**In the Shadows of Marginality: An Analysis of the 2006 Kenyan Refugee Act
and Urban Refugee Women**

By

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**A Thesis submitted to the Faculty of Graduate Studies and Research
in partial fulfillment of the requirements for the degree of
Master of Social Work**

**School of Social Work
Carleton University
Ottawa, Ontario**

January, 2012

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Ottawa ON K1A 0N4
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ISBN: 978-0-494-93625-2

Our file Notre référence

ISBN: 978-0-494-93625-2

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Abstract

The focus of this study is on the vulnerabilities experienced by urban refugee women in Nairobi, Kenya, as addressed in the 2006 Kenya Refugee Act. I define vulnerabilities as the conditions that result in, and/or the experience of multiple forms of violence in an urban refugee woman's life. The theoretical frameworks used in this study are transnational feminism and governmentality. A "policy archaeology" methodology is used in my analysis of the 2006 Kenya Refugee Act. The various aspects of the Act betray specific political and social imperatives with regards to the management and protection of refugees in Kenya. There was historical resistance towards the adoption of a national refugee policy, as well as an acknowledgement of the presence of urban refugees in Nairobi. Thus the subject of urban refugee women and the vulnerabilities they face are minimally addressed within the document, except through the 'designated areas' clause which criminalizes their presence in cities.

Acknowledgments

I am forever grateful to the numerous people who guided and encouraged me throughout this process. I would especially like to thank my supervisors Pat Evans, and Behnam Behnia for their warm guidance, insightful critique, enthusiastic support and patience, as well as their belief in the importance of this project. I would also like to express gratitude to my second reader, Karen Schwartz, and external, Blair Rutherford. Lastly to my family; my parents Florence and Tade, sisters Temi and Tilewa, brother Baba, and friends Wangui and Kimalee, you were unending sources of encouragement, insight, support, hilarity, and calm.

Thank you all!

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Chapter One: Introduction

On April 8, 2002 I was arrested by the police during the day. I showed the police my paper and I was with my children. The police ripped up my paper and they put me in Langata Police Station in Industrial Area. I spent two weeks there and I had to sleep with my children on the floor. They raped me in the prison and beat me over and over.

(Parker, 2002, p. 48)

The preceding quote is an excerpt from the Human Rights Watch study entitled: *Hidden In Plain View: Refugees living without protection in Nairobi and Kampala*. It effectively captures and describes the plight of urban refugee women in Nairobi. The urban refugee woman is a figure of extreme vulnerability, who suffers multiple forms of violence. As a woman, a refugee and an impoverished person living in the city, she gains little visibility in the eyes of the law and policymakers, while paradoxically becoming the target for brutality, exploitation and criminalization; it is the intersection of these different identities that compound the urban refugee woman's experience of multiple forms of oppression. Urban refugee women are subject to emotional, physical, sexual and gender-based abuse, as well as the violence that is perpetrated by systems and structures that construct her as dispensable and lacking value—or in fact possibly even worse do not see her at all. Urban refugee women remain marginalized by the very instruments and policies meant to see to their protection, as refugees and as women.

According to UNHCR's Global Trends report, women and girls make up nearly half of the refugee population at forty-nine percent (UNHCR, 2011). In conflict situations, mass acts of

violence against women are prevalent (Pittaway & Bartolomei, 2001). These can range from acts of physical aggression, to forms of structural violence directed by the state and other actors. They include: “ involuntary relocation, forced labour, torture, summary executions of women, forced deportations, as well as racist state policies denying or limiting public representation, health care, education, employment, and access to legal redress” (Pittaway & Bartolomei, 2001, p.21). In periods of conflict, women often become the targets for ethnically-motivated gender-specific forms of violence which encompass: sexual and gender-based violence, rape, mutilation, infanticide, forced impregnation or forced sterilization. Prevailing patriarchal and nationalistic conceptions construct women as 'vessels of culture'. Women's bodies come to symbolically stand in for the nation state. They achieve socio-cultural importance due in part to their capacity to bear children who will become future citizens, taught by their mothers the importance of family, community and country. This manifests in large-scale acts of violence against women as a form of political aggression (Pittaway & Bartolomei, 2001). As such, widespread violence against women during times of conflict is deeply rooted in patriarchal and socio-cultural notions of the role of women in society and the nation-state. In Sub-Saharan Africa¹ in particular, I would argue that such tensions are steeped in a history of: colonialism, nationalist struggles and struggles for independence, economic and socio-cultural globalization as well as economic liberalization.

Women experience conflict, flight and statelessness in specifically gendered ways. The experience of life as a refugee woman is informed by the multiple interconnecting risks and vulnerabilities they face. I define vulnerabilities as the conditions that result in, and/or the

¹ Africa South of the Sahara.

experience of multiple forms of violence in an urban refugee woman's life. The focus of this particular study is on urban refugees, refugees who inhabit urban areas as opposed to refugees who live in camps. Refugees flee border camps due to the insecurity, lack of opportunities and harsh conditions they encounter, as well as unfamiliarity with rural living. The analysis of the experiences, livelihoods, and struggles faced by urban refugees is a burgeoning area of scholarship within the field of refugee studies. Although there have been a few large-scale investigations on the topic of urban refugees in Nairobi, Kenya, we see a dearth of scholarship with regards to the subject of urban refugee women. Recent studies by advocacy and policy groups include: the aforementioned 2002 Human Rights Watch report, the 2010 report on urban refugee women by the Humanitarian Policy Group, as well as Amnesty International's 2010 study entitled *From Life without Peace to Peace without Life*: that explored the treatment of Somali refugees and asylum-seekers in Kenya. The subject has also received a degree of scholarly attention as evidenced by Elizabeth Campbell's 2006 article on urban refugees in Nairobi, as well as entire volumes dedicated to the topic of urban refugees in *Refuge*, the journal from the Centre for Refugee Studies at Queens and York University, as well as Oxford's *Journal of Refugee Studies*.

Within the context of African states that host refugees, urban refugees occupy an ambiguous space of (il) legality. Previously termed 'irregular movers' in the 1992 United Nations High Commissioner's Report on the Policy and Practice of Refugees in Urban areas, refugees not mandated to live in urban centres often have very little protection and access to services (Parker, 2002). The majority of refugee-hosting nations in Sub-Saharan Africa have strict encampment policies. Kenya is an example of a country that does not allow refugees to leave refugee camps unless given permission by UNHCR. If they venture into, or inhabit urban areas,

this can result in a loss or reduced access² to protection, food, and security, medical, legal and various other services (Parker, 2002).

Numerous feminist scholars have pointed to the androcentric and male-focused nature of international human rights law in general and refugee law specifically. They have highlighted the gender neutral language of the 1950 United Nations Refugee Convention, as well as the gendered nature of refugee determination processes and access to services and protection (Oswin, 2001). Thus, it is in light of these tendencies and a growing interest in the experience of urban refugees that I focus my investigation on the study of urban refugee women in Nairobi, Kenya.

Urban refugee women in Nairobi occupy a space of multiple insecurities. They are largely 'invisible' to host governments and international organizations, but criminalized and targeted by the state when they become visible, as well as exploited and scapegoated by the host community and the state (Parker, 2002). As such, urban refugee women are subject to intersecting levels of vulnerabilities due to: their gender, their status as a refugee, as well as their membership in the population of the urban poor. These vulnerabilities result from multiple structures of: colonialism, patriarchy, state sovereignty and socio-economic status, which interconnect to influence the lived experiences of these women.

² When refugees reside in urban centres or bypass the camps altogether to live in cities, there is no danger of a loss of status. However, this complicates their refugee status determination and registration process, access to services, and opportunities for third country resettlement, and results in their criminalization. This shall be elaborated on further in the text.

Research Question

The purpose of my research is to examine the ways in which the experiences and vulnerabilities faced by urban refugee women living in Nairobi, Kenya have been constructed in Kenyan policy. I also assess the adequacy of these policies, identifying gaps that may contribute to making the lives of urban refugee women less, rather than more secure. Thus, my central research question is as follows: How are the multiple intersecting vulnerabilities faced by urban refugee women addressed in policy? My sub-questions are: 1) What are the intersecting vulnerabilities faced by urban refugee women in Nairobi, Kenya? 2) What are the policies available for the protection of urban refugee women? 3) What are the gaps in policy? 4) Why are there such policy gaps?

In examining structural oppression, there is a danger of essentializing women as helpless victims of violence. This is a characterization that has often accompanied discussions on refugee women and their struggles. I wish to draw attention to the fact that urban refugee women are a heterogeneous group who resist, negotiate and engage with the numerous forms of interconnecting oppressions they face, in myriad and multifaceted ways.

Introduction to Theoretical Frameworks

The theoretical frameworks that I use to guide my study are transnational feminism and governmentality. Transnational feminism builds upon postcolonial and global feminism, however, it elaborates on the specific conditions of women across the globe, and emphasises the influence of globalization, global politics and the global economy (Mendoza, 2002). This perspective is particularly important in the study of refugee women as it examines transnational

movements resulting from the aforementioned dynamics, and grounds solutions to these in global human rights structures and law.

Central to the theory of governmentality is the idea that the modern state governs using a variety of techniques, structures and institutions. These include structures and institutions that are not part of the formal state, but function to pursue the objectives, aims and policies of the government (Colebatch, 2002). The theory of governmentality shall be used specifically in relation to the various strategies employed in the management and protection of refugee populations.

