

**WHAT'S IN A LABEL?
AN ANALYSIS OF THE IMPACT OF LABELLING ON THE
(IM)MOBILITY OF SOMALI REFUGEES IN KENYA**

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ABSTRACT

WHAT'S IN A LABEL? AN ANALYSIS OF THE IMPACT OF LABELLING ON THE (IM)MOBILITY OF SOMALI REFUGEES IN KENYA

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This thesis aims to contribute to the understanding of the role of labelling on refugee mobility. To elucidate this, Somali refugees in Kenya are taken as a case study. This study contends that the 'refugee' label is used in state policy as a tool to restrict the mobility of refugees who are essentially guaranteed the right to freedom of movement in international law. Thus, it employs a *regimes of mobility* approach, along with the understanding of Bourdieu's *Symbolic Power* to analyse the impact of labelling on three levels of refugee mobility; mobility during flight, mobility within the country of asylum, mobility during resettlement.

Key words: Labelling, Mobility/Immobility, Somali refugees in Kenya

ÖZ

ETİKETİN SONUÇLARI NEDİR? ETİKETLEMENİN KENYA'DAKİ SOMALİLİ MÜLTECİLERİN HAREKET VE HAREKETSİZLİKLERİNE ETKİSİNİN ANALİZİ

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Bu tez etiketlenmenin mülteci hareket kabiliyetine etkisini anlamaya çalışan literatüre katkıda bulunmayı amaçlar ve Kenya'daki Somalili mültecilere odaklanır. Çalışmada devlet siyasasında kullanılan "mülteci" etiketinin uluslararası hukukta hareket özgürlükleri tanınan mültecilerin hareket kabiliyetini kısıtlayıcı bir araç olarak kullanılması tartışılır. Tez, hareket rejimleri yaklaşımı ile Bourdieu'nün sembolik iktidar yaklaşımlarını uygularken 3 düzey mülteci hareketinden bahseder: kaçış sırasında hareket, sığınılan ülke içinde hareket ve yeniden yerleştirme durumunda hareket.

To My Parents

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and People's Rights
AU	African Union
DRA	Department of Refugee affairs
DRC	Democratic Republic of Congo
GoK	Government of Kenya
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
IRC	International Rescue Committee
ISIS	Islamic State of Iraq and Syria
NEP	North Eastern Province
OAU	Organisation of African Unity
PRS	Protracted Refugee Situations
RAS	Refugee Affairs Secretariat
RCK	Refugee Consortium of Kenya
RSD	Refugee Status Determination
SAPs	Structural Adjustment Policies
UAE	United Arab Emirates
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commission for Refugees

CHAPTER ONE

INTRODUCTION

Sprouting out of globalization debates, mobility has in the past two decades, sparked scholarly interest among the different disciplines of social sciences. Mobility and its extremes; hypermobility and immobility, have been explored through different lenses such as globalisation (Bauman, 1998) and development (Bakewell, 2008). Simultaneously, public discourse has emerged among governmental, non-governmental and international actors on monitoring, managing or governing mobility (Horst & Nur, 2016). The need to govern mobility has been emphasized for certain groups of mobile individuals. One of these groups we have come to be very familiar with following the recent forced migration crises. They are persons who flee their home countries for fear of violence or persecution to seek asylum in another country. Thus comes the paradox: the 'refugee' label categorizes a certain group of individuals who rely on their mobility in matters of life and death, only to rob them of it. This thesis argues that the 'refugee' label has, in recent years, transformed into a policy tool to restrict the mobility of individuals that fall under it. It focuses on the case of Somali refugees in Kenya, looking at the policies and practices of the government and international organizations and their role in the mobility of Somali refugees.

This thesis argues that Somali refugees in Kenya face three states of immobility. The first state of immobility is the suppression of flight through physical implementations such as border closures, roadblocks and checkpoints, and through procedural implementations such as strict asylum

laws and policies. Practices that suppress flight identified in the literature include “the erection of barriers and barbed wire fences, maritime interdiction, push-backs, and other measures to prevent those who need protection from finding refuge” (Zieck, 2018, p. 22). The second state of immobility is experienced through encampment. Kenya’s strict encampment law and policy requires all refugees to reside in camps in the peripheral regions of the country and restricts the mobility of refugees within their country of asylum. In line with this policy, refugees who self-settled in the urban areas have their mobility restricted as they are forced to be discrete in their movement to avoid surveillance. Lastly, the third state of immobility lies in the lack of opportunities for resettlement. Additionally, refugee mobility became increasingly restricted with the development of asylum law and policy from the earlier liberal times post-independence to the highly securitized era from the mid-2000s.

The image of sea vessels in the Mediterranean overcrowded with refugees, thousands of whose demise has unfortunately been at sea, demonstrates the first state of immobility faced by refugees; the physical inability to flee from danger, either made impossible by the government you are running from, or prevented by the rejection from the country you are running to. Following the intensification of the conflict in Syria that *officially* started in March 2011, countries surrounding Syria like Lebanon and Jordan gradually began closing their borders making it increasingly difficult to leave Syria to seek asylum (Crawley, Duvell, Jones, Macmahon, & Sigona, 2018). States, having the responsibility to protect civilians, those not involved in the conflict but suffer the consequences of it, instead create grey areas to avoid their international legal responsibilities. Additionally, it is evidence of how states restrict the mobility of individuals fleeing violence, further aggravating the refugee problem.

In Kenya, refugees face the first state of immobility when the government refuses to host and register any new/incoming refugees into its borders (HRW May 2016). On 6 May 2016, the Government of Kenya (GoK) announced its formal decision in a statement by the Principal Secretary of the Ministry of Interior to disband the Department of Refugee Affairs (DRA) - the main institution charged with the responsibility of refugee status determination (RSD). RSD includes receiving and processing applications for refugee status. Following this decision, refugees could potentially remain stuck at borders and continue to face dangers of persecution with no legal status with which they can claim their rights to immediate shelter and protection and to durable solutions. Similarly, Japan denies refugees their right to escape by refusing more than 99% of refugee applications accepting only 28 refugees in 2017 (The Telegraph May 2017).

Refugees barely manage to escape violence in their countries, only to be contained in camps in their host countries, thus facing the second state of immobility. While the Syrian conflict is well into its eighth year now, Somalis have been refugees in Kenya for almost three decades. Somalia broke into a civil war in 1990 with the fall of its dictator Siad Barre and has since been characterized by disunity and a dysfunctional state system. In 1991, the first largest Somali refugee influx to neighbouring countries began. 500,000 refugees fled to Ethiopia, Kenya, Djibouti and Yemen. In Kenya, Somalis were provided shelter at the Dadaab complex that was initially designed to host about 90,000 refugees. In 2011, a second large influx to Dadaab occurred when 130,000 Somalis fled drought and famine in Southern Somalia. By 2014, Kenya hosted a total of 427,311 Somali refugees. After a series of 'voluntary' repatriations since 2014, the total number by July, 2018 is at 256,609 -54% of the total 471,330 registered refugees and asylum seekers in Kenya (UNHCR, 2018). Encampment has since been the reality of Somali refugees. This policy is based on the assumption that refugee situations are only temporary and

refugees in time, will return home. However, Palestinian refugees since 1948 and Somali refugees since 1990 are only twin proofs that this is not the case.

The GoK continues to follow a strict encampment policy and requires all asylum seekers to report to a registration point within 30 days of entry after which most refugees are provided shelter at the Dadaab and Kakuma camps. Mobility among refugees is highly restricted as asylum laws require all refugees with valid reasons recognised by the Commissioner to get a movement pass under the Kenya Subsidiary Legislation 2009 Regulation 35 (1, 2, 3 and 4) in order to travel anywhere outside the camp, a pass almost impossible to acquire practically (Goitom, 2016). This policy of restricting mobility directly targeted at refugees is in contradiction to refugees' right to freedom of movement implied in the 1951 Convention Relating to the Status of Refugees, hereafter The Geneva Convention.

The Geneva Convention defines a refugee as a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to that fear, is unwilling to avail himself of the protection of that country" (UN 1951: Article 1(a)). Implicitly, refugees have a right to freedom of movement first by being refugees: "For them, the right to leave is a prerequisite to securing protection against (anticipated) persecution and the enjoyment of human rights" and "the physical span of refugee status coincides with the scope of the right to freedom of movement, which includes the right to leave one's country, liberty of movement within the host state, external freedom of movement, and the right to enter one's country" (Zieck, 2018, p. 21). Therefore, the legal refugee status, in its definition, accords mobility to refugees. But, practice is different in the national regimes.

Explicitly, refugees have a right to freedom of movement as Article 26 of the Geneva Convention states that: "Each Contracting State shall accord to

refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.” Further rights to freedom of movement are defined in Article 12 of the International Covenant on Civil and Political Rights (ICCPR), Article 13(1) of the Universal Declaration of Human Rights (UDHR) and Article 12 of the African Charter on Human and People’s Rights (ACHPR).

According to United Nations High Commission for Refugees (UNHCR), 84% of the total refugees in Kenya live in camps while 16% live in urban areas (2018). Many of the refugees in Kenya reported rape and killings within camps while “many others reported the frustration of having to live in camps where there is virtually no chance of employment and climatic conditions are harsh, and so they moved to urban areas to seek economic independence in the hope of a better life” (Pavanello, Elhawary, & Pantuliano, 2010, p. 8). Despite their attempt to escape encampment, urban refugees do not manage to escape the chains of immobility either as their circumstances force them to be extremely discrete in their movements around the country. Urban refugees are refugees who are exempt from the encampment policy for reasons such as health, higher education, security or undergoing interviews or processing for resettlement. They may be equipped with documentation for such purposes but according to Pavanello et al., there is lack of clarity or confusion on how or what papers to apply for. As a result, urban refugees find it difficult to access the formal employment sectors in the city. Additionally, they face police harassment, lack of access to basic services, discrimination and xenophobia (Pavanello et al. 2010). Nevertheless, urban refugees contribute to the Kenyan economy largely through the informal sector. Through proper measures of integration, Kenya may tap more gains by formalising matters regarding urban refugees.

Refugees further face the third state of immobility through the lack of resettlement opportunities. Resettlement is one of UNHCR's three durable solutions along with local integration and voluntary repatriation. Resettlement refers to the transfer of refugees from their country of asylum to a third country willing to grant them permanent residence. Local integration refers to the permanent settlement of refugees in their country of asylum and voluntary repatriation refers to the free and willing return of refugees to their country of origin. The UNHCR, as part of its mandate, proposes these three solutions to the plight of refugees. However, they all imply settlement, "either in the country of origin (repatriation), or in the neighbouring countries (local integration), or in a third country (resettlement)" (Scalettaris, 2009, p. 58). Nevertheless, resettlement is considered a more substantial and long-lasting solution to those who cannot return to their country and is the preferred solution for refugees in Kenya as local integration remains unpromising.

Kenya began the process of voluntary repatriation in 2013 after signing a Tripartite Agreement with Somalia and the UNHCR. By 2016, the government decided to speed up the process, working towards shutting down the camp. Both local and international organizations have condemned this act by the government reporting that Somalia is not safe for return and there was nothing "voluntary" about the return of the refugees. In 2016, Human Rights Watch (HRW) conducted interviews with refugees at the Dadaab camp and reported intimidation by the Government and misinformation by UNHCR. It also found that some of the refugees had fled back to Kenya for the second time after facing danger, violence and hunger in Somalia (HRW, 2016). Due to the unsettlement of violence in Somalia, it is fair to conclude that voluntary repatriation is not a solution for Somali refugees.

The GoK, with its strict encampment policy, does not seem to be moved by local integration either. This may perhaps be due to the fact that Somali

citizens and ethnic Somalis¹ alike are increasingly viewed through a security lens following several attacks on Kenya by Al Shabab, the Somalia based terrorist group. HRW reported that “Hostility and abuse of Kenya’s Somali refugee population has increased significantly since Kenyan troops entered Somalia in 2011, and after a series of deadly Al-Shabab attacks on Kenyan territory between 2011 and 2015” (HRW, 2016). Citing national security reasons such as the terrorist attacks and economic and environmental burdens the then Principal Secretary, Ministry of Interior announced the closure of the two camps in the shortest time possible, thereby putting at risk hundreds of thousands of lives. This decision was ruled unconstitutional by the High Court of Kenya (Goitom, 2017) but the government remains adamant in its decision.

