



Balancing National Security and Human Rights in Kenya: A Human Security Perspective

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ABSTRACT

The relationship between national security and human rights remains a central challenge for democratic states, particularly in the context of crime control and law enforcement. In Kenya, security operations aimed at countering terrorism, maintaining public order, and safeguarding territorial integrity have frequently generated tensions with constitutional and international human rights obligations. This paper examines the nexus between national security and human rights in Kenya through the analytical framework of Van Kempen's four human rights–security concepts. Adopting a qualitative doctrinal and conceptual research design, the study analyses constitutional provisions, security legislation, judicial decisions, and international human rights instruments relevant to Kenya's security governance. The findings demonstrate that human rights and national security are not mutually exclusive but are interdependent and mutually reinforcing when grounded in the rule of law. Human rights function as safeguards against abuse of state power, legitimate grounds for proportionate security interventions, and positive obligations requiring the state to protect individuals from harm. However, persistent gaps between normative commitments and operational practice continue to undermine effective security governance. The paper concludes that a human rights–centered approach to national security is essential for legitimacy, public trust, and sustainable peace in Kenya, and offers policy recommendations to strengthen rights-based security frameworks.

Key Words: Crime control, law enforcement, Human rights, Human security, Kenya, National security.

1. INTRODUCTION

The relationship between national security and human rights remains one of the most contested issues in contemporary governance, particularly in the context of crime control and law enforcement. While states have a primary obligation to protect territorial integrity and maintain public order, these responsibilities frequently intersect and at times collide with the obligation to respect, protect, and fulfil human rights (Van Kempen, 2013; Gross, 2010). In Kenya, this tension has become increasingly pronounced in the face of terrorism, transnational crime, electoral violence, and internal security operations (United States Department of State, 2020; Human Rights Watch, 2012).

Traditional conceptions of national security have largely focused on the protection of the state against both external and internal threats. Maier (1990) defines national security as the capacity of a state to control domestic and foreign conditions deemed necessary for autonomy, prosperity, and societal well-being. In contrast, human rights are inherent legal entitlements that accrue to individuals by virtue of being human, independent of state recognition (Heard, 1997; United Nations, 1948). As famously observed by Kofi Annan, human rights are “foreign to no culture and home to all nations,” underscoring their universality, indivisibility, and interdependence (Annan, 2000).

The evolution of constitutionalism and international human rights law has fundamentally altered the nature of state power. Governments are no longer merely sovereign protectors of national interests; they are also duty-bearers legally bound to uphold the rights of individuals under domestic and international law (United Nations, 2005; Van Kempen,

2013). In Kenya, this obligation is entrenched in the Constitution of Kenya (2010), which incorporates ratified international treaties into domestic law and establishes a comprehensive Bill of Rights enforceable against the state. Consequently, national security policies and law enforcement practices are subject to constitutional and international human rights scrutiny, requiring that security measures comply with principles of legality, necessity, proportionality, and accountability (Republic of Kenya, 2010; Gross, 2010). Despite this legal framework, security operations in Kenya, particularly counterterrorism measures and cross-border military engagements have raised persistent concerns regarding arbitrary arrests, excessive use of force, discrimination against vulnerable populations, and limitations on civil liberties. These challenges raise a fundamental question: are national security and human rights mutually reinforcing, or are they inherently contradictory?

This paper interrogates this question by examining the conceptual and legal relationship between national security and human rights in Kenya through the lens of Van Kempen's (2013) four human rights–security concepts. By analyzing constitutional provisions, international legal obligations, and selected security practices, the study will provide a more understanding on the subject.

1.1 OBJECTIVES

This study paper specifically seeks to:

- (i) examine the theoretical foundations linking national security and human rights;
- (ii) analyze the applicability of Van Kempen's four security concepts within the Kenyan context;
- (iii) assess how constitutional and legal frameworks in Kenya mediate the tension between security imperatives and human rights protection.

By adopting a human rights centered approach to security, the paper contributes to ongoing scholarly and policy debates on how democratic states can effectively address security threats without undermining the very rights they are meant to protect.

2. LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 Conceptualizing Human Rights and National Security

The relationship between human rights and national security has historically been framed as antagonistic, with security imperatives often invoked to justify the suspension or limitation of individual freedoms (Wolfers, 1960; Maier, 1990). However, contemporary scholars increasingly challenge this zero-sum framing, arguing instead that human rights and security are mutually reinforcing when embedded within democratic governance and the rule of law (Annan, 2000; Van Kempen, 2013). Human rights derive from philosophical traditions of natural law and social contract theory, which posit that individuals possess inherent rights that precede the authority of the state (Locke, 1690:1988; Rousseau, 1762:2003). Classical thinkers such as Aquinas, Locke, Rousseau, and Kant advanced the notion that the legitimacy of political authority is contingent upon its capacity to protect life, liberty, and property (Kant, 1797:1996; Heard, 1997). Within this framework, the surrender of individual freedoms to the state is conditional, revocable, and subject to legal constraint. Failure by the state to fulfil this obligation undermines both its legitimacy and security mandate (Van Kempen, 2013).