I shall draw upon “policy archaeology” methodology in my policy analysis of the 2006 Kenya Refugee Act. The approach of policy archaeology was developed by James Scheurich whose field is of educational policy analysis. He drew upon Foucault's work on the archaeology of knowledge, firmly situating policy in its historical context, exploring the various social factors that inform and shape it, as well as the role of social policy itself (Scheurich, 1994). Thus Scheurich traces the history and construction of a social problem, as well as the social regularities, which are the embedded values and norms that influence how a social problem is perceived and addressed. Policy archaeology also explores the range of viable policy solutions and lastly, interrogates the role of social policy itself, in replicating power inequities. Policy archaeology seeks to critically examine the construction, framing and solutions to a social problem, and brackets this within an analysis of the underlying systems of oppression that structures what is made visible, nameable and solvable by policy.

Structure of the Thesis

The introductory chapter of this study explores the multiple forms of violence a woman is susceptible to as a result of the intersection of her identity as: a woman, a refugee and an impoverished person. It also points to the focus of the research and central question: How are the multiple vulnerabilities experienced by urban refugee women in Nairobi addressed in policy? Then follows a discussion of the general treatment of refugee women in international laws and instruments, and the importance of such tools for advocacy and policy changes.

Chapter Two is a description of the theoretical frameworks, as well as the methodology which underpins this analysis. The Third chapter highlights the lived realities of refugees in camps and in the cities. This section also explores the background and evolution of the refugee regime in Kenya.

The following chapter is an analysis of the 2006 Kenya Refugee Act, and a discussion of the findings. The chapter begins with a discussion of the elements of the previously mentioned theoretical framework that informed the analysis. This chapter also briefly summarizes the specifics of the Refugee Act. Chapter Four looks at the application of the previously identified analytical frameworks within the analysis. It also examines the history of the Act as well as the treatment of urban refugee women within it. The chapter investigates the ways in which social regularities underpin how the issue of vulnerabilities faced by urban refugee women is addressed. This chapter also provides an examination of the role of the Refugee Act in the Kenyan political landscape.

The final chapter of this analysis examines global citizenship as a new approach in refugee policy. Global citizenship is a theory expanded upon by sociologist Saskia Sassen which speaks

to the contemporary context. As we inhabit a globalized world with mass transnational movements, global politics, regional organizations and international human rights structures become increasingly important. The emphasis here is on grounding the solutions for vulnerabilities faced by urban refugee women within an international human rights framework. The final section of this chapter shall also include recommendations to the Government of Kenya.

In order to examine the ways in which the vulnerabilities experienced by urban refugee women are addressed in Kenyan national policy, it is important to frame this within a historical context. To that end, what follows is a mapping of the emergence of women's issues in the field of international refugee policy as well as the attention paid to refugee women in international human rights document and policies.

Refugee Women in International Human Rights Law

The historical treatment of refugee women in international law has been less than exemplary. For a long period, the specific needs, concerns and agenda of refugee women were ignored by the United Nations (UN) and in the international human rights arena. The 34th Session of the General Assembly, held in 1979, was the first meeting which focused on the specific and crucial needs of refugee women. Karoula (2001) notes that it was not until 1985 that the particular needs of refugee women received a separate, or 'its own' agenda item at UNHCR's annual Executive Committee (EXCOM) meeting (as cited in Pittaway and Bartolomei, 2001).

The 1993 *EXCOM Conclusion No. 73 (XLIV)*³ acknowledged the link between the rampant nature of sexual violence committed against refugee women and their forced displacement (Pittaway and Bartolomei, 2001). Refugee women in situations of conflict, flight, at camps and in urban centres, are often the targets of extreme forms of violence, as a result of their gender, ethnicity, religion and perceived vulnerability. However, as stated by Pittaway and Bartolomei, “efforts to address the particular situation of refugee women have so far fallen short of the adoption of any legally binding international instruments singling them out as specific groups” (Pittaway and Bartolomei, 2001, p. 22).

There has been some progress in recognizing the particular needs of refugee women in refugee policy at the national level. This is evident in the institution of gender guidelines for refugee determination put forth by various governments such as Canada, Australia and the UK. However, the applications of such instruments lack consistency (Pittaway & Bartolomei, 2001).

The integration of refugee women into international and domestic instruments, policies and regulatory bodies has been slow in evolving. The policies have been perceived as lacking real teeth when it comes to the protection of women, and instituted purely for the sake of appearance (Oswin, 2001). The wholesale adoption of specific policies that address the needs of refugee women may be hindered by underlying systems of structural oppression that exist. In reference to the implicit disregard for women in international law, Charlotte Bunch, a global feminist scholar, notes:

³ The 1993 Executive Committee of the United Nations High Commission for Refugees Conclusion No 73 is the summary document produced during the meeting of the Executive Committee. It focuses on the topic of refugee protection and sexual violence.

The problem is that little elaboration of these rights has been made from the point of view of women, and therefore we have no significant body of international rights law in this area. Thus the dominant definition of human rights and the mechanism to enforce them in the world today are ones that pertain primarily to the types of violations that the men who first articulated the concept most feared.

(Bunch, 1995, p.15 as cited in Oswin, 2001, p. 349)

Feminists advocating for the protection of refugee women have been concerned with the male bias that underlies international and domestic legal instruments. Their efforts have focused on the language of the UN refugee definition. They have called for the elimination of the androcentric and male-centred terminology in the definition of the refugee, and the implications of this for refugee women. This is due to the fact that the experiences and realities of refugee women subject to persecution, in flight and undergoing the process of status determination, are invariably gendered (Oswin, 2001).

As detailed in the 1967 UN Refugee Protocol, a refugee is one who:

...owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.

(UN Protocol for the Protection of Refugees, 1967)

A number of feminist scholars and activists have found this definition problematic, as it does not take into account the gendered experiences of refugee women. Firstly, such a definition

does not consider the gender-specific ways in which women are persecuted, through sexual and gender based violence (SGBV), for example. The preceding definition situates these as private and domestic issues or crimes of honour, distant from the public realm of politics, war crimes or indeed persecution. Secondly, feminist academics have pointed to the liberal rights narrative upon which refugee law is founded. Such an ideology emphasizes gender neutrality and 'universalizability'. As such, the liberal subject is a free, "autonomous, rational contract-making individual whose rights are violated in the public sphere by the state" (Rao, 1996 as cited in Oswin, 2001, p.349). This concept of the 'universal citizen' does not allow for the reality of different subject positions that emerge as a result of the dynamics of gender, class, ethnicity, migration status, or indigenous identity, which can hinder the possibility of such freedom and autonomy (Oswin, 2001).

Chapter Two: Analytical Frameworks

Analyses in Refugee Studies

According to scholar Cassandra Veney, an in-depth examination of refugees needs to be informed by a number of analytical imperatives. First, the investigation needs to be historically situated. The historical roots of the refugee crisis need to be identified, most specifically, within the context of colonialism and its resultant influence and effects on present day conflicts, crises and refugee movements. As stated by Veney “postcolonial Africa has tried to grapple with the problems and challenges of state-building, nation-building, economic development, ethnic diversity [and] social integration” (Veney, 2007, p.12). Conflicts are often a direct result of efforts to nation-build, democratize, develop economically, as well as contend with ethnic tensions. Ethnic and tribal fissures were manipulated and aggravated by colonial policies as a form of colonial management and government. These divisions privileged certain groups over others, created artificial geographic separations, as well as arbitrary ethno-racial categories (Veney 2007, Akokpari 1998, Marfleet 2007). Such an analysis also requires one to understand the changing time periods and conditions in which refugee crises emerge, evolve and sometimes re-cycle.

Secondly, the importance of employing a transnational perspective and analysis is emphasized, as refugee movements and crises are not solely located within the national borders that encompass them. Factors that influence refugee flows and the impacts of these cross borders. Indeed, the very definition of a refugee is as an individual who crosses borders in search of protection, assistance and security, which their own nation-state is unwilling or unable to provide, necessitates a transnational perspective. The refugee regime is also characterized by the

negotiations and engagements between refugee-hosting and refugee-producing states, as well as international humanitarian and development organizations (Malkki, 1995).

Lastly, refugee studies require a multi-disciplinary framework, as:

The refugee crisis is both a product of and subject to political forces and calculations, understanding the politics of refugee influx, relief and regulation benefits from political science conceptions of the postcolonial state, national security, policy formation, processes of democratization, international relations, ethnic conflicts...and citizenship just to mention a few.

(Veney, 2007, p. 12)

Thus, as refugee status falls under national, regional and international law, an understanding of legal perspectives, national and international human rights law, as well as refugee conventions and instruments is important (Malkki, 1995).

The theoretical frameworks I shall be using in this study are multi-disciplinary in nature and draw from a variety of influences; such an approach is quite relevant to the topic of refugee studies. My goal in using these frameworks is to situate the issue within a sociological context, explore how the issue has come to be defined, analyse the solutions that have been advanced to deal with it, and provide potential solutions and recommendations.

In this study, I shall primarily be using a transnational feminist framework that builds upon a postcolonial and global feminist perspective to point to the specificities of the urban refugee woman's experience, and the glaring gaps in policy. I shall also be using Foucault's

theory of governmentality to explain the different techniques of management and control of refugee populations employed by state and non-state actors.

Postcolonial Feminism

The primary theoretical framework I shall be using for this study is transnational feminism. This approach builds upon key ideas in postcolonial and global feminism. In particular, transnational feminism draws from the critique of postcolonial feminism of the treatment of women from the Global South. As such, a mapping of the central concepts and ideas that influenced transnational feminism is important.

Postcolonial feminism focuses on the conditions, contexts and experiences of women in the Global South. It affirms that the experiences and inequities faced by women in the Global South are due not only to gender, but as the result of the intersection of: legacies of colonialism, economic liberalization, global power inequities, as well as ethnic-based conflicts for resources and power (Mohanty 2002, Nnaemeka 2005, Oyewumi 2003).