Voluntary return and local integration as solutions for refugees in Kenya so far are unlikely and opportunities for resettlement prove to be limited as well. Refugees undergo lengthy, cumbersome processes before they can be resettled. At the end of the day, only less than 1% of the refugee population worldwide resettle to third countries (Hyndman & Giles, 2017, p. xiv). The rest remain fixed in camps. Trends show that resettlement statistics will continue to remain low as more and more governments continue to disfavour the resettlement of refugees into their countries. When American President Trump was sworn into office in January 2017, he signed a travel ban which halted the admission of refugees from seven Muslim countries: Iraq, Syria, Iran, Lybia, Somalia, Sudan and Yemen (AlJazeera, July 2019)

As a consequence, refugees in Kenya experience three states of immobility; immobility during flight, immobility through encampment and the lack of resettlement opportunities. Mobility restriction is implemented

¹ Ethnic Somalis are Kenyan citizens of Somali origin, to be distinguished from refugees who are Somali citizens.

both through policy and physical structures such as fenced or walled borders. The three states of immobility are significant because they show the consequences of politicizing the refugee label discussed in section 1.1 below.

1.1. Conceptual Framework

Refugee

The legal refugee status is commonly drawn from the Geneva Convention and its 1967 protocol. Not only does it define who a refugee is, but it also outlines a refugee's duties to their country of asylum as well as their rights from the host government and international community, mainly their immediate rights to shelter and protection. However, it is not the only existing definition of refugee. The 1969 OAU Refugee Convention borrows from the Convention's definition and broadens it in Article I(2) in an objective definition which includes persons fleeing external aggression, occupation, foreign domination or events seriously disturbing public order. Kenya being signatories of both instruments defines a refugee as follows:

A person shall be a statutory refugee for the purposes of this Act if such a person –

- (a) owing to a well-founded fear of being persecuted for reasons of race, religion, sex, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or
- (b) not having a nationality and being outside the country of his former habitual residence, is unable or, owing to a well-founded fear of being persecuted for any of the aforesaid reasons is unwilling, to return to it.

-Kenya Refugees Act No. 13 of 2006, Section 3 (1)

Refugeehood is a legal status that seemingly has legally granted advantages such as special protection, welfare, assistance and rights not accorded to (other) migrants. Aside from the legal status, 'refugee' is problematized in this thesis as an informal label that is highly politicized by

the state to the disadvantage of the refugee. Zetter (2007) argues that the refugee label has undergone transformations where the state, not the NGOs, play the primary role in defining the refugee. The label is politicized through public and policy discourse in order to manage migration. In the media, politicians label refugees as ‘bogus asylum seekers’ or ‘illegal migrants’ within the wider political aim to deter migrants and refugees. The legal definition of refugee is thus losing its ground and international protection is increasingly undermined in this state-managed refugee regime.

The label also refers to individuals with various identities as a homogenous mass with an “assumed set of needs (food, shelter and protection) together with a distributional apparatus” (Zetter, 1991, p.44). The label is one that dismisses individual agency and annihilates personal identities. Recognising such dangers, this thesis avoids generalisation and making assumptions e.g. of vulnerability and victimisation, and acknowledges that every individual case is different.

Mobility/Immobility

Herein, mobility refers to the physical movement of individuals in relation to their status of being refugees. That is, refugees leaving their country of origin, entering into a country of asylum, moving within the country of asylum, moving to a transit country of asylum and moving to a third country offering permanent residence. Thus, immobility refers to the temporary or permanent restriction of such movements particularly by states, but which may also be facilitated by international organizations. Therefore, in this thesis, immobility is involuntary.

Rather than *The Age of Migration* (Castles, De Hass, & Miller, 2013) that suggests a world where people move freely across borders, the contemporary world is characterized by increased immobility, particularly involuntary immobility. Migration policies are increasingly becoming restrictive with the

militarization of borders and putting up of 'visa walls' to keep people from crossing into their borders. Carling argues the same stating that "the gradual restriction of the European migration regime over the last 25 years has made involuntary immobility a very real aspect of life in Cape Verde" (Carling, 2002, p.37).

Therefore, mobility is fundamental for refugees' self-protection and self-sufficiency as freedom of movement is concomitant with other rights such as education and employment. However, mobility is presented in refugee policies as a problem. This can be seen in the analysis of Kenyan asylum law and policy discussed in Chapter Four.

Protracted Refugee Situation

This thesis studies the case of Somali refugees in Kenya as a protracted refugee situation (PRS). It follows the UNHCR definition as "one in which refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. A refugee in this situation is unable to break free from enforced reliance on external assistance" (UNHCR June 2004, p.1). Refugee situations move past the emergency stage and continue to exist while the future remains blurry. Additionally, the populations may increase or decrease over time, and do not necessarily remain the same.

"Long-lasting" according to the UNHCR means five years or longer without sign of solution in sight (2004, p.2). But, for Somali refugees in Kenya it is a period of twenty-eight years and counting. It has lasted almost three-decades and has been witnessed by multiple generations of Somalis. This has various impacts. Firstly, they remain in limbo as Kenya, Somalia and UNHCR sign a Tripartite Agreement for their return to Somalia, despite the instability and ongoing insecurity in Somalia, after which they escape Somalia a second

time. Secondly, their economic, social and psychologic needs are kept on hold as local integration is not presented as a solution, rather the Dadaab complex and Kakuma camps in segregated regions in Kenya have been their home. Last but not least, their lives may actually be at risk. “In the camps, NGO workers and refugees talk about sexual and gender-based violence, unresolved crime, child abuse, and discrimination and abuse of disabled people and minority groups” (Lindley, 2011).

Despite being forced to rely on aid and external assistance, Somali refugees still struggle to express their agency by creating markets within the camp where they trade some of their rations in order to obtain a certain level of self-sufficiency. Ben Rawlence (2016) in his ever-intriguing book *City of Thorns: Nine Lives in the World's Largest Refugee Camp* discusses narratives where, thanks to the food rations they receive; Somalis are able to sell something in order to save money to start businesses, purchase goods that are not provided as aid or collect enough dowry/bride price to marry. Consequently, Dadaab has been referred to as a “city”. This is important to show how even under the most trying circumstances of immobility, refugee agency persists.

1.2.Theoretical Framework

The ‘refugee’ label and its dynamic and highly malleable nature has been problematized in earlier studies by the likes of Mazur (1986), Zetter (1991, 2007) and Malkki (1996). It is a complicated concept as it is tied to notions which are in themselves complicated such as state interests (Loescher, 1992), security (Huysman, 2000), borders (Haddad, 2003) and sovereignty (Gibney, 2004). However, it is limiting to consider the refugee “problem” as entirely attributable to these aforementioned matters alone. The ‘refugee’ label has been found to have distinct implications on the part of the labelled such as: the loss of agency (Zetter, 1991), annihilation of identity (Malkki, 1996),

othering and alienation (Somers, 2008) and stigma (Ludwig, 2016). This thesis aims to contribute a fresh insight into this research through the angles of mobility/immobility while recognising the importance of the relationship between the 'refugee' label and mobility. Categories (labels) have real life consequences. Below, Van Hear shows the inter-linkage between labelling and immobility:

People's embrace of the category may be positive for them in the access it may give them to resources; on the other hand, that embrace may be negative in that it may tend to 'fix' people and undermine means of livelihood that depend on mobility. (Van Hear, 2003, p.14)

Drawing from the work of Geoff Wood, labels are "the way in which people, conceived as objects of policy are defined in convenient images" while labelling is "a way of referring to the process by which policy agendas are established" (1985, p. 1). Labelling, therefore, is central to all development and policy discourse, and labels are the tools which aid in this process. Labels as a bureaucratic tool can have certain implications on the labelled. These are discussed in the existing literature as loss of agency, annihilation of identity, alienation and othering, and stigma. Fundamentally, this thesis introduced the 'refugee' label as one that has an impact on the mobility of refugees; first by granting it to them and later robbing it of them. This is facilitated by state laws and policies such as tight asylum laws, border controls and encampment policies examined in Chapter Four.

This thesis also draws on the early works of Zetter (1985, 1988, 1991, and 2007) on refugees and labelling. Zetter argues that political/power relations are expressed in the formation of the 'refugee' label which is imposed on the labelled described as the "non-participatory nature and powerlessness of refugees in these processes" (1991, 39). Given its dynamic and malleable nature, and due to different interests and practices of the state, the definition of 'refugee' has multiple interpretations and "like currencies, they have

fluctuating values and exchange rates” (1991, p. 40). In this thesis, ‘refugee’ is operationalised as a bureaucratic tool for the government to contain the mobility of Somali refugees in Kenya. As such, it asks the questions:

How does the ‘refugee’ label affect the mobility of Somali refugees in Kenya? And with what consequences?

Further, this thesis theoretically resonates with Pierre Bourdieu’s *Symbolic Power* (1991). Bourdieu asserts that social relations are not only symbolic interactions but also relations of symbolic power in which power relations between the labeller and the labelled are actualised. Symbolic power entails the imposition of categories of thought and perception upon dominated social agents who begin observing and evaluating the world in those categories, without being aware of the change in their perspectives, then perceive the existing social order as just. This should not be mistaken as refugees having agency. Rather, it should be viewed as similar to the “false consciousness” of Friedrich Engels as they are not aware of their change in perspective. The result is a social structure serving the interests of the dominating group. Thus, symbolic power is more powerful than physical power because it is embedded in the modes of action and cognition of individuals, and imposes the spectre of legitimacy of the social order.

1.3 Methodology

To support the analysis of the impact of labelling on the mobility of Somali refugees in Kenya, it is befitting that a critical discourse and policy analysis is conducted. By studying the policies and practices of the Government of Kenya (GoK) and the United Nations High Commission for Refugees (UNHCR) with regard to Somali refugees in Kenya, it explores how the informal ‘refugee’ label is used by the media, politicians, regional and international communities to justify the subsequent actions taken. It looks at who uses it, how it is used, why it is used, what it represents and whether

there has been a change in discourse in the years since Kenya gained its independence in 1963. It also reviews various research papers, policy documents and media reports, the Kenya Refugee Act and other local legal provisions, the 1951 Geneva Convention and its 1961 Protocol, the 1969 AU Refugee Convention and other international instruments. News articles are used in order to capture the kind of policy and political discourse that is not found in formal or academic sources. Finally, this study relies on research and interviews conducted with refugees borrowed from books, academic articles, and reports from international organizations among other sources.

The chapters that follow attempt to analyse the impact of the 'refugee' label as a tool that has been politicized in state policy to restrict the mobility of persons who essentially have their right to freedom guaranteed in international public law. Chapter Two reviews two dominant approaches in mobility literature: the new mobility paradigm and regimes of mobility, and an emerging approach: the aspiration-capability framework. Considering the role of the state in governing mobility, this thesis is situated in the mobility regimes approach and aims to contribute to the literature by analysing refugee mobility at three levels, through three distinct eras of policy in the subsequent chapters. Chapter Three examines immobility in the three levels; immobility during flight, immobility during encampment and immobility due to lack of resettlement opportunities. Here, focus is on the case of Somali refugees in Kenya where mobility is presented in the refugee regime as a problem and is consequently restricted. Finally, Chapter Four examines the development of asylum law and policy in three ages; the golden age 1963-1990, the age of encampment 1991-2006 and the age of deterrence 2007-2018. Through a critical discourse and policy analysis, it follows the development of an increasingly restrictive regime from a period of free movement in the 1960s to encampment in the 1990s and finally to securitization and deterrence in the 2000s.

CHAPTER TWO

LITERATURE REVIEW

Conflict within and between states produces mass movement of people in search of refuge. At the same time, it produces non-movement which more often than not, is forced or involuntary. Involuntary immobility falls upon specific categories of people which include internally displaced persons, asylees, refugees and stateless persons and not necessarily on students, businessmen or tourists. Therefore, “mobility has become an important stratifying factor” (Carling 2002, p.5). In order to explain this, the ‘regimes of mobility’ framework emerged explaining that there are “social fields of differential power” that “facilitate and legitimate differential mobility” (Salazar & Schiller 2014, p.iii).