National security, on the other hand, has traditionally focused on the preservation of state sovereignty and public order. Maier's (1990) definition emphasizes the ability of a state to control internal and external conditions necessary for societal well-being. While this conception privileges state stability, it does not inherently exclude human rights protection. Rather, modern security thinking increasingly recognizes that insecurity often arises from governance failures, institutional abuse, and systematic rights violations (United Nations, 2005; Human Rights Watch, 2012).

2.2 Human Security and the Universality of Rights

The emergence of the human security paradigm marked a significant shift from state-centric security toward an individual centered approach. Human security broadens the scope of security to include freedom from fear, want, and indignity, thereby aligning closely with international human rights norms (United Nations Development Programme

[UNDP], 1994; Human Security Commission, 2003). Critics have argued that the concept is overly broad and difficult to operationalize; nonetheless, its normative value lies in reframing security as a condition experienced by individuals rather than abstract state entities (Paris, 2001; Chandler, 2012). The Universal Declaration of Human Rights (UDHR) embodies this individual centered vision by affirming that all persons are born free and equal in dignity and rights (United Nations, 1948).

The Declaration and subsequent international human rights instruments articulate civil, political, economic, social, and cultural rights as inalienable and universally applicable (United Nations, 1966a, 1966b). These instruments establish binding obligations on states to respect, protect, and fulfil human rights, thereby situating human rights at the core of legitimate security governance (Annan, 2000; Van Kempen, 2013). In Kenya, the domestication of international human rights norms through the Constitution of Kenya (2010) represents a significant commitment to this paradigm. Article 2(6) incorporates ratified treaties into domestic law, reinforcing the universality and enforceability of human rights within national security operations (Republic of Kenya, 2010).

2.3 Human Rights and Security: Complementarity or Tension?

Scholars debates on the human rights–security nexus often oscillate between two positions. The first views human rights as constraints on security, arguing that legal protections impede effective law enforcement and counterterrorism efforts (Posner, 2008; Gross, 2010). The second contends that human rights enhance security by fostering legitimacy, public trust, and institutional accountability (Annan, 2000; Maier, 1990).

Van Kempen (2013) offers a useful analytical framework that transcends this binary by conceptualizing security through four human rights–centered lenses. These concepts provide a nuanced understanding of how human rights both limit and enable state security functions. First, security can be understood as the protection of international peace through domestic human rights compliance. This perspective posits that states which safeguard civil liberties, democratic governance, and the rule of law contribute to international stability (Van Kempen, 2013; United Nations, 2005). International human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) reflect this logic by linking rights protection to peace, justice, and stability (United Nations, 1966a).

Second, human rights function as a form of negative security against the state. In this sense, rights operate as safeguards against the abuse of state power, particularly in contexts of policing, criminal justice, and counterterrorism (Van Kempen, 2013; Human Rights Watch, 2012). Procedural protections—such as freedom from torture, arbitrary detention, and unlawful surveillance limit the coercive reach of security institutions while preserving individual liberty (United Nations, 1984; United Nations, 1966a).

Third, national security is frequently invoked as a justification for limiting human rights. International and constitutional frameworks recognize that certain rights may be restricted in the interests of public order, safety, and national survival, provided such limitations are lawful, necessary, and proportionate (Gross, 2010; Van Kempen, 2013). In Kenya, Article 24 of the Constitution establishes strict criteria for limiting rights, reflecting international standards on proportionality and justification (Republic of Kenya, 2010).

Fourth, the state bears positive obligations to provide security for individuals. This dimension of security requires states to prevent, investigate, and punish violations committed by both state and non-state actors (European Court of Human Rights, 1998; Van Kempen, 2013). Human rights monitoring bodies increasingly interpret civil and political rights as imposing duties to criminalize harmful conduct, protect vulnerable groups, and ensure effective remedies (United Nations, 2004; Human Rights Committee, 2018).

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2.4 The Kenyan Context: Law, Security, and Rights Protection

Kenya provides a compelling case study for examining the interaction between human rights and national security. The country has faced persistent security challenges, including terrorism, cross-border conflict, electoral violence, and organized crime (United States Department of State, 2020; Human Rights Watch, 2012). In response, the state has adopted a range of legislative and operational measures aimed at safeguarding public order and territorial integrity. However, security interventions—such as counterterrorism operations, refugee management policies, and public order enforcement have generated allegations of human rights violations, particularly against marginalized communities, including refugees, ethnic minorities, and political protesters (Human Rights Watch, 2012; KNCHR, n.d.).