More specifically, postcolonial feminism is critical of Western liberal feminism and its approach to the study and treatment of women in the Global South. In particular, Western feminism has been critiqued for its representation of 'Third World' women and feminists. Postcolonial feminist, Gayatri Spivak, refers to some of the treatment of women from the Global South in Western feminist scholarship or Western scholarship in general, as epistemic violence or the violence of knowledge production (Spivak, 1988). Postcolonial feminists suggest that non-Western women in Western scholarship are often generalized, distorted and represented as

unceasing victims needing saving, with the rescue identified as development aid, religion, modernization, or human rights (Kim, 2007). Writings on women from the Global South may carry strains of neo-colonial rhetoric. These distortions have been elaborated upon by Chandra Talpade Mohanty in her seminal essay “Under Western Eyes”. In her work, Mohanty points to the universalization of Third World women in Western feminist writing, alternatively, concurrently and unceasingly as: victims of patriarchy, religion, globalization, development, economics, neo-colonialism and colonization. Not only are they described as a homogenous group, but this nebulous conflated entity that is a ‘third world’ woman, is rarely depicted as resisting or challenging the multiple forms of oppression she is subject to. Even while challenging and resisting however she never sheds the status of ‘victim’. Thus, according to Mohanty:

...third world women as a group or category are automatically and necessarily defined as: religious (read “not progressive”), family-oriented (read “traditional”), legal minors (read “ they-are-still-not-conscious-of-their-rights”), illiterate (read “ignorant”), domestic (read “backward”) and sometimes revolutionary (read “their-country-is-in-a-state-of-war-they-must-fight!”)

(Mohanty, 1988, p.80)

The modernization and development paradigm is another aspect of Western scholarship on the Global South and women from the global south, that postcolonial feminism resists (Kim, 2007). Postcolonial feminists assert that although economic development and the creation of industries can improve the material conditions of women’s lives in the Global South, there is an underlying belief that gender equality will immediately result, which is not the case

(Chowdhury, 2006). There are many instances where industrialization creates its own set of gendered inequities. However, modernization and development is too readily seen as a panacea to gender oppression, which is problematic on several levels. Firstly, the modernization and development paradigms which go hand in hand, construct the Global South as a region languishing in an underdeveloped and pre-modern past that needs to be brought into the future. As stated by transnational feminist Elora Chowdhury, “[the] literature relies on a framework of a modernized First world that should go in and rescue, civilize and liberate those facing yet another crisis in the Third World, always imagined as a region of ‘aberrant violence’ (Chowdhury, 2009, p. 62).

Additionally, the language of modernization and development also assumes that non-Western customs and traditions are inherently patriarchal and oppressive. Such patriarchal oppression does occur within the confines of certain cultural traditions as with all cultures across the globe. However, the assumption that non-Western cultures are implicitly patriarchal is a gross generalization, and pays no attention to the variations in traditions, as well as to the various practices and histories that are emancipatory for women.

Lastly, postcolonial feminists are critical of the way that the concepts of gender and sisterhood come to be understood and universalized for all women, by Western feminism. Nigerian feminist scholar Oyeronke Oyewumi (2001, p. 7) questions, “On what basis are feminist concepts, developed from Western social categories, transferable or exportable to other cultures that display a different social organization and cultural logic?” (as cited in Kim, 2007, p. 112). This is particularly true for the concepts of ‘gender’ and ‘sisterhood’ which are universally

applied in Western feminist analyses, but which must be situated within their specific cultural contexts and understandings.

Global and Transnational Feminisms

Transnational feminism, although critical of the concept of global sisterhood, sees the utility of transnational networks, and international human rights instruments for advancing women's rights globally. Thus, charting the emergence of the global feminist movement as well as identifying the global structures and concepts that came to be, informs the solution and strategies employed by a transnational feminist perspective.

In the 1980s feminism emerged on the transnational stage as a global movement with wide-ranging support and momentum. This was marked by the 1985 Nairobi conference, the United Nations Third World Conference on Women. The objective of the gathering was to assess the changes made during the UN decade for Women and to devise a plan of action for the next ten years (World Conference on Women, 1985)

At the time, a number of new phenomena emerged that informed the transnational movements of the 1980s. These included: new information technologies, newly open economies (particularly in the Soviet Union), as well as a growing global awareness of the effects of World Bank induced economic austerities in the Global South (Moghadam, 2000). In light of these changing dynamics, feminist organizing began to take on a more international scope. Global feminism sprang from collaborations around issues of economic inequality, patriarchal oppression and human rights, between women of the Global north and South (Moghadam, 2000).

Underlying this was an overall sensitization to issues affecting women across the globe. Iranian feminist scholar and activist Valentine Moghadam defines global feminism as:

The discourse and movement of women aimed at advancing the status of women through greater access to resources, legal measures to effect gender equality and the self-empowerment of women within national boundaries but through transnational forms of organizing and mobilizing.

(Moghadam, 2000, p. 62)

The global feminist movement emerged beneath the umbrella of UN world conferences on women, and a framework of international human rights. The 1985 Nairobi conference and the Fourth World Conference on women in Beijing in 1995 were global assemblies where the goals, hopes and objectives of global feminism were first articulated (Moghadam, 2000). Moghadam actually dubs the Beijing platform for women, the ‘manifesto’ for global feminism, and it reads:

The objective of the Platform for Action is the empowerment of women. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the states regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms...

(Beijing Declaration and Platform for Action, The Fourth World Conference on Women, Ch. II, paragraph 9)

One of the core concepts upon which global feminism is premised is that of global sisterhood. Thus, all women share common struggles and experiences of gendered oppression as all women across the globe are connected. As stated by Charlotte Bunch, “the oppression of women in one part of the world is often affected by what happens in another...no woman is free until the conditions of oppression of women are eliminated everywhere” (Bunch as cited in Tong, 2009, p 215). Bunch emphasizes the connections between the Global North and the Global South asserting that there are linkages between local and global struggles, and that the battles fought in the First world have ripple effects in the Third world and vice versa.

To make global feminist consciousness a powerful force in the world demands that we make the local global, and the global, local. Such a movement is not based on international travel and conferences, although these may be useful, but must be centred on a sense of connectedness among women active at the grass roots in various regions. For women in industrialized countries, this connectedness must be based in the authenticity of our struggles at home, in our need to learn from others, and in our efforts to understand the global implications of our actions, not in liberal guilt, condescending charity, or the false imposition of our model on others. Thus, for example, when we fight to have a birth control device banned in the United States because it is unsafe, we must simultaneously demand that it be destroyed rather than dumped in the Third World.

(Bunch, as cited in Tong 2009, p 217)

Thus, global sisterhood stresses accountability and connectedness to women’s issues across the globe. However, as with most constructs, the concept of global sisterhood has been questioned. In this particular case, the notion of sisterhood may be in danger of essentializing the conditions

of all women from the global south and implying a similarity of all women's experiences across the world. So although all women may experience forms of gendered oppression, this experience is often informed and framed by; class, culture, race, context, and various other factors. Thus, even in the same geographical, cultural and economic location, a woman's experience of a gender wage gap⁴ for example, might be complicated by: the type of job she has, the number of dependents as well as emotional and financial support from spouses, friends and family members. Similarly, the types of gender oppression experienced by women in the Global South are not always the result of extreme forms of customary violence, such as in the case of female genital cutting. As noted earlier, Oyewumi suggests that the notion of sisterhood may not be understood in the same way universally, neither is it always culturally relevant to the same extent everywhere (Kim, 2007). Global sisterhood takes its point of departure from the normative liberal Western subject, and as such, does not account for the heterogeneity of women's experiences across the globe (Chowdhury, 2006). In addition, some transnational feminists contend that the rhetoric of global sisterhood results in further replicating relations of inequity, and a neo-colonial rhetoric which posits Third world women as unaware, unenlightened and apolitical:

Feminist scholars and activists frequently use the term 'sisterhood' invoking powerful notions of female solidarity and interconnectedness across cultures and nations albeit through the creation and representation of unequal feminists and female subjects. Implicit and explicit divisions are implied in the discourse of 'global sisterhood' between feminists and 'other women'—where the assumption seems to be that feminists inhabit

⁴ The difference between the higher earnings of male employees, in comparison to their female counterparts.

one world (the Western one) whereas other women are elsewhere and are not feminists or unequally feminist.

(Chowdhury, 2006, p. 293)

Chowdhury points to transnational feminism as a suitable alternative, rooted in the key ideologies of global feminism, but which takes into account the various historical disjunctures, and power inequities that have been present in the study of Third world women. Transnational feminism also infuses international coalitions, and local global struggles for women's rights in different contexts. It also examines the experiences of racialized and non-racialized women in the 1st world. Thus:

The transnational model...moving away from the homogenized figure of difference and braiding a post-colonial and race analysis, pushes towards the interdisciplinary study of the uneven, unequal and complex relationship among women in diverse parts of the world. It highlights women's diverse needs and agenda in many cultures and societies, which are as complicated within societies as they are across nations.

(Chowdhury, 2009, p.56)

Another important element of a transnational feminist lens is that it pays particular attention to the effects and interplay of the processes of globalization, global politics and the global economy. Breny Mendoza (2002) elaborates:

The term points simultaneously to the position feminists worldwide have taken against the processes of globalization of the economy, the demise of the nation state and the

development of a global mass culture as well as pointing to the nascent global women's studies research into the ways in which globalization affects women across the globe.

(Mendoza, 2002, p. 314)

Thus a transnational feminist analysis is particularly important for the study of urban refugee women as they are subject to processes of globalization, global politics and global economics, which compel their transnational movements. Additionally, transnational feminism grounds policy solutions within the framework of international human rights instruments, regulatory bodies, and assemblies. My purpose in using a transnational feminist perspective, structured on postcolonial and global feminist underpinnings is that this speaks to the context and experiences of women in the Global South. In my analysis and study I want to be cautious of not engaging in epistemic violence. Conscious of my position of privilege as someone studying urban refugee women, I want to ensure that their voices are present where possible, in the narratives of their lives and vulnerabilities. Another goal in using this framework is to ensure that the analysis and policy solutions put forward engage with the conditions faced by urban refugee women in Kenya, in a manner specific to the context and histories of these women, the region in which they reside, and its people. Lastly, I wanted to emphasize the use of international, regional and national legal and human rights instruments as particularly suited to bringing to light the vulnerabilities experienced by urban refugee women, as well as making sure that these are addressed.

