to rebuild their lives in the security of new countries, and in many cases to gain citizenship in their new countries of residence.

## 5.0 Conclusion and Recommendations

### 5.1 Conclusion

This paper has described the complexity of analysing migration and poverty. It has highlighted general themes within a very broad literature, on a very diverse topic, with the intention of trying to locate gaps in knowledge. Empirical findings about linkages between migration and poverty differ greatly, and there is a sense that there is a causal link between the simplifying theoretical assumptions and conflicting empirical results.

Among various typologies of migration, 'voluntary- forced dichotomy' is the recent discourse although the distinction between the two is 'often blurred in the real world.' Forced migration is the product or counter product of either of conflict, development projects, disaster, trafficking or smuggling. Conceptualisation of forced migration can be done in terms of the models: legal institutional, social development, political economy and security model.

The legal institutional conceptualisation of forced migration is characterised by three major features: an emphasis on demarcating and categorising different groups of forced migrants, a concern with either the *legal entitlements* of these groups or the mandated *responsibilities* of various international agencies and NGOs and a focus on dealing with forced migration as primarily a matter of *humanitarian* concern.

This paper recognises that Social policy vis-à-vis migrants is a double-edged sword. Thus, there are practical ways in which social policies can protect and support migrants, and help labour markets and workers adjust under processes of increased migration. At the same time, social policies define citizenship, produce forms of inclusion, and hence inevitably exclusion.

Migration issue cannot be analysed and interpreted by sidelining the issues of forced migration now onwards. More complex is to segregate between forced and voluntary in the EAC context too, however study on migration needs to address both elements now. Only studying economic migration can, explicitly and implicitly, exclude the other side of the coin - forced migration.

In the Kenyan context, conflict induced displacement is the burning issue regarding forced migration. This means not that issue of human trafficking, human smuggling, disaster induced displacement are not the issues. To address the displacement issue, all four models mentioned above needs to be adopted simultaneously.

## **5.2 Recommendation**

The formation of United Nations High Commissioner for Refugees (UNHCR) in 1950 and the 'key international legal document' on UN Convention Relating to Status of Refugees, 1951 are the milestones to shape the legal-institutional models in forced migration. Thus, Kenya being a signatory to this treaty, needs to continue referring to it and implementing its proposals.

It is also worthy mentioning that the legal institutional conceptualisation of forced migration retains four major strengths which serve to rally its support, namely: the state commitment, reinforcement of law, strengthened states and strengthened forced migrants. Thus, this paper proposes that Kenya considers the Legal Institutional Model as a formula to dealing with forced migration

The issues of refugees and IDPs are related to social, economic and cultural ones. Hence, they are not possible to solve only through legal-institutional supports. To that end, Kenya needs to consider social-development as an alternative approach. This is because it is the application of the basic social development model to the conflict-forced migration situation, on the basis that both the conflict and the forced migration are, in their totality and in their detail, largely an outcome of social development trends, whatever those trends are economic or political in nature or some combination of the two.



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**ANNEX 1: GLOSSARY**

<b>DRC</b>	: Democratic Republic Of Congo
<b>GCIM</b>	: Global Commission for International Migration
<b>IDPs</b>	: Internally Displaced Persons
<b>KPHC</b>	: Kenya Population and Housing Census
<b>OCR</b>	: Optical Character Recognition
<b>NGOs</b>	: Non Governmental Organisations
<b>UN</b>	: United Nations
<b>UNDP</b>	: United Nations Development Programme
<b>UNHCR</b>	: United Nations High commission for Refugees