Judicial interventions have played a critical role in mediating the tension between security imperatives and rights protection. Decisions by Kenyan courts blocking the closure of refugee camps and striking down unconstitutional provisions of security legislation underscore the judiciary's function as a guardian of constitutionalism and the rule of law (Republic of Kenya, 2015; Republic of Kenya, 2017). These rulings affirm that national security measures must conform to constitutional standards of legality, necessity, and proportionality.

The Kenyan constitutional framework, reinforced by regional and international human rights obligations, positions human rights not as obstacles to security but as normative guides for lawful and effective security governance. This approach aligns with Van Kempen's (2013) argument that human rights and security share a common referent: the protection of the individual as the ultimate beneficiary of both legal order and state authority.

3. METHODOLOGY

This study adopts a qualitative, doctrinal, and conceptual research design to examine the relationship between national security and human rights in Kenya. The research is non-empirical and relies on systematic analysis of legal texts, policy documents, judicial decisions, and scholarly literature relevant to security governance and human rights protection. The primary sources of data include the Constitution of Kenya (2010), national security and criminal justice legislation, and Kenya's ratified international and regional human rights instruments. Secondary sources consist of peer-reviewed journal articles, authoritative books, policy reports, and publications by recognized human rights bodies. These materials were purposively selected for their relevance to crime control, law enforcement, counterterrorism, and constitutional rights discourse in Kenya.

Data analysis was conducted through thematic and analytical interpretation, guided by Van Kempen's (2013) four human rights–security concepts. Each concept—human rights as international security, negative security against the state, security as justification for limiting rights, and positive state obligations to provide security—served as an analytical lens for evaluating Kenya's legal and institutional responses to security challenges. The approach enabled the identification of patterns, normative tensions, and areas of convergence between security imperatives and human rights standards. The study is anchored in normative legal analysis, assessing the extent to which Kenya's security practices align with constitutional principles of legality, proportionality, accountability, and respect for human dignity. Ethical considerations were addressed by relying exclusively on publicly available documents and secondary data, ensuring no risk of harm to individuals or institutions.

4. RESULTS AND DISCUSSION

4.1 Human Rights Protection as a Foundation for International and National Security

The analysis demonstrates that Kenya's legal and constitutional framework reflects the principle that human rights protection contributes to both national and international security. Kenya's incorporation of international treaties into domestic law under Article 2(6) of the Constitution signals a commitment to aligning internal security practices with global human rights standards. This legal posture supports Van Kempen's first concept, which links domestic rights protection to international peace and stability.

However, the findings indicate a significant gap between normative commitments and operational practice. Kenya's military intervention in Somalia, while justified on the basis of collective self-defence under international law, exposed civilians to human rights risks and generated allegations of excessive use of force and mistreatment. These outcomes highlight how external security operations can undermine international security objectives when human

rights safeguards are inadequately enforced. The results suggest that compliance with international humanitarian and human rights law is not merely a legal obligation but a strategic necessity for sustaining regional security and diplomatic legitimacy.

4.2 Human Rights as Negative Security Against State Power

The study finds that constitutional and judicial mechanisms in Kenya have functioned as critical safeguards against the abuse of state power in the name of security. Courts have played a central role in enforcing negative human rights obligations by restraining arbitrary executive action, particularly in contexts involving counterterrorism and refugee management.

Judicial decisions blocking the closure of refugee camps and condemning unlawful detentions illustrate the application of Van Kempen's second concept: human rights as a form of security against the state itself. These rulings reaffirm that security agencies are bound by constitutional standards of legality, necessity, and proportionality. The findings reveal that rights-based constraints do not inherently weaken security but instead enhance institutional accountability and public trust.

Nevertheless, the analysis also reveals persistent challenges in operational compliance. Reports of arbitrary arrests, discriminatory profiling, and excessive force suggest that negative security protections remain unevenly applied, particularly against marginalized populations. This disconnect underscores the need for stronger oversight mechanisms within law enforcement institutions.

4.3 National Security as a Justification for Limiting Human Rights

The results further demonstrate that national security has been repeatedly invoked to justify limitations on constitutional rights in Kenya. Article 24 of the Constitution provides a legal framework for restricting rights, subject to reasonableness and justifiability in an open and democratic society. In practice, this provision has been relied upon by security agencies during public order operations, counterterrorism efforts, and periods of political instability.