Governmentality

To the extent that the modern state 'rules', it does so on the basis of an elaborate network of relations formed among the complex of institutions, organizations and apparatuses that make it up, and between state and non-state institutions.

(Rose and Miller, as cited in Colebatch, 2002, p. 418)

The preceding quote highlights core elements in the theory of governmentality. Central to this is the idea that the modern state governs by means of various institutions and structures, which may not be explicitly linked to government, yet work to ensure that its goals, objectives and policies are implemented.

In this study, I shall be using governmentality theory specifically to aid my analysis of the various strategies deployed in the management and protection of refugee populations. In the development of his concept of governmentality, Foucault traced the evolution of the art of governing from the eighteenth century onwards. He demonstrated that, in the eighteenth century the emphasis was on tradition and natural law comprised of 'wisdom, justice, liberality, respect for divine laws and human customs'. In contrast, modern forms of governance focus on the strengthening of the state and endeavour to manage and control the behaviour of citizens (Rose, O'Malley and Valverde, 2006). Contemporary governmentality does not explicitly and exclusively rely on the use of state-actors, but also engages various other organizations, with little to no connection to the government, in the pursuit of governmental objectives. This is done through a variety of strategies, structures and tools.

Governmentality highlights the tensions, struggles and power dynamics between the different stakeholders: urban refugee women, the government of Kenya and the United Nations High Commission for Refugees (UNHCR). Such tensions and power inequities are made evident within a governmentality framework, as in the service of governmental objectives, the UNHCR must also contend with its own internal commitments and mandate. Similarly, the various ways in which refugee populations are managed results in their resistance to governmental rules and regulations, as in the case of refugees fleeing camps to go to cities. Thus the sovereignty and power of the nation state is called into question.

The theory of governmentality is important to refugee studies in general and for this particular study as it frames and illuminates the management and treatment of refugees by states and organizations. This encompasses the relationship between refugees and the state, the control of, and provision for, refugee populations, as well as the persecution of these same populations. As stated by geographer Rachel Silvey:

...the growing body of critical work highlights governmentality and the dispersion of power beyond the formal state apparatuses. For migration research, this analytical shift encourages greater attention not only to discursive production of migrant's⁵ bodies, national borders, and citizen-subjects, but also to the everyday mediations of exclusion/inclusion by actors involved in these circuits of migration n and governance

(Silvey, 2007, p. 268, as cited in Gill, 2010, p.637)

⁵ In this study, refugees are also characterized as forced migrants.

One of the major ways in which Foucault's theory of governmentality provides context to the plight of refugees is through his idea of sovereignty. Governmentality highlights the tensions of sovereignty that lie at the core of nation-state's treatment of refugees. States want to define and assert their sovereign power, which includes keeping a tight rein on the populations within their borders as well as movements across them (Colebatch, 2002). Mass refugee movements as well as various other transnational exchanges undermine state sovereignty. Nevzat Soguk speaks to the governmental anxieties aroused by the figure of the refugee, whose border crossing is at once a representation of the limits of the nation-state, as well as upon whom numerous forms of control, regulation and state-power are enacted. As such:

...the very refugee or migrant bodies, which while at first undermining for instance, a state's ability to produce the claim that it is in control of its proper territories/borders, at times also becomes a source of re/presentation for the state(ism) whereby the state(ism) poses itself as an ontological necessity (being). I shall call this situation the 'paradox of the representable refugee'.

(Soguk, as quoted in Muller, 2004, p 24)

Additionally, when looking at the present economic and political context, the concept of governmentality becomes particularly salient. Our contemporary conditions are shaped by the process of globalization, global capitalism and the liberalization of economies. Rose and Miller argue that in our current context multinational corporations, regional, international and non-governmental organizations play a larger role in the governmentality of nation-states than actual governments (Colebatch, 2002). In this, various actors with similar goals to the state work to

ensure that state policies, rules, regulations and objectives are met. This becomes evident in the particular case of Kenya, where the UNHCR comes to assume the primary responsibility for refugee protection, status determination and management, in a goal to fulfill its mandate while also maintaining amicable relations with the government of Kenya.

The idea of governmentality helps to highlight certain processes in the treatment and protection of refugees as well as in the use and formulation of refugee policy. A central notion in governmentality theory is 'problematizing', understanding the process through which states attempt to construct, define, understand and solve social problems. As such governmentality is understood by:

...the problems around which it circulates, the failings it seeks to rectify, the ills it seeks to cure...It is around these difficulties and failings that programs of government have been elaborated.

(Colebatch, 2002, p. 425)

Such problematizing becomes evident in the ways in which urban refugee women come to be constructed as a problem. Their very presence in the cities is framed as a social problem, as they are expected to reside in refugee camps.

The governmentality approach also directs our attention to the identities by which groups and individuals are constructed and through which they are governed:

Practices of government, as much as practices of self-government, or modes of resistance, attempt to specify and fix our identities in definite ways in the service of particular ends. The 'dangerous individual' or the 'long-term unemployed' as much as

'active citizen' or the 'enterprising person' are personal and collective identities 'made-up' through particular forms of reasoning and technologies, so that they might be worked with and upon to different ends.

(Dean & Hindess 1998, p. 11 as cited in Colebatch, 2002, p. 426).

The different ways in which the identities of urban refugee women are circumscribed is of particular note. The intersection of their various identities prescribes how they are treated, what services they can access, and what threats they are vulnerable to. In this, gender, country of origin, religion, ethnicity, refugee status and class, play a part.

Foucault also refers to technologies of government, and these are the means and mechanisms through which subjects, citizens and populations are governed. Rose and Miller describe these technologies as follows:

Government is a domain of strategies, techniques and procedures through which different forces seek to render programmes operable, and by means of which a multitude of connections are established between the aspirations of authorities and the activities of individuals and groups. These heterogeneous mechanisms we term technologies of government.

(Rose & Miller 1992, p. 193, as cited in Colebatch, 2002, p.427).

Such technologies comprise the entirety of the refugee regime, including government policies, regional agreements as well as international human rights law. An example of such technologies

would be the processes used to determine refugee status, as well as various methods of counting and keeping track of refugee populations. In his study on governmentality and the international refugee regime, Randy Lippert (1999) identifies refugee camps as a specific technology of governmentality. In this the purpose of the refugee camp was to keep forced migrants corralled to one space, monitored, disciplined and provided for. Liisa Malkki elaborates on the concept in her study on the international refugee regime:

The refugee camp was a vital device of power: The spatial concentration and ordering of people that it enables, as well as the administrative and bureaucratic processes it facilitated within its boundaries had far-reaching consequences. The segregation of nationalities; the orderly organization of repatriation or third country resettlement; medical and hygienic programs and quarantining; “perpetual screening”...and the accumulation of documentation on the inhabitants of the camps; the control of movement and black-marketing; law enforcement and public discipline; and schooling and rehabilitation were some of the operations that the spatial concentration and ordering of people enabled or facilitated.

(Malkki, 1995, p.498)

Another important element in writings on governmentality is the concept of governing at a distance. Thus:

...the governmentality literature sees a key characteristic of modern government as ‘action at a distance’, in both a geographical sense meaning the governing of distant

territory, and a constitutional sense, meaning that government is accomplished ‘through the activities and calculations of a proliferation of independent agents including philanthropists, doctors, hygienists, managers, planner, parents and social workers’

(Rose and Miller 1992, 180, as quoted in Colebatch, 2002, p. 429)

As such, modern governing is carried out not only through the direct involvement of government or government agencies, but also through distant third parties. This highlights the roles and interventions of various service providers and those implicated in the refugee regime. My use of governmentality theory is to point to the interplay of competing needs, interests, values and power struggles between the UNHCR and the government of Kenya and how these in turn structure and constrain the lives and vulnerabilities of urban refugee women.

Methodology

The methodology I shall be using for this investigation is policy archaeology. Policy archaeology draws upon Foucauldian thinking and was originated by James Scheurich in his analyses of education policy. The main objective of policy archaeology is to question the construction of social problems, norms or ‘social regularities’ inherent in how these problems are perceived and addressed, the range of acceptable policy solutions that are advanced, as well as the role of social policy analysis itself in potentially replicating structures of inequality (Scheurich, 1994). Scheurich comments that policy archaeology:

...significantly expands [policy studies] as a critical problematic. Rather than beginning after social and educational problems have emerged into social visibility, policy archaeology studies the social construction of the range of policy solutions. Rather than acquiescing to the range of policy solutions debated by policy makers and policy analysts, it interrogates the social construction of that range. Rather than accepting policy studies as a 'neutral' social science, it questions the broader social functions of policy studies. And, finally, rather than concluding that social and educational problems, policy solutions and policy studies are created by the conscious interplay of the free agents of history, policy archaeology proposes that a grid of social regularities constitute what is seen as a problem, what is socially legitimized as a policy solution, and what policy studies itself is.

(Scheurich, 1994, p. 297)

Scheurich delineates four key arenas in the exercise of policy archaeology. The first arena is the social problem arena. In this arena, the social construction and history of the particular social problem is examined, and questions are raised as to how and why this particular issue came to be defined as a problem and the circumstances under which it did. Thus, "instead of accepting a social problem as an empirical given, questions or brackets this givenness. Paraphrasing Foucault (1972) [t]he tranquility with which... [social problems] are accepted must be disturbed (p.25)" (as quoted in Scheurich, 1994, 300).