What was initially celebrated in the postmodern era of a globalized world is now seen as a threat to a state’s political, economic and border security. Transnational migration as a means for migrants to create a sustainable economic lifestyle for their families, or to create social networks for their careers is hallowed upon, especially from the upper classes of society. When it comes to refugees, however, the narrative takes a different course. Salazar and Schiller (2014) attribute the shift from a celebrated mobility to the normalisation and necessitation of immobility for political security to the current global economic crisis.

Aside from the regimes of mobility perspective and the mobility turn, the ‘aspiration-capability’ framework recently emerged in mobility literature. The all-encompassing ‘mobility turn’ appears to naturalise mobility as the norm. On the contrary, Salazar and Schiller cite a dynamic relationship and

the interconnectedness of mobility and sedentarism and warn against normalising one over the other. The aspiration-capability framework, on the other hand, in turn criticizes regimes of mobility scholars for portraying immobility primarily as involuntary yet there are cases of voluntary mobility.

Three main approaches in mobility literature are reviewed and intersected with refugee studies. The mobility regimes approach best explains the immobility of Somali refugees in Kenya for the following reasons; firstly, there is not a single global regime that governs mobility. In addition to the Geneva Convention and the OAU Refugee Convention, there are national regimes that govern the mobility of refugees within a nation-state framework. Secondly, these regimes intersect with each other. Kenya is party to both international regimes and applies their definitions of 'refugee' in the 2006 Kenya Refugee Act. In addition, Kenya implements asylum laws and policies, discussed in Chapter Four, which oppose the provisions of the international instruments. Finally, the mobility regimes criticize the romanticization of mobility as liberating. For the case of Somali refugees in Kenya, (im)mobility is imposed on them in terms of involuntary mobility leaving Somalia and involuntary immobility in Kenya.

2.1 The mobility turn

The mobility turn, also referred to as the "new mobilities paradigm", emerged in the 1990s as a result of the increasing movement of people, objects, capital, data and ideas. According to Sheller and Urry, "these diverse yet intersecting mobilities have many consequences for different peoples and places that are located in the fast and slow lanes across the globe" (2006, p.207). The word 'turn' refers to the transformation of social science from "a-mobile" into understanding the different levels and patterns of movement and their importance on society. The mobility turn, therefore, criticizes the sedentarist view of normalising people as static subjects tied to place or territory and of

mobile persons such as nomads as placeless and abnormal (Ibid., p.208). While travel and movement were always present in society, the increased importance of movement today is the result of developing technologies. These new technologies “enhance the mobility of some people and places *and* heighten the immobility of others” (Ibid. p.207). The new paradigm therefore puts mobility at centre stage.

The ‘new mobilities paradigm’ can be mistaken to mean that movement or mobility are a new phenomenon. As Tim Cresswell (2010, p.18) warns:

The second problem concerns the different ways that ‘new mobilities’ can be read. If the emphasis is on the word ‘new’ then this suggests an old mobilities paradigm. If the emphasis is on the word ‘mobilities’ then this suggests that old paradigms were about the immobile or sedentary. The second of these options seems untenable because movements of one kind or another have been at the heart of all kinds of social science (and particularly geography) since their inception.

Both movement and non-movement are recognised for their historical role in social, political and economic life. But, they have undergone transformations and new forms of movement have formed due to the progression of technology (such as the internet) and through new forms of governance. That being said, what is new is the emphasis of movement as central to social, political and economic life rather than movement as consequences of it. Additionally, it uses the ‘mobilities’ as a plural as it encompasses all *forms* of movement of people, things and ideas in a multi-disciplinary approach.

Certainly, the (im)mobility of refugees is central to international politics today. The increased movement of asylum seekers as a result of increased conflict has in turn led to the increased discourse of deterrence policies. Consequently, the mobility of refugees is seen as a security threat and is increasingly being restricted. As the new mobilities paradigm seeks to replace sedentarism with mobility as the new norm, it is not the case for refugees. Due to its limitations, the ‘regimes of mobility’ approach emerged

challenging the naturalisation of movement. Rather, it recognises the dynamic relationship between sedentarism and mobility in a non-binary approach.

2.2 Regimes of mobility

The contemporary world is in such a way that both movement and non-movement exist at the same time. While tourists, businesspersons and students are increasingly on the move, refugees have their mobility restricted. This is the cause of national and international regulations or *regimes* that govern the mobility of people. The mobility turn recognises that there are several forms of mobility which intersect with each other. But, mobility regimes introduces the concept of power in shaping these mobilities. In addition, mobility regimes proposes an approach to mobility that “neither normalises fixed relationships between people and territory nor naturalises movement” (Salazar and Schiller 2014, p.6) unlike the mobility turn which attempts to replace sedentarism with mobility. Rather, mobility regimes recognises the dynamic between sedentariness and mobility in a non-binary approach.

The ‘regimes of mobility’ defines both movement, or the lack thereof, in a manner that recognises the role of the state and international regulations on individual mobility and thus, does not ignore national borders. Salazar and Schiller argue that there are several *regimes* of mobility that intersect with each other that “normalise the movements of some travellers while criminalizing and entrapping the ventures of others” (2014, p.7). Therefore, Salazar and Schiller propose a new approach to mobility (i) which is non-binary (ii) that does not prioritize a form of mobility over others. For example, the tendency of migration studies to focus on international migration more than internal

migration (iii) that does not fall into the trap of methodological nationalism² neither does it ignore the presence of national borders and (iv) which recognises the presence of a power geometry in the mobility of individuals.

‘Regime’ echoes governance. And mobility regimes represent “sets of principles, norms and rules that fundamentally regulate the movement of people, objects, capital and data” (Witzgall, Vogl & Kesselring, 2016, p.20). These are set in the 1951 UN Convention, the practices of the UNHCR and the policies of states and may intersect with each other at any point in time. Ever since mobility regimes developed, the way in which people relate to distance, space and time changed. Mobility became an experience that is both politically and socially governed and is “by no means a natural or inevitable development. Rather, they are the outcome of a multitude of collective and individual decisions made in politics and everyday life” (Ibid. p.18). Despite the clashes in literature on how to approach mobility, there is a general agreement. That is: there are national and international regulations that sanction the mobility of some groups of people, but at the same time limit not only the movement, but also opportunities and choices to move. Thus, connections between stasis and mobility develop.

Thus, this thesis leans towards the ‘regimes of mobility’ approach more than the ‘new mobilities paradigm’. Despite the claims of a mobilized and globalized world, movement across the border from Somalia to Kenya has become even more restricted over the years. As a matter of fact, GoK’s intentions to erect a wall along the border demonstrate the persistent relevance of the national boundaries, and how borders do in fact affect the mobility of people and goods. The Kenya-Somalia border, therefore, is one of

² “Methodological nationalism is an ideological orientation that approaches the study of social and historical processes as if they were contained within the borders of individual nation-states” (Salazar and Schiller 2014, 3).

the examples though which mobility and stasis become interconnected. Hence the idea of borders and nations remain relevant as they shape the policies that govern mobility.

Furthermore, power asymmetry between the labeller and the labelled is one of the main arguments of this thesis. While it is the decision of the refugee to move to a country of asylum or to a third country, his/her ability to do so lies upon the governments involved, since it is the government (usually) that grants the refugee status. Therefore, the government holds the power to decide who may or may not benefit from mobility. This is an idea that has been neglected in earlier studies that tend to romanticize mobility, equating it with freedom, liberation and power; for example, the nomad, for his ability to evade power (Deleuze & Guattari, 1987). This thesis aims to contribute to the literature by showing how the mobility of Somali refugees into Kenya has actually cost them their freedom, among other vitalities.

The paradox of refugees as mobile individuals turned immobile shows how one must keep their reservations regarding mobility as freedom. It explains that mobility can also constrain, coerce and repress. Refugees and asylees are restricted to settling in camps or to remain in specific cities. For the Somali refugees in Kenya, this has been the case for close to three decades now. As for urban refugees and the *sans papier*, movement may not necessarily be voluntary, as they are forced to move around to avoid getting caught. They are also forced to be inconspicuous in their movements, such as moving at odd times of the night. In these cases, mobility constrains rather than frees.

2.3 The aspiration-capability framework

Migration has long been studied in terms of “drivers” or “push and pull factors” that lead people to migrate. The wide literature in migration studies, however, has failed to account for the different forms of (im)mobility

present today. This is because they tend to overlook factors that may restrict such movement, what Schewel calls the “mobility bias” (2019). Further developing Carling’s (2002) aspiration/ability model, Schewel proposes an approach to mobility that includes the “structural forces that constrain or resist migration in and between origin and destination areas, as well as the aspirations of actors who respond to these same forces by *staying*” (Schewel 2019). Therefore, mobility, or the lack thereof, is explained as a combination of two factors: the aspiration to migrate and the capability to migrate. When there is both aspiration and capability to migrate it is called *mobility*. When there is capability but no aspiration to migrate, it is called *voluntary immobility*. When there is an aspiration to migrate but no capability, it is *involuntary immobility*. And when there is neither the aspiration nor the capability, it is called *acquiescent mobility* as seen in the frame below:

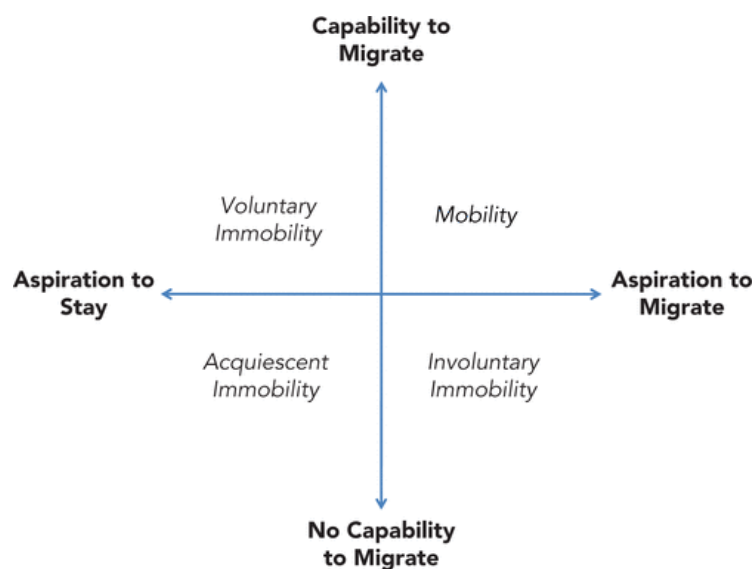


Fig. 1: Categories of (im)mobility as suggested by the aspiration-capability framework (Schewel 2019)

Therefore, immobility is explained with two reasons; the lack of capability to move, or the preference to stay. Lack of capability can be due to political/legal, economic, social or physical constraints. These constraints do not explain voluntary or acquiescent immobility (Schewel 2019, p.11), but the case of Somalis in Kenya fits well into the involuntary immobility slot due to political and physical constraints. Political constraints include the encampment law which forbids the movement of refugees outside of camps. Physical constraints include the guarded fence around the Dadaab complex to implement the encampment law. The main aspiration of refugees to leave the camp is the need for self-reliance. Food and aid cuts have led many refugees into debts in attempts to feed their families. Security is another main factor that causes refugees to aspire to leave as Dadaab is prone to attacks by the Al Shabab.

In conclusion, the aspiration-capability framework is an important analytical tool that aids in understanding that- not only are there drivers that lead people to move, but there are also constraints that prevent people from doing so. Immobility is not caused by the lack of these drivers, but by the presence of structural and physical forces that constrain such movement. That forms the difference between voluntary immobility and involuntary immobility. Mobility is a complex phenomenon with varying determinants. Nevertheless, mobility regimes explain best the case of Somali refugees in Kenya.

CHAPTER THREE

THE THREE STATES OF IMMOBILITY EXPERIENCED BY SOMALI REFUGEES IN KENYA

If mobility is movement infixed with meaning (Cresswell, 2006, p.2), then immobility is more than a state of non-movement or motionlessness. In this thesis, immobility is conceptualized as non-movement that consequently denies individuals the exercise of agency and that distorts identity. As introduced, refugee immobility is a counter-intuitive phenomenon due to the necessity of refugees to leave or be outside their country of origin in order to obtain that status. Additionally, the choice of movement is never left to the individuals themselves. In this chapter, the three states of immobility within the mobility regimes framework are exhibited as suppression of flight, encampment and the lack of resettlement opportunities. They are the result of the power asymmetry between refugees and policy makers in the protracted refugee situation of Somalis in Kenya

The international refugee regime shaped by the aftermath of World War II is centred on protection; a short-term approach that proves incompetent in the contemporary world and particularly in protracted refugee situations. While protection is vital for refugees, solutions beyond the emergency phase must be sought. Despite its potential as an effective long-term solution, mobility in refugee policy is considered incongruous and is completely neglected as settlement is the only solution proposed for refugee progress. "In fact, all three durable solutions imply settlement, either in the country of origin (repatriation), or in the neighbouring countries (local integration), or in a third country (resettlement)" (Scalettaris, 2009, p.58).