The enactment of the Security Laws (Amendment) Act of 2014 represents a significant case in point. While intended to enhance national security, several provisions were subsequently declared unconstitutional by the High Court for disproportionately infringing on fundamental rights. This judicial intervention illustrates the practical application of Van Kempen's third concept, which recognizes security as a legitimate but limited ground for restricting rights.

The findings suggest that security-based limitations are most defensible when they are narrowly tailored, evidence-based, and subject to judicial oversight. Conversely, broad or vague security justifications risk eroding constitutionalism and undermining the legitimacy of security institutions.

4.4 Positive State Obligations to Provide Security

The study also finds strong evidence of Kenya's efforts to fulfil positive obligations to provide security through legislative, institutional, and policy measures. The establishment of specialized security and human rights institutions, alongside the enactment of laws criminalizing torture, gender-based violence, and organized crime, reflects an acknowledgment that human rights protection requires proactive state intervention.

This aligns with Van Kempen's fourth concept, which emphasizes the duty of the state to protect individuals from harm by both state and non-state actors. The Kenyan constitutional framework facilitates access to justice by empowering individuals to seek redress for rights violations, thereby reinforcing the protective role of the state.

However, the effectiveness of these positive obligations is constrained by challenges such as weak enforcement, limited institutional capacity, and occasional political interference. The findings indicate that positive security obligations are most effective when complemented by independent oversight, adequate resourcing, and sustained political commitment.

5. DISCUSSION

Collectively, the results demonstrate that human rights and national security in Kenya are interdependent rather than antagonistic. Human rights function simultaneously as constraints on state power, justifications for lawful security action, and normative foundations for sustainable security governance. The application of Van Kempen's framework reveals that security policies grounded in human rights are more likely to achieve legitimacy, durability, and public cooperation. The findings further suggest that failures in security governance often stem not from excessive respect for human rights but from inadequate implementation of constitutional and legal safeguards. A rights-based approach to security therefore strengthens, rather than weakens, the capacity of the state to address complex security threats.

6. CONCLUSION AND RECOMMENDATIONS

6.1.1 CONCLUSION

This paper set out to examine the relationship between national security and human rights in Kenya through the analytical lens of Van Kempen's four human rights–security concepts. The analysis demonstrates that national security and human rights are neither mutually exclusive nor inherently antagonistic. Instead, they are deeply interconnected and ultimately converge on a common referent: the protection of the individual.

The findings show that human rights serve multiple and complementary functions within security governance. They operate as safeguards against the abuse of state power, as legal justifications for proportionate security interventions, and as positive obligations requiring the state to protect individuals from harm. Kenya's constitutional framework, particularly the Bill of Rights and the incorporation of international human rights law, provides a robust normative foundation for balancing security imperatives with rights protection.

However, the study also reveals persistent implementation gaps. While Kenya has adopted progressive legal frameworks and institutions, security operations—especially in counterterrorism, refugee management, and public order policing—continue to raise concerns regarding proportionality, accountability, and discrimination. These challenges underscore the need to move beyond formal legal compliance toward effective operationalization of human rights standards within security institutions.

By applying Van Kempen's framework to the Kenyan context, the paper contributes to broader debates on human security by demonstrating that rights-based security is not a theoretical ideal but a practical necessity for democratic governance. Sustainable national security cannot be achieved through coercive measures alone; it requires legitimacy, public trust, and adherence to the rule of law.

6.2 POLICY RECOMMENDATIONS

Based on the findings of this study, the following policy recommendations are proposed:

i. Strengthen Human Rights Training for Security Agencies

Law enforcement and security personnel should receive continuous, mandatory training on constitutional rights, international human rights law, and proportional use of force. Embedding human rights norms at the operational level will enhance compliance and improve public trust.

ii. Enhance Oversight and Accountability Mechanisms

Independent oversight bodies, including parliamentary committees and civilian review institutions, should be adequately resourced and empowered to monitor security operations and investigate alleged human rights violations.

iii. Institutionalise Proportionality in Security Legislation

Security-related laws and regulations should undergo rigorous human rights impact assessments to ensure compliance with constitutional standards of necessity, legality, and proportionality.

iv. Strengthen Judicial Protection of Rights During Emergencies

Courts should continue to play an active role in reviewing security measures, particularly during states of emergency or heightened security operations, to prevent unjustified derogations from fundamental rights.

v. Promote Community-Centred Security Approaches

Security policies should prioritize community engagement, intelligence-led policing, and inclusive security strategies that address underlying social and economic drivers of insecurity.

vi. Align Counterterrorism Measures with Human Rights Obligations

Counterterrorism strategies should integrate international humanitarian and human rights law to prevent abuses that undermine both domestic legitimacy and international cooperation.

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