The second arena comprises the network of social regularities from which social problems are perceived and understood. Social regularities are the embedded and underlying norms and values that influence how we think about social problems and policy solutions

(Scheurich, 1994). As explained by Davis: “social regularities comprise thought, the values that prompt their development, and perceptions of reality which manifest as policy and practice” (Davis, 2008, p. 11). Ramsuran and Malcolm highlight key elements of social regularities. Firstly, they are not intentional, and thus were not created consciously by a set of individuals. Secondly, they are historical, and reflect the time and context in which they operate. Lastly, regularities operate beneath the surface and are not always evident (Ramsuran and Malcolm, 2006). In this particular study, the social regularities at play, which influence how the vulnerabilities of urban refugee women are perceived as a social problem, are: gender and class oppression. Gender and class oppression inform what is visible or invisible as a social problem, and how this comes to be regulated, addressed, or ignored within policy. Thus, such elements comprise social regularities.

The third arena in the policy archaeology framework comprises the social construction of acceptable policy solutions and examines how these are influenced by the aforementioned social regularities. The final arena interrogates the role and broader social functions of social policy (Scheurich, 1994). It examines the possible ways in which social policy tends to bulwark and support institutions, groups and structures that make up the power elite, while exacerbating power inequities, and further marginalizing those who the policy is meant to address.

I chose this specific methodology as it is in line with the main theoretical frameworks I am using in my investigation, specifically with governmentality and transnational feminist theory. Policy archaeology offers an important approach to the study of refugee policy in particular and this specific investigation for a number of reasons. Firstly, it allows me to situate the study within a historical context, which is not merely descriptive but critical. It also helps me

to trace and frame the ways in which the issue of urban refugees and urban refugee women come to be constructed as a social problem. Policy archaeology also calls my attention to the particular techniques, strategies and regularities employed in the treatment, management and protection of urban refugee populations. Additionally, it encourages me to question the current policy solutions, as well as the gaps that may exist in them. Lastly, a policy archaeology framework will help me to interrogate the wider implications of policy and policy studies in general, and its possible role in replicating structures of inequality.

Chapter Three: The Refugee Regime in Kenya

According to refugee studies scholar Lisa Malkki, the refugee regime is comprised of all the state and non-state actors such as: UN organizations, NGOs, community groups and development agencies that play a role in the care, treatment, provision and protection of refugees (Malkki, 1995, p.505). In Kenya, two distinctive periods in refugee policy are distinguishable, pre and post 1990s. Before the 1990s, Kenya could be described as having a fairly laissez-faire policy (Refugee Consortium of Kenya, 2008). After the 1990s, with various conflicts escalating in the Horn of Africa, Kenya experienced a mass influx of refugees it was unprepared to deal with.

Pre-1990

After independence from Great Britain in 1963, Kenya shone as an economic, social and political success in the region. It was economically prosperous, enjoyed a level of political stability, and ethnic conflict was minimal. As such, refugees from neighbouring Uganda and Rwanda, as well as South Africa, the Democratic Republic of Congo and Malawi fled to Kenya. These early refugees enjoyed a range of rights which included: the ability to work, have business licenses, go to school, live where they pleased, as well as be able to access social services. Early refugees to Kenya were afforded numerous privileges because they were perceived as contributing extensively to the Kenyan economy through skilled work and financial investments (Veney, 2007).

Before 1991, the Kenyan government had a well-defined process for determining refugee status. Individuals seeking asylum were interviewed by an Eligibility Committee comprised of representatives of the Ministry of Home Affairs and the Immigration Department. UNHCR's

role in the proceedings was that of observer and advisor. The Eligibility Committee employed the 1951 Convention definition of a refugee to determine status. Although Kenya was also required to use the wider definition contained in the Organization of African Unity Convention, there was no mechanism in place for designating refugees under this. The Eligibility Committee however, was not equipped to deal with large numbers of refugee claimants. According to Verdirame:

This system based on individual status determination by the Kenyan government, 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. The war in Somalia, and the subsequent arrival of the Sudanese 'walking boys' in the northwest, led to the final collapse of the system of individual status determination by the Kenyan Eligibility Committee.

(Verdirame, 1999, p.56)

As a means of soliciting external funding from the UNHCR, the UN, and the international community to provide for the needs of the Somali and Sudanese displaced population, the Kenyan government began to look towards refugee camps as a solution (Verdirame, 1999). Camps were established by UNHCR, on the coastal city of Mombasa, and in Dadaab for the Somali population. The Ethiopians were moved to camps in Mandera, in the North-Eastern province near the Ethiopian border (Verdirame, 1999). Kakuma was established to host the population of Sudanese 'lost boys' in the Turkana region of north-west, in close proximity to the Sudanese border. These camps were run and managed by the UNHCR. Presently, only two camps remain, Kakuma and Dadaab (Verdirame, 1999).

Prior to its closure in 1995, the Reception Centre, established in October 1981 at Thika a town in close proximity to Nairobi, hosted a number of refugees (HRW, 2002). The Reception centre was located in a suburb near Nairobi and was run by the Kenyan government (Verdirame, 1999). A main difference between Thika and the camps was that once refugees were assigned to camps they were required to live there. As Verdirame succinctly summarized, “In the bureaucratic jargon of the Post-1991 refugee regime in Kenya, refugees *have* to reside in camps ‘until a durable solution is found’ (Verdirame 1999, p.57).

From 1991, UNHCR had sole control of refugee status determination which it outsourced to the Jesuit Refugee Service. Refugees received letters from the UNHCR office in Nairobi detailing their refugee status (Verdirame, 1999). These ‘protection letters’ functioned as a form of identification and designated them to specific camps or in exceptional cases permitted them to reside in Nairobi (Verdirame, 1999). During this period, relations between the UNHCR and the government of Kenya strained to the point that the Kenyan government refused to recognize UNHCR issued protection letters. The Kenyan government went so far as to announce to the press that the UNHCR had no authority to determine refugee status on Kenyan soil (*The East African*, 7 Sept 1998). The government’s official position at the time stated that Kenya was a ‘transit country’ in which refugees could reside in temporarily provided they receive assistance from UNHCR in camps (Verdirame, 1999).

On the question of the legal status of refugees in Kenya in the 1990s, the state never formally acknowledged UNHCR status determination. In addition there was no real legal framework, law or guidelines that had been formalized in writing for the treatment and management of refugees. There was also no delineation of authority and responsibility between

the government of Kenya, UNHCR and various other partner agencies and groups. According to Verdirame:

The Kenyan government has never officially accepted that UNHCR's status determination procedure would be given full recognition in Kenya. The 'status determination' which UNHCR conducts thus inevitably results in an unclear status and the protection letter that ensues is essentially devoid of any legal significance. It is merely an invitation by UNHCR to the Kenyan government to consider the holder *as if* he were an officially recognized refugee.

(Verdirame, 1999, p. 58)

Thus the early 1990s marked a shift in Kenya's approach and reception of refugee population. This shift was typified by camp confinement, UNHCR refugee determination, and much less autonomy for the Kenyan government in matters of refugee determination, protection and provision. This resulted in the Kenyan government exhibiting marked signs of resentment towards UNHCR, as demonstrated in the persecution and general apathy towards the plight of refugees.

Post-1990

Cross Border Operation

In 1992, UNCHR established a Cross Border Operation in Southern Somalia. Four UNHCR stations were created about one hundred miles away from the Kenya-Somali border. The area between the border and the stations mapped a 'preventive zone' (Hyndman, 1999). The Cross

Border Operation comprised humanitarian, relief and community development projects in conflict afflicted areas of Somalia. It also included attempts to repatriate willing Somalis currently living in camps, back to Somalia, during what appeared to be a lull in the conflict, and relocate them to peaceful zones (Hyndman, 1999). The Operation was an effort by UNHCR to placate the Kenyan government, as in the wake of his election win in 1992, Kenyan president Daniel Arap Moi announced that refugees would be forcibly repatriated to Somalia (Hyndman, 1999). In late 1991, he made the announcement that all Somali refugees would be sent back to Somalia. This announcement took place during the period of the first multi-party elections in Kenya, and the expulsion of Somalis might have been used as a diversionary tactic by Moi. By scape-goating and stereotyping Somalis as criminals and gun-runners, Moi drew attention to an external threat, hoping to distract Kenyan voters from his past repressive and corrupt activities (Veney, 2007). As such, the preventive zone was created to avoid the *refoulement* of large numbers of refugees, but was framed by political necessity (Hyndman, 1999).

Swoops and Forcible Repatriation

Over the course of the 1990s there were various incidents of forcible repatriation and xenophobic attacks carried out against refugee populations in Kenya. These were a reflection of tense political moments when refugees were often used as scapegoats for; criminal activity, terrorist activity, and as political diversions and pawns (Veney, 2007). The 1990s was characterized by a period of single-party state rule, under President Daniel Arap Moi. During this period Kenyan civil society groups as well as foreign institutions and organizations clamoured for an end to single-party rule and the establishment of a democratic government (Veney, 2007).

Moi's rule was marked by a period of political repression, ethnic, land and political clashes that later resulted in an internally displaced population. The conflicts were said to have been instigated by Moi himself as a strategy to deter calls for democratic elections (Veney, 2007).

According to Human Rights Watch:

The ethnic violence had been deliberately manipulated and instigated by Moi and his inner circle in order to undermine the political opposition and limit the effect of democratic reforms. The government had failed in its duty to punish those responsible for the violence and had exhibited outright violence towards those who sought to help the victims.