Furthermore, refugees' movements outside the three solutions such as secondary or onward movements, or moving to the city in search of their own solutions is criminalized. The question thus arises, why is immobility the policy practiced, yet mobility is the solution?

3.1 Suppression of flight

The starting point in reference for refugee mobility is flight; as flight is intrinsic to being a refugee. A person, on account of fear of persecution, is forced to leave his country of origin, or being out of his country, is unable to return. Flight is the primary movement to seek asylum, most commonly in the neighbouring country. However, the conditions of asylum in the first country may not always be satisfactory. As a result, refugees may seek to move to a third country to seek asylum outside of a resettlement programme. This is referred to as onward or secondary movement. Onward movements are more practised in PRS due to the lack of sustainable solutions.

The process of flight is not at all straightforward or linear. Rather it is a complex movement from a country of violence and persecution, to one of supposed safety. When one does not find safety in the first country of asylum, s/he may choose to seek asylum in another. According to the UNHCR,

In situations where refugees are confronted with serious protection problems in their country of asylum, including, for example, threats to their life and liberty and restrictions on their freedom of movement, such onward movements can legitimately be considered as part of the process of flight and search for asylum. When this is not the case, and refugees move on to seek a better standard of living, or to be reunited with their compatriots, such movements may be better understood as a form of international migration. (UNHCR Rev. 1 2007).

As a result, there's a thin line here between flight and international migration. It appears, however, that countries have abandoned entirely the idea of onward movements in search for asylum as onward movements remain the premise of migration policy and not within the refugee regime (Scalettaris,

2009). In this vein, refugees seeking asylum through onward movements are denied entry and asylum, and are regarded instead as labour migrants or queue-jumpers.

The Refugee Convention, despite its limitations, recognises the rights of individuals to flee. In actuality, the suppression of flight is mainly produced by national regimes. Practices such as tight-asylum policies, closing borders, push-backs and maritime interdiction deny refugees safe means to claim asylum. They make flight either difficult or impossible when they force asylees to seek assistance from human traffickers or smugglers through dangerous routes. States have shown their commitment to the international refugee convention in rhetoric, but in practice deny asylum and detain asylum seekers on account of national security. Therefore, in agreement with the mobility regimes framework, two points can be made. Firstly, there is not a single global regime governing refugee mobility. Rather, there are several regimes at international and national level. Secondly, we can see the intersectioning of the regimes which agree in theory, through the ratification of conventions, but differ in practice. Here, the Geneva Convention and the OAU Convention normalise mobility with the right to freedom of movement, while the national regimes suppress mobility with *non-entree* policies.

According to the Geneva Convention Article 31(1), refugees in flight shall not be penalized for unauthorized entry or presence provided they present themselves to the authority in good time and show good cause for their actions. Therefore, in essence, there are no illegal movements for refugees in flight. Additionally, the UNHCR legitimizes onward movements in search of asylum and disallowing such movements also, does not make them illegal. All movements are legal, but they are not necessarily safe. The suppression of flight, therefore, does not make refugee movements illegal, only unsafe. So does the detention of asylum applicants as the same applies to unauthorized

presence. Why then do states remain committed to the international convention while their actions are completely opposite to its provisions?

Suppression of flight is the practice of the *non-entrée* regime, the current regime that began in 1989 according to Phil Orchard's table of the four regimes³. It is spearheaded by the main actors of the developed world, the United States, United Kingdom and the European Union. Kenya has also taken cue, not through interdiction at sea or detention, but through its decision to build a wall along the Kenya-Somalia border, the involuntary returns of refugees to Somalia, and the non-registration of new arrivals or non-processing of asylum claims. These *non-entrée* policies affirm the role of the state in that mobility is determined more by state policy than by the decisions of the individuals.

Closing the border between Kenya and Somalia and building a wall along it explicitly denies Somalis their right to flight and increases the chances of their persecution by the Al Shabab who attack asylees on the borders of Kenya and Ethiopia. While the High Court of Kenya deemed the decision to close the camps unconstitutional, the government continues to issue threats to close the camps. Threats to shut down camps have forced refugees to return to Somalia, back to the situation they tried to flee from. Despite the involuntary nature of return and the precarious nature of conflict in Somalia, more than 82,000 Somalis from Dadaab camp alone have been returned since 2014 (VOA March, 2019). Furthermore, the refusal to process new asylum claims and the denial of refugee status not only undermine protection, but also suppress flight and onward movement in search for asylum. Amnesty International reported that

It is becoming increasingly apparent that the Refugee Affairs Secretariat, which is meant to register refugees, is only concerned with

³ Orchard identifies four regimes that have governed refugee affairs. They are; "Laissez-Faire" (1789–1914), "Attempted Internationalization" (1921–39), "Effective Internationalization" (1951–89), and "Non-Entrée" (1989–present). (Orchard, 2014)

reducing their numbers in Dadaab. It is not registering new arrivals and has cut back its operation in the camp, in blatant contravention of last year's court order (Amnesty International, February 2018).

Without legal status and documents, Somalis turn to smugglers in dangerous attempts to cross the Gulf of Aden to Yemen or the United Arab Emirates, while others end up detained and enslaved in Libya while *en route* to Europe (TRT, March 2019).

The case of Alan Kurdi, the three-year-old, whose body was washed up on the shore of the Mediterranean on September 2, 2015, is a case of suppression of flight. Alan and his family were supposedly not granted refugee status in Turkey despite having fled their hometown, Kobani, twice following the events of the civil war in Syria and attacks by Islamic State of Iraq and Syria (ISIS). Resorting then to the dangerous sea passage to the Greek island of Kos, Alan's father lost his wife and his two children. Apparently, Kurdi's family made several applications to the Canadian immigration department but their applications were rejected "in part because they were unable to obtain formal refugee status or an exit visa from the Turkish authorities" (LA Times, September 2015). In this case, Kurdi's family was denied mobility both during flight and onward movement; the former, by not being granted asylum in Turkey and being forced to return to Kobani after which they had to flee again and the latter, by being denied asylum by Canada forcing them to resort to irregular means.

3.2 Encampment

In *Un Monde De Camps*, the authors write that approximately twelve million refugees and displaced persons reside in over 1500 camps all over the world (Agier & Lecadet, 2014). Agier and Lecadet adds that camps of the global south and detention centres of the global north are tools of government of the "undesirables", where the camp is the dominant paradigm for keeping

away those who are not needed in the globalized world. Camps exclude, isolate and immobilize. From a similar yet different vantage point, Rose Jaji speaks of refugees as existing outside the “old trinity of the state, the nation (birth) and land” while Kenya’s camps “function as a form of social technology designed to curb the potential threat posed by refugees to the order created around nation-state unit of organizing, governing, controlling and containing populations” (Jaji, 2011, p.221-222). The structures, locations and administration of the camps indeed show how refugees in Kenya are excluded, immobilized and governed as persons outside Kenya’s nation-state *normale*, and are contained in camps in order to maintain it. However, Bourdieu’s concept of symbolic power is used in this thesis rather than Foucault’s social technology, as Jaji does, to go beyond “rules, techniques and physical structures” (Ibid. p.223), further to the embeddedness of these actions and structures into the lives of refugees in Kenya, eventually imposing the power hierarchy as the legitimate social order.

Encampment has been the practice of the government and UNHCR in Kenya ever since the first major influx of Somalis to Kenya in 1991. In March 2014, the government reaffirmed its encampment policy by ordering all (urban, self-settled) refugees to move to refugee camps. Citing security concerns resulting from the presence of refugees and asylum seekers in urban areas. The directive demanded that (a) all refugees residing outside the designated refugee camps must return to the camps immediately, (b) all Kenyans must report refugees and “illegal” migrants they encounter outside of camps; and (c) an additional five hundred law enforcement officers were going to be deployed mainly to Nairobi and Mombasa “to enhance security and surveillance”. (Goitom 2016).



Fig.2 Location and population of refugee camps in Kenya (Source: International Business Times, 2017)

Dadaab and Kakuma are located in the hot semi-arid regions in North-Eastern Province and Turkana County respectively, in the margins and far from the main cities. The Dadaab complex, composed of Hagadera, Dagaheley, Ifo I and Ifo II camps, was established in 1991 closer to the Somali border to accommodate refugees fleeing Somalia. The surrounding population in North Eastern Province are ethnic Somalis. Kakuma camp, located in the poorest county in Kenya, was established in 1992 to accommodate the fleeing lost boys of Sudan but has since hosted refugees from Burundi, Democratic Republic of Congo (DRC), Ethiopia, Rwanda,

Uganda and some Somalis who relocated there. The camps are made of temporary or semi-permanent structures made of tents, plastic sheets, mud bricks or wood. Additionally, proximity to home country borders reflects the favour of repatriation as the lasting solution by the GoK.

The encampment policy and discourse by the government and the UNHCR disregard the mobile livelihoods of the refugees they host and the importance of mobility for their self-reliance. From sea men, pilgrims, pastoralists to traders, “mobility appears to have been a quintessential part of life in the Somali-speaking region for many centuries” (Kleist, 2004, p.2). But in Kenya, refugees are located in the semi-arid less agriculturally-productive regions. Additionally, they are not allowed to conduct any agricultural activities outside the camps (Montclos & Kagwanja, 2000, p.207). This leaves refugees dependent on food and non-food rations they receive from humanitarian organizations. Challenging this agency-lacking state of affairs, refugees trade portions of their rations both with the refugee and local population to create a market-like structure within the camps and to gain access to products not provided through aid.

Mobility is also an important self-protection strategy for “conflict-displaced” populations as discussed by Horst and Nur, yet it is neglected in the humanitarian assistance of international organizations. In the article *Governing Mobility through Humanitarianism in Somalia*, Horst and Nur (2016) describe how humanitarian actors get caught up in governing the mobility of displaced Somalis by withdrawing aid to the Dadaab camp and increasing funding for the repatriation programme following the cue of the government. This forced return to volatile spaces restrict mobility of people like 24-year-old Hassan who wishes to build a livelihood through education or employment but risks being recruited to the military for his youth. For Hassan who fled the war to Kenya, and then fled the “situation in Dadaab” back to Somalia, mobility is a self-protection strategy (Ibid. p.551). The abandoning of the

refugee camp by Hassan is his reaction towards mobility governance and shows how it leaves people feeling paralysed in such a way that conflict becomes more tolerable than immobility.

Those who remain in camps must obtain a refugee identity card, are subject to the laws in force in Kenya and are entitled to the rights and duties provided in the international conventions to which Kenya is party such as the right to employment, movement, property ownership and self-sufficiency. While social integration is out of the question as they are required to live separate from society, refugees have some form of legal and economic integration on paper. However, the practice on the ground is different as the Refugee Consortium of Kenya (RCK) reported that except from a few cases, the government does not issue work permits to refugees (RCK, 2012). Refugees are additionally denied self-sufficiency with the restrictions on movement outside the camps.

In the case that a refugee wishes to travel outside the camps, the Refugee Act section 35 describes the process as follows:

1. An asylum seeker or refugee may apply to the Commissioner, through the refugee camp officer, for **permission** to travel outside a designated area.
2. An application under sub regulation (1) shall be in Form 10 set out in the Schedule.
3. The Commissioner shall issue a movement pass to an asylum seeker who has a **valid reason** to travel outside a designated area.
4. Where the Commissioner **refuses** to grant a movement pass, he shall give reasons in writing for refusing to grant an application made under the sub-regulation (1).

The language in the Refugee Act is evidence of the subtle ways in which power and social order is maintained by the GoK. Aside from 'refugee', words like 'permission', 'valid reason' and 'refuses' are a part of the linguistic resource the dominant group uses to reiterate its position in the social structure, without using actual physical force or physical symbols of power. In this case, language is not merely a method of communication, but also a mechanism of

power used to restrict the movement of persons who essentially have the right and freedom of movement.