(Human Rights Watch, as cited in Veney, 2007, p. 78)

Thus, from the beginnings of the refugee crisis in the 1990s, Moi labelled asylum claimants as bandits and criminals who sought to enter the country disguised as refugees. As such, a policy of security checks and police sweeps popularly referred to as 'swoops' were implemented to apprehend them (Veney, 2007). Ethnic Somalis living in the city as well as in North-Eastern Province were subject to harassment and arrest. Individuals were required to show birth certificates, ID papers or a passport to prove that they were not illegal and had a right to reside in Kenya. People unable to demonstrate Kenyan citizenship were forcibly repatriated (Veney, 2007). Large numbers of ethnic Somalis were forcibly taken back to Somalia, many of whom had never been, had been born in Kenya or lived in Kenya the majority of their lives. During the swoops around 3,500 Kenyan citizens of Somali origin were forcibly repatriated (Veney, 2007).

Closure of Thika Reception Centre

The Thika reception centre, established in October 1981 was located thirty miles away from Nairobi, in the town of Thika (Parker, 2002). It was originally intended to host 500 refugees, but it came to house up to 5,000 Somali, Sudanese, Ugandan and Ethiopian refugees. The facility was not intended to house such large numbers of refugees, and so malnutrition, disease, and hygiene and sanitation issues abounded (Veney, 2007). In 1995, the Kenyan government announced that it was closing the facility and that refugees would be relocated to camps (Veney, 2007). Upon hearing this, residents of the centre organized a hunger strike as:

A considerable number of refugees originate from urban and urban-like areas, it is not realistic to believe that all these refugees would adapt to life away from town.

Furthermore, it is a well-known fact that many refugees not only depend on assistance from UNHCR'S implementing partners and other NGOs but also rely on support provided by their own kinsmen, who mainly live in Nairobi.

(Veney, 2007, p.173)

UNHCR cooperated with operations to transfer refugees to border camps. The organization performed screenings to ensure that those in need of specialized medical attention remained at Thika, while others were moved to camps. Thus, "for the UNHCR, the over-riding concern about *non-refoulement* can take precedence over actions to provide economic, social or political freedoms. If camps offer basic protection and a logistically uncomplicated means of delivering assistance, they will be favoured" (Jamal, 2003, p. 4, as cited in Veney, 2007).

Camp Confinement

Refugees in Kenya are required by an unwritten executive policy, which originated in 1991 to live in one of its two camps, Dadaab or Kakuma (Parker, 2002). The minister for internal security has the power to establish a law that obligates “aliens to reside and remain within certain places or districts”(Parker, 2002, p. 148). Under Kenyan law however, this policy may only be instituted “when a state of war exists...or when it appears that an occurrence of imminent danger or great emergency has arisen” (Parker, 2002, p. 148). Certain categories of refugees are eligible for the administrative exceptions to camp confinement, which are limited to:

- Refugees undergoing resettlement interviews or processing;
- Refugees who require specialized medical or psychological care not available in camps;
- Refugees pursuing educational opportunities not available in camps
- Refugees with serious security problems in camps.

(Parker, 2002, p.148)

Unfortunately, for the most part, refugees are completely unaware that they may qualify for these exceptions. Similarly, the Kenyan police force is uninformed, and provided little training on the exceptions to the camp confinement policy.

In 2006, the government of Kenya enacted the Refugee Act. The Act restates much of the original camp confinement policy while also creating a separate Kenyan body for refugee determination as well as a permanent refugee identification documents (Refugee Consortium of Kenya, 2008).

Consequently, the refugee regime in Kenya has been marked by a power struggle between the UNHCR and Kenya, with both parties fulfilling their roles in a somewhat nebulous

manner. The parameters of what is required by both sides have shifted and evolved with both entities stepping away from their functions or neglecting them altogether. These changes however did not occur in a vacuum, and were reflective of internal and external political conflicts and tensions, funding pressures as well as efforts to deliver refugee protection with a minimal lack of resources and a lack of complete understanding of programmatic needs, requirements, infrastructure and implementation.

Refugee Conventions

The legal framework for defining refugees in Kenya is shaped by a variety of national, regional and international policies, some of which are included in Kenyan Refugee Act. For instance, the International Convention and OAU Convention definition of refugees are used within the Kenyan national policy. However, prior to the 2006 Refugee Act, the field of Kenyan refugee policy existed within a hodge podge of ambiguity (Pavanello, Elhawary and Pantuliano, 2010). This consisted of an unwritten camp confinement policy, lack of clarity and acknowledgement of the roles of the Kenyan government and UNHCR, and indifference and ignorance of the different refugee distinctions and rights afforded them. Despite the fact that Kenya was a signatory to both the UN and OAU Conventions, the elements of these Conventions were never formalized or instituted in practice by the Kenyan government, and the responsibility for status determination was offloaded to the UNHCR. This resulted in a lack of awareness of the specifics of refugee protection by those who came into daily contact with refugee populations, the police and immigration officials.

The seminal instrument pertaining to refugees worldwide is the 1951 United Nations Convention Relating to the Status of Refugees, to which Kenya is a signatory (Blavo, 1999). The Convention, signed in Geneva, was adopted in the aftermath of World War II to address the large displaced population in Europe. It is regarded as “the critical event in the institutionalization of the post-World War II regime” for the treatment of refugees (Malkki, 1995, p. 501). The 1951 Convention definition is categorically, “the universal basic definition which can pragmatically be expanded, when need arises [,] by extending the mandate of the UN High Commissioner for Refugees (UNHCR) through resolutions by the UN General Assembly and by the adoption of regional instruments complementary to the universally respected Geneva Convention” (116:20 as cited in Malkki, 1995, p.501). Article 1 Section A of the Convention defines a refugee as a person who due to events occurring before 1st January, 1951:

...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 such fear; is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear; is unwilling to return to it.

(United Nations, Geneva, 28, July 1951).

This definition identifies the context in which a person can be determined to be a Convention refugee. As such, an individual is a Convention refugee, if as a result of post World War II conditions, they find themselves subject to persecution because of their race, religion, nationality or political opinion. These categories speak to politicized and easily identifiable

forms of persecution. However, the Convention also points to persecution that occurs as a result of membership in a particular social group. The particular social group classification has often been used in cases of persecution due to sexual orientation (Greatbach, 1989). A person is further determined to be a refugee if (s) he is outside the country of his nationality or residence, and as such is unable to access the protection of the state. The term unwilling and/or unable is problematized by the fact that most often a refugees' 'willingness' to avail themselves of the protection of the state is often complicated by the very real dangers they face. Thus a language of 'willingness' assumes that a refugee is in a situation where they have the freedom and autonomy to pick and choose what sort of protection they require. In reality there is no such choice, and a refugee is often unable to access the protection of the state due to the danger they are in. An individual may be unable to access the protection of the state, as the state itself may be complicit in his persecution. As a result of this, such a person is loath or unable to return to his country of origin or country of usual residence.

The Protocol Relating to the Status of Refugees was adopted by the United Nations General Assembly on the 4th of October 1967. The Protocol was an extension of the original 1951 Convention, and was written to include refugees in regions other than Europe. The Protocol effectively eliminated the geographical and time-bounded limitations of the original 1951 Convention. The Protocol is an entirely independent document and can be acceded to by states that are not party to the International Convention. Kenya is party to both the Convention and the Protocol (Malkki, 1995). The Protocol employs the same definition as the Convention, therefore, it can be signed unto by both Convention and non-Convention states.

In Africa, the late 1950s marked a period of independence movements, termed the independence decade. The various struggles for independence, the toppling of colonial governments, nationalist movements, as well as consolidation of power and resources created a large population of displaced people (Blavo, 1999). In 1969, the OAU adopted the Convention Governing the specific aspects of Refugee Problems in Africa to address the particular context of the African refugee crisis. The core definition from the 1951 International Convention was maintained, with the addition of an extension which spoke to the specific conditions on the continent. Thus, Paragraph 2 Article (1) of the OAU Refugee Convention defines a refugee as an individual who: “Owing to external aggression , occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin or nationality” (Kuhlman, 1991, p.5).

The words 'nationality' and 'persecution' hold particular significance in both the International Convention and the OAU Convention. 'Nationality' refers to the country (ies) from which an individual can prove citizenship through documentation; of which s/he is a national by birth or descent, or through membership within a specific ethnic group and who is identifiable as such. If an individual does not have proof that s/he belongs to the preceding categories, nationality can be taken as habitual or permanent residence in a country for the majority of one's life, or one's country of origin. Nationality is important for identifying the circumstances of an asylum claimant's displacement. If a person is not a national of the country in conflict, then it may be considered safe for them to return to their country of origin as they are not in danger of persecution. For example if an individual is a Tanzanian national, but resides in the Democratic Republic of Congo, where there is conflict, the individual would be required to seek refuge in her country of origin, Tanzania, and not a third country such as Kenya (Blavo, 1999).

Additionally, an asylum claimant must have a “well-founded fear of persecution” in order to pursue a claim for refugee status. Persecution is defined as a situation that could be psychologically and physically damaging, destructive or fatal to an individual, or the group to which they belong. Such persecution may have been instigated by the government of the country of origin, by certain groups with the complicity of the government, or with the tacit approval of the government. Persecution is also understood as the government being unable and/or unwilling to protect victims (Blavo, 1999, p.14).

Refugee Status

Various types of refugee statuses are recognized and granted by a variety of international, national, regional and community bodies. Some of the instruments that delineate the requirements for different types of refugee status include the UN International Convention, the OAU Convention, national policies as well as those by coalitions of community and religious organizations. Different types of status carry with them varying degrees of protection, privilege and access.

Convention Refugee Status is granted by signatories to the 1951 International Convention, and provides the refugee with a number of social, economic and political rights designated by the Convention. These include: the right to Convention travel documents, as well as the right to *non-refoulement* – that is, the right of a refugee not to be returned to the country of their persecution (Blavo, 1999, p.17). In terms of the different types of refugee status available, Convention Refugee status is perceived as affording the most comprehensive type of protection. Convention status is internationally recognized, provides refugees with travel documents (key for

mobility and third country resettlement), and highlights *refoulement* as a major contravention of the International Convention.