Urban refugees also experience the second state of immobility when they are forced to be discreet in their movement to avoid getting caught. Despite the encampment policy, some refugees still manage to live outside the camps. In September 2017, The UNHCR reported that around 64,000 refugees live in Nairobi. A majority of Somali refugees live in Eastleigh, a residential and economic hub predominantly inhabited by ethnic Somalis. Due to the criminalization of urban self-settlement of refugees in Kenya, refugees can only participate in the informal sector of the economy. Additionally, they do not have access to services such as security, legal, health and education due to lack of documentation. They become susceptible to harassment and detention by police who take advantage of their situation to demand bribes. Finally, they are excluded from the resettlement programme.

Bourdieu's symbolic power requires both the dominator and the dominated to accept their positions in the social hierarchy. 'Refugee' and the language associated with the label are imposed into the refugees' perception such that they begin observing and evaluating the world in those categories. Without being aware of the change in their perspective, they then perceive the existing social order as just. Indeed, most of the refugees can do nothing but be grateful for the basic support they receive, as they are expected to be by the host community. As the chairman of the returnees in Kismayo, Somalia said regarding the return of refugees "To the Kenyan government, to be honest, we are thankful. We are requesting as your brothers and your neighbours, that you have taken care of for over 20 years, you don't end an old relationship in a shameful way" (VOA, October 2016). Somalis are also known to be very resilient people, and that has played a role in their acquiescence of the encampment order.

Through the policy and practice of encampment, the government has restricted the mobility of refugees while in their country of asylum. Despite recognising their right to freedom of movement, GoK uses language to manoeuvre its way around its obligations. Additionally, it manifests its symbolic power through language and labels to restrict movement.

3.3 Lack of resettlement opportunities

Resettlement is another form of movement directly associated with refugees. UNHCR describes resettlement as the process where refugees are transferred from their first country of asylum to a third country which has agreed to submit them. The UNHCR identifies refugees for resettlement and submits their files for consideration in different categories. The main categories for resettlement are 1) legal and/or physical protection needs 2) lack of foreseeable alternative durable solutions 3) survivor of violence and/or torture 4) women and girls at risk 5) medical needs 6) children and adolescents at risk and 7) family reunification, which is the category that holds the least. However, there is a huge contrast between the number of submissions and the number of departures where the number of those who are eventually resettled is way smaller. Somalis in Kenya face the third state of immobility through this lack of resettlement opportunities.

Refugees are denied resettlement opportunities through non-registration. In order to qualify for the resettlement programme, one must have a refugee status. The refusal of the government to process incoming asylum claims and grant new comers refugee status in order to reduce the number of refugees in Kenya not only suppresses flight but also denies refugees their opportunity to resettlement. . Urban refugees are also denied resettlement opportunities as self-settlement is criminalized. In order to access the resettlement programme, one must present him/her-self in the camps. Their lack of documentation also eliminates this opportunity for them.

Recently, the government made changes to the Refugee Act through the 2014 amendment that sought to reduce the number of refugees and asylum seekers stating that “The number of refugees and asylum seekers permitted to stay in Kenya shall not exceed one hundred and fifty thousand persons” (The Security Laws (Amendment) Act No.19, 2014). Fortunately, the High Court of Kenya deemed this provision unconstitutional and therefore, null and void. The Court ruled that placing a cap on the number of refugees and asylum seekers would result in the expulsion of hundreds of thousands of refugees and “violate the principle of *non refoulement*, which is part of the law of Kenya and is underpinned by the Constitution” (Goitom, 2017).

Kenya is one of the top five refugee hosting countries and is home to the world’s largest refugee camp: Dadaab. In 2018, there were 471,724 refugees and asylum seekers in Kenya. 10,109 were repatriated and 1,298 were resettled. This means that less than 0.3% of refugees from all origins were resettled (UNHCR, 2018). Only a few countries are listed as resettlement countries and have additional criteria for resettlement. Nevertheless, the government favours and pushes for repatriation over resettlement, thus refugees’ movement to third countries is contained.

Furthermore, the travel ban by President Trump in January 2017 has significantly affected the resettlement of refugees. The ban which halted the admission of refugees from seven Muslim countries affected 26,000 Somali refugees in Kenya who were set to travel to the US in 2017. One of the victims, 30-year-old Binto Anshur who has been living in Dadaab for 28 years was scheduled to travel before the ban (AlJazeera, July 2019). These are some of the factors that hinder the movement of refugees to third countries. Furthermore, the threat to close down the refugee camps and return all refugees to their countries is a double-edged sword. Not only does it return people to violence-prone and volatile spaces, but it also decreases refugees’ chances to resettlement.

3.4 Immobility and the securitization of asylum

How do states manoeuvre around refugees' right to freedom of movement and therefore, impose the three states of immobility upon them? The answer is securitization of migration and asylum. Securitization refers to the portrayal of an issue as a security threat thereby legitimizing all extraordinary measures taken against it. The issue, herein refugee mobility, does not necessarily have to be an actual threat to security, but is socially constructed and presented to an audience as so through a "speech act" (Buzan, Waever, & deWilde, 1998). This way, by prioritizing the issue as a security threat, the state "can obtain permission to override rules that would otherwise bind it" (Ibid. p.26). Additionally, the securitization of an issue is dependent on the audience's acceptance of the issue as a threat. *Speech acts*, an aspect of language that leads to an action on the basis of authority, is employed in order to gain the audience's acceptance and to successfully securitize an issue. The securitization theory was further developed by Balzacq (2010) where actual practices, in addition to speech acts, constitute the means through which issues become securitized. According to Balzacq, "security practices are enacted, primarily, through policy tools" thereby giving importance, not only to discourse, but also to policy (2010, p.15).

In the globalised era, the world saw a promotion of open borders, multinational cooperation and heightened mobility. Nonetheless, the discourse quickly changed; the very same things became associated with fear, societal danger and threat to cultural identity, more so in the western societies. As "the fear is mainly about the different, the alien, the undocumented migrant, the refugee, the Muslim, the "non-European," the Hispanic", (Ceyhan & Tsoukala, 2002, p. 22) the securitization of migration became apparent. As a result, securitarian policies against migrants, stemming from this discourse of fear, danger and threat to culture and identity became underway in the 1990s, particularly in Europe.

In the same period, Kenya witnessed mass influxes of refugees from Somalia, the first largest being in 1991. Kenya implemented a formal encampment policy aimed at restricting refugee mobility, a move contrary to international law, through the securitization of the 'refugee' label. Different from other migrants, Somali refugees in particular are portrayed as a threat to national order and security. The encampment policy became formalized in the Kenya Refugee Act of 2006. Kenya has witnessed a number of deadly attacks by Al Shabab, a terrorist group based in Somalia. The Al Shabab also launch attacks within Somalia, causing many Somalis to flee their home. However, the GoK claim the inability to tell apart between Somali refugees and Al Shabab terrorists, claiming that terrorists disguise themselves as refugees in order to enter the country and conduct their attacks. Additionally, the GoK claims that the camps have become hotbeds for the recruitment of members of the Al Shabab.

By securitizing the refugee agenda through public discourse, the government has managed to gain *some* acceptance from the audience as a study shows that Kenya ranks 23rd out of 27 countries willing to host refugees (O'Collaghan and Sturge, 2008, p.15). Consequently, the government pushes for its securitarian and deterrent policies which have been discussed as closing borders, shutting down the camps, returning refugees and non-registration of asylum seekers thus causing Somali refugees in Kenya to experience the three states of immobility. There has been criticism to such policies from the international community, but the High Court of Kenya has been the most successful in stopping some of these policies in their track.

The following chapter discusses the development of such policies since Kenya gained its independence from Britain in 1963, through to 2018 looking at the causes of the policies and their effects on the refugees.

CHAPTER FOUR

THE DEVELOPMENT OF ASYLUM LAW AND POLICY IN KENYA

The development of asylum law in Kenya, albeit slow in progress, is a significant one. Prior to 2006, Kenya did not have a specific national legal framework for asylum. Instead, the government relied majorly on The Geneva Convention, the 1969 OAU Convention, the 1967 Kenya Immigration Act and the 1973 Aliens Restriction Act, besides other international treaties to which Kenya is party. It was only in 2006 when the government adopted its first Kenya Refugees Act. As laws evolve, so do policies, even though they may not always appear to go hand in hand. In order to provide the context within which the refugee label transformed into a policy tool through which relations of symbolic power are actualised, this section discusses the evolution of asylum law and policy in Kenya in three key phases; (i) the golden age between 1963-1990 which saw a period of the more liberal policies of Kenya as a nascent republic, (ii) the encampment policy age between 1991-2006 which began with the influx of refugees leading to a strict policy of encampment and (iv) the deterrence age between 2007-2018 which is characterized by the securitization of refugee policy.

These three eras are identified for two main reasons. Firstly, they are not unique to Kenya and parallel patterns can be observed with the global refugee regime allowing for comparison. For example, for the post-WWII refugees, the Nansen passport facilitated movement within and across borders and encouraged self-reliance. Later, the 1951 Convention limits cross-border movements to repatriation or resettlement with focus on care and protection rather than self-reliance. Currently, many countries practice policies of deterrence such as detention, border closure and forced return. Secondly,

these phases are created when certain events lead to a policy change by the government which then have effects that persist until other causes lead to a new change in policy creating these three eras of asylum law and policy. This section, therefore, discusses these eras in terms of what they entail, what causes the policy changes and consequently, what the effects of the new policies are.

Fundamentally, these eras affirm the role of the state in governing mobility. Regarding the (im)mobility of Somali refugees in Kenya, the government is the primary, if not the sole determiner. In the golden era, we see refugees fleeing to Kenya without barriers and moving freely within the country. In the encampment era, refugees' movement within the country becomes increasingly restricted while resettlement opportunities are made available to them. In the deterrence era, the state increases its governance of refugee mobility suppressing flight through *non-entrée* policies, restricting mobility within the country by formalising the encampment policy and decreasing the opportunities for resettlement by securitizing refugee policy. Additionally, this chapter expands the mobility regimes literature by analysing the development of the refugee regime in Kenya throughout the three eras as the 'refugee' label becomes increasingly politicized.

4.1 The Golden Age 1963 – 1990

The Golden Age is characterized by a *laissez-faire* policy towards asylum seekers. Soon after Kenya became a republic, refugees were provided with assistance, they had *de facto* freedom of movement and access to the labour market. In this period, Refugee Status Determination (RSD) and all asylum procedures were carried out on individual basis by the government through the departments of Immigration and Home Affairs while the UNHCR played observatory and advisory roles. Verdirame states the pre-1991 regime in general "was characterised by the fact that, other than poverty, which made

survival difficult for many refugees in Kenya, there were few formal obstacles to local integration and to the enjoyment of such basic rights as the right to work, to education and to freedom of movement” (1999, p. 57).

The government relied on the Geneva Convention, the 1969 OAU Refugee Convention, the 1967 Immigrations Act and the 1973 Aliens Restrictions Act, picking bits and pieces from each as there was no single specified domestic law relating to the protection of refugees. Rather, clauses (which are discussed in depth in sub-section 4.1.2) were introduced in the Immigrations Act to allow entry of refugees and their immediate families into Kenya. The Aliens Restriction Act itself was introduced to govern the affairs of all non-citizens, including refugees, but without recognizing them as a special legal category. However, as Abuya connotes “the Aliens Restriction Act and the Immigration Act provide the barest legal underpinning that Kenya’s asylum system might use to determine refugee claims” (2007, p.63). Notwithstanding, until 1991 the GoK remained fully in charge of the administration of refugee affairs such as entry, asylum claims determination, settlement etc.

4.1.1 *Why the ‘golden’ age?*

Kenya gained its independence in 1963 but has been a recipient of refugees since the 1960s during the wars of independence throughout Africa. Reasons for Kenya’s initial openness towards refugees are debated upon. They include the natural hospitality of Africans, sympathy and understanding due to similar anti-colonial struggles (Sansculotte-Greenidge 2014) and, ethnicity of the refugees and their population (Verdirame 1999, Abuya 2007). However, consistent with many political events, there is not one single cause behind any policy.

Sansculotte-Greenidge (2014) discusses refugee policies by many African nations in two distinct periods. Regarding the early independence era, Sansculotte-Greenidge states that “The situation during this time was characterized by high levels of host community support for efforts to assist internally displaced persons and refugees- often justified through pan-Africanism, anti-colonial and anti-minority regime solidarity” (2014, p.183). She argues that many African nations accepted refugees mainly to support the anti-liberation struggles as not only did they tolerate refugees but also armed and trained them to fight the regimes back home.

She further states that “The so-called golden age of refugee and IDP policy, like so many things, came to a close with the end of the Cold War” (ibid. p.183). Thus, the second period of more restrictive refugee policy began in the 1990s blanketed with economic stagnation and democratic competition. Certainly, the dwindling economy of Kenya and other African states at the time played a role in the change towards more restrictive policy. Kenya was also one of the countries that had to fight for independence and it is convincing that Kenyans would wish to lend a hand to other Africans experiencing similar struggles.

On the other hand, Abuya points to the population and ethnic familiarity of Kenya’s early refugees rather than simple Kenyan hospitality to explain this policy of openness stating that “Because the number of Ugandan refugees was relatively low and most had relatives in Kenya, the forced migrants were easily accepted into Kenyan society” (2007, p. 57). The number of refugees in Kenya by 1990 is estimated at 15,000 while in 1980 it was barely 5000. The refugee population was mainly composed of Ugandans, Ethiopians and Somalis (ibid. p.57). The small population of refugees present in the country were spread in various towns across the country . (Kiama & Karanja, 2013). This not only supports the statement that the number of refugees was

small, but also that there was freedom of movement and capacity to choose places of settlement.

Similarly, Verdirame supports this argument suggesting that, once the population increased, the government of Kenya succumbed to the pressure and abandoned its role in refugee management and its *laissez-faire* policy. Verdirame explains that Kenya's system of individual status determination "began to come under pressure as the numbers of asylum-seekers increased as a result of the continued strife in Uganda after 1986 and, later in Ethiopia and Somalia" and finally collapsed following "the arrival of some 400,000 Somali refugees in Kenya, combined with the arrival of the Sudanese 'walking boys' in the northwest" (1999, p.56). Following these events, the government abandoned its role of individual RSD and changed course towards an encampment policy.

From another perspective, Kagwanja (2000) argues that the hospitality of the Kenyan government rooted from the hospitability of the refugees. Many of the Ugandans, particularly of Asian origin, fleeing the regimes of Idi Amin and Milton Obote were skilled professionals and business-owners were welcomed to Kenya mainly for their anticipated contribution to Kenya's economy. "In the 1970s and 80s, in order to meet its need for skilled labour and investors, the government allowed Ugandan refugee intellectuals, businessmen and professionals to participate in economic life." (Kagwanja 2000, p. 22). Besides class, ethnicity was also a contributor to Kenya's post-colonial asylum policy. According to Kagwanja, Kenya rolled the red carpet for the more conservative Hutus fleeing the genocide in Rwanda. At the same time, Kenya shut its doors to Somalis from the Ogaden region which was in conflict with the then ally to Kenya and President of Somalia, Siad Barre (Ibid., p.22).

Nevertheless, refugees during this period apparently had *de facto* freedom of movement, access to the labour market and were eventually

integrated into the national economy and society at large. According to Freudenthaler, refugees were allowed to move freely within the country and to choose their place of residence (2011, p.22). RCK also report that “many Kenyans who went to school in the 1970s and 80s have memories of Ugandan teachers”; proof that Ugandan refugees found their way to the formal employment sector. Freudenthaler, however, states that it was the aid organizations, churches and UNHCR who encouraged refugees to work by providing them with stipends and posting vacancies on notice boards but only a small number found access to the (formal) labour market (2011, p.22).

The arguments by Verdirame, Abuya and Kiama & Karanja suggest that Kenya’s *laissez-faire* policy was in direct relationship with the small number of refugees in that period rather than other factors such as hospitability. Once the numbers shot up, Kenya was no longer “generous” in granting freedoms to refugees. Kagwanja, on the other hand cites class and ethnicity to make reason of Kenya’s asylum policy in the early independence era while Sansculotte-Greenidge speaks of a policy driven by anti-colonial solidarity. Regardless, Kenya’s asylum policy consisted more of freedoms than restrictions and it remains the sole reason this period is referred to as the golden age in this thesis. Having discussed the causes of a more open policy, the following sub-section discusses the actual policy and laws with reference to national and international legal instruments.

4.1.2 *Domestic Laws and Policies of the Golden Age*

Despite being a recipient of refugees since 1960, Kenya only ratified the 1951 Convention in 1966 and the 1969 OAU Convention in 1969. This means that for at least six years, Kenya allowed the entry of refugees to its country with barely the definition of a refugee within its legal framework. Even after ratification, international conventions could not be applied domestically without the passing of laws by parliament in order to incorporate them into

national law, as is the case with many countries. "This position is affirmed by the Judicature Act 1967, which excludes treaties as a source of law' in Kenya" (Abuya, 2007, p.58); an indication that the GoK in this period was simply improvising when it came to asylum law. Ratifying the Refugee Convention was merely a sign of Kenya's commitment to the international community to uphold the provisions within it. The law regarding the application of international treaties in Kenya was later changed by the Constitution of 2010 which states in Article 2 (5) that the signing of international treaties is now binding without the need for parliamentary debate.

The Immigration Act (1967) coupled with the Aliens Restriction Act (1973) were the two main references with regard to asylum in Kenya and are still in the statute books. However, they only provided the bare minimum for the protection of refugees and asylum seekers. The Immigration Act that commenced on December 1, 1967 is an Act of Parliament to amend and consolidate the law relating to immigration into Kenya. In Section 5, the Act provides 13 classes of entry permits, from Class A to Class M, through which a non-citizen may apply for entry into Kenya. One of the amendments of this Act was the class M which provides for the entry of a "person who is a refugee" (as per the definition of refugee in the Refugee Convention) "and any wife or child over the age of thirteen years of such a refugee". It is worth to note that 'refugee' is mentioned only twice in the entire Act, both times as appear above.

It can be drawn from Class M that Kenya adopted the classical definition of refugee from the refugee convention, which becomes the first category of refugees allowed entry. The second category of refugee are the dependents of the first category, i.e. the wife and child over the age of thirteen years. Thus, the Act assumes movement of refugees based on gender and age giving precedent to the males. However, research shows that women and children constitute a significant majority of asylum seekers. What, therefore,

happens to the women and children who arrive in Kenya without a “guardian”? Finally, it only observes the principle of family unity to some extent and shows inclusivity of both monogamous and polygamous marriages which are tradition both in Kenya and Somalia.

The Aliens Restriction Act (1973), on the other hand, is an Act of Parliament to enable restrictions to be imposed on aliens, and to make such provisions as are necessary or expedient to carry such restrictions into effect. It defines an alien as “any person who is not a citizen of Kenya”. It does not consider refugees to be a special category of non-citizens and therefore cannot provide for the protection special to refugees. The single time ‘refugee’ is mentioned in the Act is in Section 6(1) where it states “A registered alien shall upon payment of a fee of two thousand shillings, be issued with a certificate of registration, but a certificate of registration shall be issued to a recognized refugee to Kenya free of charge”. Therefore, the only distinction between refugees and other aliens is that no fee is charged.

The two Acts have proven incompetent in providing for the protection of refugees and asylum seekers and provide very little for legal reference. Therefore, one may surmise that asylum policy in this era does not take precedence from the law. The *laissez-faire* policy practiced by the GoK in this period had no reference to domestic law. The freedoms allowed to refugees were simply based on the interests of the state at the time, be they political, economic or social in nature. The effects of this policy are discussed below.

4.1.3 *Effects of the Golden Age policies*

The impact of the label on Ugandans and other refugees in Kenya on their agency, identity, integration and mobility are not as profound as ‘refugee’ was not present as a specified legal category and the government practiced a lenient policy towards them. As a report by UNHCR suggests, many of the Ugandans who fled to Kenya did not lose their identity by

becoming refugees. The report reads, “In the 1970s, for example, significant number of Ugandans who fled from violence in their own country and took refuge in Kenya, many of them teachers and other educated people who, because of their skills and cultural affinities, settled successfully in the country” (Campbell, Crisp & Kiragu, 2011, p.5). The notion of a “universal identity” as described by Malkkii (1996) is not seen. Teachers maintain their identities as teachers, using their skills to make ends meet, as known to them. This also shows how refugees were able to integrate into society rather than be secluded in faraway camps.

Additionally, being a refugee did not rob them of their agency nor their mobility. Not only were they able to move around, but they were also able to choose the places and nature of their residence. This demonstrates how refugees apparently had the will to speak and act on their own accord. It also shows how the refugees, having the freedom to move, sought employment rather than lazing around waiting for handouts. According to Abuya (2007), employment was available to refugees, although those with professional skills and education had an advantage over those without. For example, Ugandan teachers who fled the Idi Amin regime were able to find employment in Kenyan schools (p.73). Nevertheless, churches with the assistance of the UNHCR, provided vocational training to refugees who eventually became self-employed (p.72). Despite receiving stipends, food and shelter from aid agencies, they also proved to be hard working individuals ready to contribute to their own well-being as well as that of their countries’.

4.1.4 *Conclusions from the Golden Age*

Class, ethnicity, anti-colonial sentiments and numbers are some of the factors that influenced the asylum policy of the golden age. Although there was no national legal instrument providing for asylum, the pre-1991 regime favoured local integration- one of the three durable solutions. Refugees were

able to enjoy basic freedoms such as movement, education and employment, and to choose places of residence.

Evidently, the way in which the 'refugee' label is used in the laws and policies of a country has real-life impacts on the refugees. The policies for governing refugee affairs prior to 1991 showed that refugees rather than having their mobility restricted were able to move around, rather than being alienated were integrated, rather than being robbed of their agency had freedom to choose where to live and rather than the universal 'refugee' identity, were recognized by their own myriad of identities.

Indeed, this thesis recognizes the importance of having a refugee law and policy, as the lack thereof meant that individuals were denied protection essential to their status. According to Abuya, it was churches and aid agencies, and not the state, that provided refugees with the shelter and assistance they needed in order to become self-sufficient and to establish a life in Kenya (2007, p.69). The GoK provided the bare minimum: physical space.

In the golden era, the government, aid agencies and churches were able to see refugees beyond the label. Things began to take a turn at the end of the 1980s when the number of refugees coming into Kenya increased by a ten-fold. Kenya's asylum policy shifted from a lenient *laissez-faire* policy to a stricter encampment policy. The causes and effects of this policy change are discussed in section 4.2. Accompanying the policy changes, is the change of the 'refugee' label in the 1990s after which refugee mobility became increasingly restricted, not through the suppression of flight but through encampment.

4.2 The Encampment Policy Age 1991 – 2006

Prior to 1990, there were no refugee camps in Kenya. The Thika Reception Centre, funded by the UNHCR, served as an accommodation centre for up to 500 refugees. However, they were not required by law to reside there.

Internal conflicts in Somalia and Ethiopia in 1991 caused mass movements of asylum seekers into Kenya. RSD on an individual basis became impossible for the government to process and refugee status was granted on a *prima facie* basis (Campbell et al. 2011, p.5). Eventually, Kenya abandoned its role of managing refugee affairs, handing it over to the UNHCR. The UNHCR advised the government to set up camps as the most practical way to assess asylum claims and provide security to the large number of applicants, marking the beginning of the encampment policy era.

In 1991, the first largest influx of Somali refugees to neighbouring countries began; 500,000 Somalis fled to Ethiopia, Kenya, Djibouti and Yemen. In Kenya, many Somalis who arrived on boats at the coastal region were forced to camps in the coastal city of Mombasa while others managed to settle themselves in nearby towns. Refugees living in and out of camps were able to set up businesses. These tax-free businesses fared a little too well to the liking of the locals, who were not pleased by the unfair competition posed by refugee businesses. As a result, they began lobbying the government to shut down these camps. By 1995, the government made the decision to shut down the camps in Mombasa and to relocate all refugees to the Kakuma camp (Verdirame 1999). Refugees of Sudanese, Ugandan and Ethiopian origin were sent to the Kakuma camp in the North West region while those arriving from Somalia were sent to the Dadaab complex in the North Eastern region. The setting up of Dadaab and Kakuma closer to the borders signified the assumed transience of their refugeehood. 27 years later, Somalis find themselves in a case of protracted refugeehood.