Humanitarian status is granted by governments to persons who are considered ineligible for Convention Refugee Status but who would be at peril if sent back to their country of origin. Humanitarian status allows them to remain in the country of asylum, as well as the right to *non-refoulement*. Unfortunately, Humanitarian refugees cannot make the same claims to rights and privileges Convention refugees are privy to. Religious organizations such as churches and mosques may sponsor and care for a Humanitarian refugee (Blavo, 1999).

Mandate refugees are recognized by UNHCR based on its statute. Mandate status is granted exclusively by the UNHCR, while Humanitarian status may be given by various other cultural, religious and non-governmental organizations. As such, an individual is eligible to be a mandate refugee regardless of whether their country of refuge is signatory to the 1951 International Convention. In some cases, mandate refugees may be individuals whose applications for Convention status have been denied. UNHCR functions at different administrative levels in a country and aims to identify people in need of protection in a variety of ways. In this instance UNHCR provides protection to the asylum-seekers not recognized by the government, but who fall within their mandate. A mandate refugee has the right to international protection against *refoulement*, as well as care and treatment in line with basic humanitarian principles. Mandate refugee status does not, however, confer the array of social and economic rights granted by Convention status (Blavo, 1999).

The wider definition of refugee status encompasses individuals unable to prove a “well-founded fear of persecution”, yet whose lives would be at risk. This is a more expansive

definition than the one detailed in the UN Convention. It ascribes a level of protection in line with basic humanitarian principles to all those who fall under this definition (Blavo, 1999). An example of an individual who would come under this more expansive definition is a person who can provide physical evidence and documentation of her torture, arrest and unlawful detainment, but is unaware of the reasons behind the torture, and is certain that return to her country of origin would result in death.

In the event of a mass exodus of rural people, an assessment of individual eligibility is impractical, and so *prima facie* refugee status may be granted to the entire group. *Prima facie* refers to 'eligibility based on first impressions' (Blavo, 1999, p. 17). The granting of *prima facie* status, although practical, becomes quite complex and problematic in certain contexts. Kenya is such a case. Since 1991, the Kenyan government has not granted individual Convention refugee status. In the wake of the conflicts in the Horn of Africa region in the early 1990s, the Government of Kenya now designates *prima facie* status to all Somali, Sudanese and Ethiopian refugees in Kenya (Hyndman, 1999). *Prima facie* status is an *ad hoc* designation that does not grant the rights and mobility afforded by the Convention. As such, *prima facie* status ends up producing a sub-class status. According to Jennifer Hyndman: "Granting refugees *prima facie* rather than convention status is a de facto segregation measure, whether intended as such or not" (Hyndman, 1999, p. 111). Another issue with *prima facie* status is the fact that while it should represent a temporary solution it is currently being used as a permanent policy for refugees on much of the continent. Additionally, *prima facie* status has been integral to Kenya's strict camp confinement policy, as Kenya decrees that all *prima facie* refugees must reside in camps. *Prima facie* determination allows for the downloading of financial and administrative burdens to the UNHCR, connected UN agencies, and international NGOs. Group determination limits the

amount of resources that might have been otherwise spent on individual status determination, additionally *prima facie* status limits the presence of refugees to camps which are administered, run and provided for by the UNHCR and affiliated UN agencies. Thus, large groups of rural people, upon crossing the border are assigned *prima facie* status, and immediately ferried to nearby camps. Whether intentionally or as a result of circumstances, the corralling of *prima facie* refugees in border camps results in their segregation both spatially and with regards to the rights that they are privy to (Hyndman, 1999).

Chapter Four: The Lived Realities of Refugees

The population of urban dwellers (refugee and non-refugee) in Sub-Saharan Africa is expanding at a rapid rate. It is estimated that over half of the population in the region will be residing in urban areas in two decades (UNHCR, 2006). This trend is also reflected in the population of refugees in Sub-Saharan Africa, as well as globally (Pavanello et al., 2010). Up to half of the 10.5 million refugees across the globe are believed to be living in cities and towns, and only one-third reside in camps. In 1980, Kenya was host to about 12,000 refugees, mostly from Uganda⁶ (UNHCR Nairobi, 2004 as cited in Campbell, 2006). Today, the number has increased to 430,800 registered refugees, making it one of the top 10 major refugee-hosting nations in the world (UNHCR Global Trends, 2011). Refugees living in urban centres are a largely invisible population. There is little knowledge about how many they are, who they are, where they are, where they come from, how they survive and earn a living, their refugee status is also unknown. In 2006, the UNHCR office in Nairobi, the capital, registered 32,000 refugees living in the city. Today, the estimate sits at 50,000, with the real figure anywhere up to 100,000 (Campbell, Crisp & Kiragu, 2011, Pavanello et al., 2010). As such, the refugee experience in Kenya does not occur solely within the confines of the refugee camps. Addressing the protection needs, concerns and quasi-legality of this mainly hidden population creates tensions for state actors as well as humanitarian and development organizations.

Multiple factors combine to influence a refugee's decision to flee the camps and seek asylum in cities, or bypass the camps altogether and head straight for the urban center. Urban refugees are displaced persons who move to urban areas as a result of the insecurity, strained

⁶ There was no camp confinement policy at this time; this was a relatively small and highly literate refugee population that easily integrated into the local community (Veney, 2007).

resources and lack of opportunities in camps. The number of urban refugees presently in Nairobi is 50, 000 (Campbell et al., 2011). Urban refugees suffer from multiple marginalizations as they are simultaneously ignored and invisible to host governments, criminalized and targeted by host governments and societies, as well as re-victimized by elements in the very institutions tasked with protecting them. Kenya's strict camp confinement policy makes it exceedingly difficult for urban refugees to live openly and with dignity. Due to this policy, which restricts their movements and place of residence to border camps, urban refugees live a clandestine existence in which their opportunities and access to livelihoods, education, mobility, healthcare, safety and security are severely limited. In a 2002 report, Human Rights Watch summarizes the struggles faced by urban refugees; " Refugees may not be poorer than Kenyans...but they must struggle for survival without legal status or networks of friends and family that citizens have" (Parker, 2002, p.1). Kenya's camp confinement policy not only restricts the lives and movements of refugees, but also results in wilful disregard towards the plight of urban refugees. As stated by Human Rights Watch:

Those who find themselves in urban areas of those countries are being denied access to the protection and assistance to which they are eligible, and are easy targets for police harassment and extortion. Government officials even go so far as to deny the very existence of refugees in urban centres.

(Parker, 2002, p.2)

Kenya's Refugee Camps

The impetus for forced displacement has been described in migration literature as a push and pull. Push and pull describes the factors that compel individuals to leave one location and move to another, and is often used to refer to the traffic of people away from areas of conflict, environmental degradation, economic and development-induced displacement (de Haas, 2008). Such a concept is also appropriate in explaining the flight of people from refugee camps.

Refugees leave camps for a variety of reasons that may include: insufficient humanitarian assistance, widespread insecurity and conflict, inter-ethnic, religious or political targeting, or a lack of access to education, work and healthcare (Pavanello et al., 2010). Some of the pull factors that are associated with refugees leaving camps include: the fact that they come from urban areas and so are unused to rural living; livelihood opportunities; anonymity which shrouds them from religious and political targeting; hopes for integration into the local community; opportunities for third-country resettlement; as well as greater access to health, education, vocational and recreational opportunities (Kobia & Cranfield, 2009). Kenya currently has two refugee camps Dadaab and Kakuma, each located in the northwest and northeast of the country, respectively. Both camps are plagued by a number of problems ranging from a harsh climate, scarce natural resources, and clashes with local militia, criminal activity, and the presence of security agents, inter-ethnic conflicts and the targeting of certain groups (HRW, 2002). There are 430,800 people in total currently residing in Kenya's refugee camps and urban centres (UNHCR Global Report, 2011). Dadaab has the largest number of refugees with a population of 378,000 in a site originally designed to accommodate 90,000 people (CARE, 2011).

Kakuma camp is located in the semi-arid Northwest region in close proximity to Kenya's border with Sudan. This area of the country is populated by the Turkana, a nomadic pastoralist group, who have historically been on the social and economic margins of Kenyan society. The region has a history of strife both due to inter-ethnic clashes as well as conflict between local militia and the Kenyan government as represented by the police and army. The practice of cattle-rustling and the violence that goes along with it is quite widespread (Verdirame, 1999). Kakuma was initially established to accommodate the 17,000 "walking boys" of Sudan in 1991. These boys, ranging in age from ten to seventeen, had escaped on foot from Sudan to Ethiopia in order to avoid forced conscription and the multiple wartime atrocities. Upon arriving in refugee camps in Ethiopia, they were forced to flee again with the overthrow of the Mengistu regime and internal turmoil in the country (Verdirame, 1999). Their plight made international headlines as tales of their perilous journey and encounters with hostile villagers, wild animals and enemy combatants were broadcast across the globe. There are currently about 7,000 of the original group of 'walking boys' still residing in Kakuma (Verdirame, 1999, p.62).

Dadaab, Kenya's second refugee camp is located in the North-Eastern province, about 100 kilometres away from the Somali border. Dadaab was constructed in 1991 and is a complex of 4 camps which include Ifo, Dagahaley, Hagadera and the recently built Ifo II (Abdi, 2006). Dadaab is located in a region formerly referred to as Northern Frontier District. It has long been an area rife with conflict, as the region, inhabited by ethnic Somalis has been subject to claims by the government of Somalia as well as attempts by local armed groups termed *shifias* to join the Somali state. As a result of the unrest in the North-Eastern province, the region was put under a state of emergency from independence in 1963 until

1992. The region remains on the margins socially and economically, and the ethnic Somali population is treated to a lesser form of citizenship as evinced by the 1999 swoops, which involved the forcible repatriation, arrest and detention of ethnic Somalis to Somalia, particularly in North-eastern province and cities (Abdi, 2006).