4.2.1 *Causes of the shift in the refugee regime*

Why did the government of Kenya shift practice from a *laissez faire* policy, to a more restrictive policy despite there being no changes in the domestic law until 2006? It has been argued in the previous section

(Verdirame 1999, Abuya 2007, Kiama & Karanja 2012) that the overwhelming number of asylum seekers coming in caused the collapse of Kenya's early refugee protection regime. Figures increased tenfold from less than 15,000 refugees before 1990 to up to 150, 000 refugees in 1991. By the end of 1992, Kenya hosted 300,000 refugees from Somalia alone (Abuya, 2007).

On the other hand, scholars cite the economic conditions of post-cold war Africa as the reasons for the end of the golden age. In the 1990s, many African countries including Kenya were facing economic deterioration and reconstruction through Structural Adjustment Policies (SAPs). According to Sansculotte-Greenidge "By the 1990s, a combination of economic stagnation and increased democratic competition meant that policy and practice were characterized by a retreat from the fundamental principles of asylum, international refugee law and the abrogation of the host states' responsibilities to protect forced migrants" (2014 p. 183). At the time, many African political systems including Kenya, were experiencing a shift to multi-party democracy referred to above as "democratic competition". Governments focus shifted to the economy and national interests while refugee protection was pushed to the curb.

High inflation and unemployment rates also meant that refugees would be seen as an economic threat by Kenyans who were not ready to compete for jobs. In this, the GoK found the opportunity to securitize asylum as the audience would be susceptible to its discourse. At the same time, the government saw an opportunity to attract international funding during these tough economic times. As Verdirame opines "In order to attract external resources to cope with the material needs of the Sudanese and the Somalis, the Kenyan government began to acquiesce in the conventional approach of putting refugees in camps, and provided the land for these establishments" (1999 p.57). Thus, camps were in the beginning established to facilitate "crowdfunding".

Additionally, the ethnicity of the refugees played a fundamental role in the restrictive policies employed in this era. Many refugees coming in the 1990s from Somalia, Ethiopia and Sudan were received differently from their Ugandan counterparts. The Somalis especially, were arriving after a history of secessionist conflict and hostility between Kenyan Somalis and the GoK. The Shifta (Bandit) War which started in 1963 involved Kenyan Somalis in North Eastern Province (NEP) attempting to secede from Kenya to join Somalia (HPG 2018). Kenyan security forces responded with collective punishment placing Kenyan ethnic Somalis in concentration camps and killing their livestock. Somalia signed a ceasefire with Kenya ending the war in 1967 but the NEP was placed under emergency rule until 1991.

The attitude of the GoK towards Somalis thereafter was suspicious, and at the same time hostile. It can be argued that the GoK fears that when Somali refugees are integrated in Kenya, they would link up with the 2.4 million Kenyan Somalis in a renewed attempt to secede from Kenya. Hence the 'containment' measures. This is in line with the securitization theory. The threat to societal security, that is, "to traditional patterns of language, culture, association and, religious and national identity and custom" (Waever, 1993, p.23)– real or perceived, led the GoK to treat the Somali-asylum case as a security issue, and to respond as such.

Further arguments suggest that the overwhelming number of refugees coming into Kenya in the 1990s, the economic downfall at the time and the assumed transience of the refugee situations caused the shift in refugee policy from *de facto* freedom of movement to a *de facto* encampment policy. These causes were not necessarily independent and may be interrelated, although their population and ethnicity weigh heavier on scale than economic reasons. There were no major legal changes in the encampment era, however, policy practice took a one-eighty degree turn. This is discussed in the next subsection.

4.2.2 *Laws and Policies of the Encampment Era*

In 1991, there still was no domestic asylum law in place and Kenya relied on the same instruments as the pre-1991 regime coupled with *ad hoc* policies. Parliament began the drafting process of the 2006 Refugee Act, lobbied by civil society but which would take a decade and a half to come into law. Nevertheless, there was a shift in the refugee regime from freedom of movement to a *de facto* encampment policy. As Kerubo states “The Government of Kenya enacted the Refugee Act in 2006; however, since the early 1990s the country has been employing a *de facto* encampment policy which requires all refugees to reside in camps located in the semi-arid northern part of the country” (2013, p.1).

Firstly, the encampment policy required all refugees irrespective to reside in designated areas said to be Kakuma and Dadaab. However, the government did not gazette these camps as designated areas. Therefore, this policy had no basis in law and refugees were not actually committing any crime being outside of these camps. Force may have been used, but certainly, the law was not. This mainly targeted the post-1991 mandate refugees but also included urban refugees who self-settled prior to the policy. Despite this directive, many of the full status convention refugees reside in the urban city. The majority of the urban refugees of Somali and Ethiopian origin established businesses in Eastleigh, in the capital city Nairobi. As this population grows, discrepancies in the policy become more apparent. As Lambo states “Their numbers are a testament to the fairly *ad hoc* nature of the encampment policy and the ambiguity that exists in its implementation” (2012, p.4).

Secondly, the policy indicates that the government meant to control mobility as all refugees were required to obtain a movement pass or a temporary leave permission for the proven purposes of health, education or court attendance after which they must return to the camps. The UNHCR also plays its role in forced encampment by only providing health-care services to

refugees in the camps (Jansen 2016). Nevertheless, refugees still manage to manoeuvre their way into urban centres as in Kenya as it is not always about law or policy, but one's social position, or how much they can pay to get a pass (Jansen 2016).

Thirdly, the policy curtails refugees' enjoyment of other rights such as access to higher education and the right to employment. Although refugees have a right to employment by law, the government essentially does not grant work permits to refugees with the exception of a few. O'Callaghan and Sturge argue that this is "due in part to Kenya's high unemployment rate of over 39% and high dependence on the informal economy" (2018, p.6). Despite these restrictions, refugees engage in trade within the camps while urban refugees become part of the informal sector.

In light of the three durable solutions; repatriation, local integration and resettlement, the policy of encampment is on opposite poles with local integration. Restrictions on movements, access to the labour market and higher education all hinder social and economic integration. Additionally, some Somalis have been refugees in Kenya for up to 28 years and may qualify for naturalization. However, Goitom (2016) points out that in practice, Kenya does not grant citizenship to Somali refugees. Repatriation remains the main solution as the government continues to practice policy as in the early 1990s when refugee situations were assumed to be transient.

The government finally espoused the encampment policy into its legal framework by enacting the Kenya Refugee Act in 2006 which came into effect in 2007. The main developments include incorporating international law into domestic law and establishing the Department of Refugee Affairs (DRA). The Immigrations Act and Aliens Restriction Act were repealed as the Refugees Act (2006) and the Refugee Regulations (2009) became the main legal references to Kenya's refugee regime thereafter. The end of this era is marked by the beginning of a legal encampment law. Despite the adoption of the

Refugee Act, Kenya began to practice the policy of deterrence more than restriction; even threatening to close down camps in the subsequent years. As has been practice in the previous years, policy always seems to precede the law.

4.2.3 Effects of the Encampment Policy

The policy of encampment itself and the reference of 'refugee' in policy discourse has several effects on refugees' lives and the management of refugee affairs. Firstly, the policy eliminates local integration as a possible solution to their plight; structurally by placing refugees in camps in deserted areas of the country and far from the hosts, and by affecting the attitudes of the hosts towards them. According to O'Collaghan and Sturge, Kenyans are less willing to host refugees, ranking 23rd out of 27 countries polled (2018 p.15). Another study by the World Bank conducted around Kakuma showed that communities in direct contact with refugees tend to cooperate and do good business and generally have a positive attitude towards them the more they interacted (*ibid.* p.10).

Secondly, the policy proves counterproductive in refugee management since forced encampment has led urban refugees to living in quasi-illegal situations as obtaining legal documents becomes impossible. A majority of the urban refugee population are Somalis who live in the commercial centre of Eastleigh and engage in businesses and trade and become self-reliant. Nevertheless, they are subject to harassment by police, forced placement in to the camps and discrimination by hosts (Campbell, 2006). Another effect of this is that the government fails to tap the potential economic gains by urban refugees.

Thirdly, forced encampment annihilates identities. People from all walks of life cross the border of Somalia into Kenya. For example, Halima Aden born in Kakuma camp and resettled to the US at the age of six, is now

an international supermodel who first made her debut at the New York Fashion Week and is renowned for changing the modelling industry. Ilhan Omar fled Somalia and lived in Dadaab for four years until resettling to the US in 1992. Today, she is an elected congresswoman in the Minnesota House of Representatives with many firsts. Unfortunately, those who remain in camps have only one identity; refugee.

Fourthly, the encampment policy leads to the very crimes, violations and human rights abuses that refugees fled from in the first place. An article by Kagwanja demonstrates how women refugees in Kenya have been subjected to abuse, and how militias have been able to thrive in camps. “Longstanding institutional discrimination against Somalis in Kenya created a fertile ground for sexual violence against refugees; the prevalence of institutionalized patriarchal culture in camps enables male refugees and militias to assault and rape Sudanese women with impunity” (2000, p.24). In addition to the fear of persecution in their home countries, refugees continue to live in fear of abuse and harassment in the host countries as some of the rape cases were committed by the Kenyan police and soldiers. The refugees also had limited access to justice in part due to the restriction of movement.

Lastly, but certainly not least, the policy turns ‘refugee’ into an oxymoron where people who are initially faced with forced movement are now faced with forced non-movement. Claimants struggle to obtain the seemingly beneficial refugee status which paradoxically leads to another level of burden upon them. The encampment policy restricts mobility which is intrinsic to being a refugee because it allows them to escape violence, persecution and human rights abuses. Involuntary mobility now becomes involuntary immobility.

4.2.4 Conclusions from the Encampment Age

Following the refugee influx in 1991, the Kenyan government shifted from a *laissez faire* policy to a *de facto* encampment policy. Despite there being no major changes in domestic law, the government employs *ad hoc* policies that intend to restrict the movement of refugees by confining them into camps. Some causes of the shift in policy have been argued, but the effects are profound. Besides lacking a lasting solution, the encampment policy has also robbed refugees of their identity, their agency, their security and their mobility. The label 'refugee' continues to take sour turns from involuntary mobility in the home country to involuntary immobility in the host.

4.3 The Deterrence Age (2007-2018)

In 2006, Kenya enshrined the Refugee Act followed by the 2009 Refugee Regulations. The Act together with the Regulations brought to law the practised encampment policy, legally directing refugees to camps. However, the government's tradition of employing unwritten *ad hoc* policies continued. In addition to the already restrictive policies of the previous era, this period is characterized by deterrent policies aimed at keeping refugees out of Kenya. These policies include both temporarily and permanently closing the Kenya-Somali border, threatening to shut down the camps and returning refugees to Somalia. These policies have been challenged in the Kenyan courts and have received criticism from the international community which continually reminds Kenya of its international obligations and the ongoing insecurity in Somalia. Nevertheless, Kenya seems adamant in pursuing deterrence policies.

Kenya is not singled out in the deterrence paradigm which has been the practice of many developed countries since the 1990s. These countries attempt to shift migration flows to neighbouring countries through border-control, interdiction, interception, offshore detention and repatriation to third

countries like Turkey (Moreno-Lax 2017). Additionally, they put in place tighter asylum laws and lengthy visa processes. These practices have no basis in international law and are developed on subjective and *ad hoc* procedures. The EU countries and Australia are two cases in point (Hargrave & Pantuliano, 2016). The consequences of such policies can clearly be seen in the fatalities in and around the Mediterranean. Hargrave and Pantuliano also find that these deterrent policies by EU, Australia and other developed countries have created a ripple effect by influencing the refugee regimes in lower income countries like Indonesia, Kenya and Jordan. The following subsections discuss the specific deterrence policies practiced in Kenya, their drivers and their effects as the current age of refugee policy in Kenya.

4.3.1 Causes of the deterrence age policies

In this era, refugee governance is mainly seen through the lens of national security. In 2007, Kenya temporarily closed its border with Somalia, disallowed entry into the country and returned over 400 refugees who had just arrived. The then Foreign Minister, Raphael Tuju gave reasons that Kenya was not able to determine whether they were 'genuine' refugees or Al Shabab fighters, and therefore found it best that they remain in IDP camps within Somalia (BBC, January 2007). Tuju also claimed that Kenyans were 'overburdened' by refugees and they do not receive enough aid from Europe and America to support them. Recently, in 2016, Kenya closed its border with Somalia in a long-term decision to keep out Al Shabab fighters.

By the same token, Kenya has attempted to shut down the Dadaab and Kakuma camps and to repatriate all refugees. Government officials claim that camps have become hotbeds for radicalisation and terrorism, and for the recruitment of Al Shabab members who conduct attacks in Kenya. In Hargrave and Pantuliano's study, "a high-ranking security official who was interviewed explained: 'Dadaab has become a dangerous area where high-

level crimes and terrorism are organized. It is a threat to Kenya's internal security'" (2016, p.14). Senior UN officials have expressed their doubt and enough evidence has not been provided by the government to support these claims. Nevertheless, while internal security remains a matter of concern, refugee affairs can be approached through other policies that do not compromise protection.

Another cause cited for deterring refugees from entering Kenya's borders are the economic costs of asylum. Kenya's hosting of refugees heavily relies on international aid. In the recent years, however, international cooperation has been dwindling with aid and lower resettlement numbers. Funding in 2018 alone dropped by 64% in Kenya, Uganda and Tanzania. As a result, aid programs in the three countries were forced to shut down.

4.3.2 Laws and Policies of the Deterrence Age

Kenya's refugee policies have not always been in line with the laws. In fact, deterrence policies clash with the law so much so that they are overruled by Kenyan courts. The most consistent policy has been the repatriation of refugees. On 10 November 2013, Kenya Somalia and the UNHCR signed a Tripartite Agreement for the voluntary repatriation of Somali refugees and was adopted on 29 July 2015. In their operations strategy report, the UNHCR admitted that "conditions in Somalia are not yet conducive for safe, dignified and sustainable mass refugee returns to Central/South Somalia" (2017, p.6). Nevertheless, the programme has facilitated the repatriation of 83,669 Somalis. (IRC November 2018).

The Geneva Convention does not specifically address repatriation but the UNHCR Executive Committee's 1980 Conclusion 18 (XXXI) (b) states that:

The repatriation of refugees should only take place at their freely expressed wish; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of

absolute safety, preferably to the place of residence of the refugee in his country of origin, should always be respected.

In essence, repatriation must be voluntary and there is no such thing as the “involuntary” repatriation of refugees. The practice of repatriation in Kenya has been criticized by the international community for the following reasons; firstly, there is still an aspect of fear of persecution among the refugees. For repatriation to be voluntary, the subjective fear should have ceased. Secondly, the voluntariness is questioned when repatriation follows threats to shut down the camps. Refugees are basically not given any option but to return. Finally, cash is offered to those refugees who are “willing” to return to Somalia to assist in their relocation (UNHCR, 2017, p.13). In times of food scarcity and uncertainty, refugees accept to be repatriated in exchange for cash.

Another main policy is closing the border between Kenya and Somalia, for a short time in 2007 and by erecting a fence in 2016. The purpose of closing the border is said to be to keep the Al Shabab from crossing the porous Kenya-Somali border, but it also prevents Somalis from escaping violence and persecution. Additionally, in 2016, the government disbanded the DRA which was established by the 2006 Refugee Act. Refugee management became the function of the Ministry of Internal Security. The Refugee Act was also amended to revoke the granting of refugee status on a *prima facie* basis. RSD for Somali refugees is now done on an individual basis.

When it comes to shutting down the camps, the discourse by the government seems very assertive but has not achieved its intention due in part to blockage by the courts. Following an Al Shabab attack in Garissa University where 150 lives were lost, Kenya’s Vice President, Ruto, instructed the UNHCR to close the Dadaab camp which is located in Garissa County. Ruto reasserted the decision in May 2016 stating plans to repatriate all refugees by November 2016 (BBC April 2015). Given the size and the population of

Dadaab, questions arise on how the government can manage to do so in such a short time without violating the rights of refugees. It can also be argued that the government uses threats to close down the camps as bargaining chips to attract international funding.

4.3.3 Effects of deterrence policies

Deterrence policies undermine refugee protection as they forcibly return refugees to danger or prevent them from accessing asylum. Similar to the “non-admission” and “non-arrival” policies of Thailand, Malaysia and Indonesia that return boats carrying Rohingya refugees, or of Australia returning boats carrying refugees to Sri Lanka (Gammeltoft-Hansen & Tan 2017, p.34-35) , deterrence policies not only suppress flight, but also force refugees to seek the help of traffickers or smugglers, further endangering their lives and risking exploitation. Simultaneously, deterrence has led to the growth of smuggling as a multi-billion dollar industry with well-established criminal networks (Gammeltoft-Hansen & Tan 2017, p.37).

The government adopts procedural and physical mechanisms to deter refugees while portraying refugees as a threat to national security puts all Somalis at risk of racial profiling and xenophobia. This is part of deterrence strategy which involves instilling fear in order to circumvent international legal commitments and avoid criticism. Fortunately, political discourse has not entirely influenced public opinion as a study shows that 88 per cent would like the government to support refugees while a lesser 27 per cent perceive refugees as a threat to national security (IRC November 2018, p.12). Unfortunately, refugees experience all three states of immobility as a result of deterrence policies.

Furthermore, deterrence undermines all three durable solutions first by compromising repatriation, secondly by eliminating integration and finally, refugees cannot be resettled to third countries when they cannot obtain

a refugee identification or documents in order to apply to the resettlement programme.

4.3.4 Conclusions from the deterrence age

Deterrence has increasingly become the practice by many governments towards asylum seekers. Many countries adopt procedural and physical mechanisms to prevent refugees from accessing their protection. They include border-control, interception, offshore detention and push-backs. Kenya practices deterrence through temporarily closing the Somalia-Kenya border and threatening to shut down refugee camps and return all refugees. This suppresses flight, justifies the encampment of Somali refugees for almost three decades and takes away prospects of resettlement. Deterrence policies intend to circumvent international legal commitments and push responsibility to neighbours. The reasons cited for the practice of deterrence is security concerns since the refugees share the same nationality and/or religion as the Al Shabab terrorist group. Additionally, cuts in international aid prompted the threats to shut down the camps. The effects of deterrence are detrimental as they put the lives of many Somalis at risk. It undermines protection and take away the chances of refugees to the three durable solutions promoted by the UNHCR. Finally, deterrence policies prove unsuccessful as they do not prevent refugees from entering Kenya as intended. Rather, they have led to the growth of the smuggling industry and its criminal networks which consequently undermines international security.

CONCLUSION

The purpose of this thesis is to analyse the relationship between labelling and refugee mobility. Labelling, a process by which policy agendas are established according to Wood (1985, p.1), certainly has implications to the disadvantage of the labelled. These implications have been identified in earlier literature as the annihilation of identity, the loss of agency, alienation or othering, and stigma. They have been reaffirmed in my case study of Somali refugees in Kenya who, in their protracted situation for close to thirty years, have been hosted in refugee camps in the semi-arid margins of the country. Additionally, Zetter (1991, 39) argues that refugees do not participate in the formation of the 'refugee' label. Rather they are powerless in this process as the label 'refugee' is imposed on them. This acts as a means in which power relations between the labeller and the labelled are expressed.

Fundamentally, the 'refugee' label is problematized as one that has been politicized in public discourse and policy to restrict the mobility of refugees. To elucidate that, the development of asylum law and policy in Kenya is analysed in three phases; 1963 to 1990 as the Golden Age characterized by a *laissez-faire* policy towards refugees, 1991 to 2006 as the Age of Encampment following the influx of Somali refugees to Kenya and resulting into the practice of encampment as the main policy and 2007 to 2018 as the Age of Deterrence. During the early post-independence years, refugees had *de facto* freedom of movement and access to the labour market. Reasons such as their small population, ethnic orientation and anti-colonial solidarity are cited for the more liberal policies. Additionally, in the first phase there was no domestic asylum law. Rather, Kenya depended on the international conventions and improvised with the Immigrations Act and Aliens Act to

govern the affairs of refugees. In this period 'refugee' was implemented as the legal status defined in the Geneva Convention.

In 1991, Kenya witnessed its first major influx of Somali refugees. Its liberal policies changed course towards a strict encampment policy. The Dadaab complex was established in the North Eastern Province (NEP) closer to the Somali border, signifying the assumed transience of the refugee situations. However, twenty-eight years down the line, the case of Somali refugees is recognised as a protracted refugee situation and not a temporary one. In this era, Kenya began formulating its domestic refugee law which would formalise the encampment policy in the coming years. In the meantime, Kenya employed *ad hoc* policies which aimed to restrict the movement of refugees. These policies constrained refugees' enjoyment of other rights such as access to employment and education. Reasons for these restrictive policies are argued to be the assumed temporariness of their situation, economic deterioration in Kenya which was undergoing structural adjustment policies (SAPs) in the post-cold war era, the high population of Somali refugees and their ethnicity.

In 2006, Kenya enshrined the Refugee Act which formalised the encampment policy of the second era. Nevertheless, the government's practice of employing unwritten *ad hoc* policies continued. These are the *non-entrée* policies of GoK which threatened to shut down the camps, return all refugees to Somalia and close the border between Kenya and Somalia. The government also stopped registering any incoming Somalis and stopped processing asylum claims. These policies were challenged in the courts and the government's decision to shut down the camps was overruled by the High Court of Kenya as unconstitutional. Notwithstanding, the government remained adamant in pursuing deterrence policies citing security reasons such as terrorist attacks by the Somali based Al Shabab. GoK also reprimanded

the international community for neglecting their 'burden' sharing responsibilities and not providing funds to keep the camps running.

Analysing these policies and the politicization and securitization of the 'refugee' label situates this thesis in the *regimes of mobility* framework. The *new mobility paradigm* and the *aspiration-capability framework* reviewed in the second chapter do not sufficiently explain the role of the state in governing the mobility of refugees. On the other hand, the mobility regimes approach suggests that there are several regimes that govern mobility on both national and international levels. These regimes intersect with each other sometimes agreeing and sometimes clashing with each other. When these regimes clash, as in the case of Kenya, it is the national regime that prevails. Unlike, the new mobility paradigm, the mobility regimes approach does not normalise mobility. Rather it suggests that both movement and non-movement characterize the contemporary world.

Additionally, the restriction of movement through the securitization and politicization of the 'refugee' label is an expression of the government's *symbolic power*. Thus, 'refugee' is not just a label, it is an instrument of the political system through which social hierarchy is established. For Bourdieu, symbolic power is a soft power, and it is more powerful than physical violence as it imposes a social order which is maintained within and across generations. For about 28 years, Somali refugees have been forced to live in camps in Kenya and rely on aid. Some of those who arrived in Dadaab in 1991 have bore children, and their children have bore children. Through the label, the government has maintained their socio-political position in the structure, even across generations. Since Kenya gained its independence in 1963, the 'refugee' label has fluctuated in meaning in accordance with the interests and practices of the state, just as currencies fluctuate in values and exchange rates as exemplified by Zetter (1991, p.40). The refugee, therefore, is not describes as they are. Rather, the refugee is decribed as they need to be in state-interest.

In this case study, three states of immobility experienced by Somali refugees have been discussed. The first state is experienced through the suppression of flight. Suppression of flight is the motif of the present day *non-entrée* regime which is characterized by the closure of borders, roadblocks, push backs, maritime interdictions among others. The government in Kenya suppresses the flight of Somali refugees by its decision to temporarily close the Somali-Kenya border and non-registration of incoming refugees seen in the Age of deterrence. The second state of immobility is experienced through the encampment policy and law of both the ages of encampment and deterrence. Finally, the third state of immobility is experienced through the lack of resettlement opportunities. Resettlement opportunities were present during the Golden Age and the Age of Encampment albeit in small numbers. However, resettlement opportunities increasingly became lacking in the Deterrence Age with less countries willing to grant refugees permanent residence as a result of the securitization of the 'refugee' label and the non-registration of refugees in Kenya.

Overall, the aim of this thesis is to contribute to the understanding of the relationship between labelling and mobility in a *regimes of mobility* approach. Focusing on Somali refugees in Kenya, this thesis argues that the 'refugee' label is a tool of policy used to restrict the mobility of persons who are essentially guaranteed mobility in their legal status. As a result, refugees are denied their freedom of movement while states circumvent their international legal responsibilities. Consequently, this aggravates the global refugee problem and has led to the unfortunate demise of thousands of asylum seekers.

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