Despite the harsh and dangerous external environment of the camps, the everyday intricacies of daily life are riddled with pitfalls. Reports by Human Rights Watch detail the presence of ranks of rebel forces as well as security agents from home countries (Parker, 2002). According to the same report, the Sudanese People's Liberation Army (SPLA) is known to influence the leadership and running of Kakuma camp (Parker, 2002). The presence of security officers has also been noted. A senior NGO worker summarizes the situation as follows:

The location of the camp is very insecure; it is close to three borders. Ethiopian government forces have been present in the camp. Many former Ethiopian officers are vulnerable. The SPLA also enters the camp. We can notice changes in the camp composition based on how the fighting is going in the South in Sudan.

(Parker, 2002, p. 128)

In addition to the presence of repressive forces in Kenya's refugee camps, violence between different groups as well as conflicts in home countries that resulted in the mass displacement in the first place, persist. As such ethnic tensions and conflicts abound (Parker, 2002). Lastly, the infrastructure of the camp is ill-equipped to provide the adequate levels of

education and healthcare necessary (Parker, 2002). Education and healthcare are key, especially in cases where immediate medical attention in the wake of physical and psychological trauma is required. Additionally, schooling is highly important for individuals who may have spent their whole lives in a refugee camp due to several decades of ongoing conflict. These factors combined make for an existence plagued by insecurity and despair.

Gender Dimensions of Camp Life

At night, the *shiftas* just enter your house. You are sitting among your children and a gunman enters. There is nothing you can do. He will kill you if he wants to, he will rape you if he pleases, and he will rob you of the rations you collected that day, if he pleases. And the children are without food the next day. We are even robbed of the plastic bags that are distributed. Every time anything decent and useful is distributed, someone comes in and robs you. They beat you and take the few shillings you might have saved. They beat you up and take the money. You are in pain, forced to reveal everything; you give up everything you have, even the clothes you are wearing, and they take them. There is no one to tell or complain to.

(Abdi, 2006, p. 238)

The insecurities of camp life are magnified for women, as they are continuously exposed to a multiplicity of vulnerabilities. Women are at risk in their daily activities inside and outside the camps, they are targeted for abuse, and are subject to various forms of gender-based violence.

The abuse and violence women suffer is a result of their symbolic representation as nation and tribe, as well as gender-specific forms of violence.⁷ Within patriarchal and nationalistic understandings of the nation-state, enacting violence against the bodies of women of a particular tribe, religion or ethnicity is tantamount to an attack against the nation itself.

One such activity during which women and young girls are at severe risk is the collection of firewood. This has been highlighted as one of the major dangers faced by women at Dadaab refugee camp. Women and girls forage for firewood in order to attend to their cooking and sanitary needs (Parker, 2002). Upon their treks into the outskirts of camp to look for firewood, women are accosted by *shiftas*, rebel forces, combatants and other refugees. Women are at risk at all hours of the day, whether they are outside or at home, with their children, husbands or parents.

In Kakuma, the ethnic dimensions of violence against women are more complex. Sudanese non-Dinka male refugees and militia specifically target and attack women from the Dinka tribe⁸. Additionally women at Kakuma are also subject to culturally specific types of gendered violence in the form of child marriage and forced marriage. In certain instances women are kidnapped from refugee camps and forced to marry men in Sudan, who unbeknownst to the women and without their consent have paid bridewealth to their families in Sudan (Kagwanja, 2000).

Cases of sexual violence are rampant in both refugee camps. UNHCR reported an increase in cases of sexual violence from 103 in 2007 to 219 in 2008, with 79 cases of rape

⁷ There have been numerous studies on rape as a weapon of war, and the specific targeting of women during times of conflict as they come to represent national symbols. This was further elaborated on in the introduction.

⁸ The Dinka are a historically marginalized group in the Sudan, and have historically opposed and fought the Sudanese government through the Sudanese Peoples Liberation Army (SPLA).

(IRIN, 2009). With the recent drought and famine in the Horn of Africa, UNHCR states that the number of reported cases of sexual violence in Dadaab refugee camp have quadrupled. 385 cases were reported from January until June 2011, compared to 75 during the same period in 2010 (CARE, 2011). It is important to note however that these are only reported cases of sexual violence, and the real numbers are most probably much higher.

As a result of the numerous hardships and conditions of life in refugee camps, it is no wonder that women flee. Although little is known of the numbers who leave the camps to get the cities, women often undergo long and perilous journeys over insecure and inhospitable terrain, having to avoid *shiftas*, local military and hostility from the local population (Parker, 2002). Women travel to Nairobi by whatever means are available to them: on foot, hitching a ride or via public transport if they can afford it.

Urban Refugee Women

Protection of Urban Refugee Women

In the Kenyan context, protection and legal redress through the justice system is hard enough to come by for the average impoverished Kenyan, much less urban refugees. The use of traditional justice systems also result in gaps in protection, under reporting and the re-victimization of women. Despite the efforts of traditional justice systems to punish the perpetrators and seek redress by compensating the victim's families, the women themselves never accrue any benefits from this. As stated in a report by Asylum Aid: "A woman victim of rape would either be forced to marry her aggressor or a payment would be made to the male

members of her clan or her family. Under Somali customary law, she would not be permitted access to it” (Asylum Aid as cited in, Refugee Consortium of Kenya, 2008, p.14).

In reaction to the high rates of sexual violence prevalent in the country, Kenya passed a Sexual Offences Act. The Act provides guidelines and protection from certain forms of gendered violence (RCK, 2008). However, as noted earlier, the justice system and law enforcement is weighted against women:

If Kenyan women find it extremely difficult to seek justice in their own country, how can a refugee woman with often very few resources and source of income be expected to be able to find redress in Kenyan courts? What protection is there for her?

(RCK, 2008, p.14)

Multiple Intersecting Vulnerabilities

In situations of conflict, flight and asylum, women and girls are vulnerable to extremes of violence, exploitation and abuse. Studies have shown that women, who have previously experienced traumatic and violent incidents during the course of conflict or flight, are most vulnerable to extreme violence during settlement (RCK, 2008). This violence is often compounded by the lack of a comprehensive framework for refugee protection nationally, regionally and internationally, much less one which takes into account the specific experiences of women. Urban refugee women are often subject to a range of risks and vulnerabilities which

include: exposure to sexual and gender-based violence, precarious legal status, limited livelihood opportunities, insecure housing and criminalization and targeting by police (RCK, 2008).

Sexual and Gender-Based Violence

One of the major concerns for refugee women is their vulnerability to sexual and gender-based violence (SGBV). The United Nations Population Fund (UNFPA) defines SGBV as follows:

...the term sexual and gender-based violence encompasses a wide variety of abuses that include sexual threats, exploitation, humiliation, assaults, molestation, domestic violence, incest, involuntary prostitution (sexual bartering), torture, insertion of objects into genital openings and attempted rape. Female genital mutilation and other harmful traditional practices (including early marriage, which substantially increases maternal morbidity and mortality) are forms of sexual and gender-based violence against women which cannot be overlooked nor justified on the grounds of tradition, culture or social conformity.

(RCK, 2008, p.15)

The issue of SGBV is one of particular concern for refugee women, but is also prevalent in Kenyan society at large. As stated by the Refugee Consortium of Kenya, the pervasiveness of this problem is also exacerbated by the structural violence embedded in specific cultural norms and practices which harm, violate and exploit women in multiple ways. These gendered cultural norms are prevalent in much of the Horn and East African region, and particularly in Kenya, and are aggravated by high rates of HIVAIDS and sexual violence in the country. They include:

female genital cutting, forced child marriages, wife inheritance, and sexual and domestic violence (RCK, 2008).

Refugee women encounter risks and multiple vulnerabilities at every stage of forging a life for themselves in the urban centre. As stated earlier, these multiple vulnerabilities are as a result of: limited access to livelihoods, security and services, as well as the prevalence of SGBV. In their daily lives and activities, urban refugee women are continuously at risk. In the following excerpt, an urban refugee woman gives an account of her sexual assault, while homeless and living on the street in front of the UNHCR offices, in order to access protection.

One night, I had to cross the street to the shops to get some charcoal so I could cook some small food. I left from the last gate of UNHCR and went to the place to buy the charcoal—it was maybe ten yards away.

There were four men standing there and one of them held a knife up to my throat. I tried to fight him off with my hands. He was “hanging” (choking) me. He pushed me down and pulled up my dress. They were all going to rape me—but I refused to open my legs, I kept them together. So, then he took his knife and sliced my thigh, from my thigh to above my knee. They started raping me. I passed out eventually. They left me in the roundabout in the center of the road in front of UNHCR.

(Parker, 2002, p. 36)

A lack of livelihoods, security and access to services and vulnerability to SGBV are conditions faced by the average poor woman living in Nairobi. However, for the urban refugee

woman these are compounded by the fact that as a refugee she may not be privy to the rights, community supports, and security afforded (albeit perhaps minimally) a Kenyan citizen. In fact as an urban refugee woman, she is targeted for exploitation, aggression and criminalization.

Urban refugee women are at risk of severe forms of gendered violence from spouses, family members, employers and other refugees. Additionally women report repeated incidences of rape when they do go to report the sexual violence at police stations. Urban refugee women dwell in extreme insecurity where they reside:

The main thing I am worried about is not those thieves but the men who live around me; they keep on coming back to me because anyone can break into our little house and they come and beat on the door and tell me to let them in. They come at night like that—I am very scared. I am afraid of that day and night.

(Parker, 2002, p.37)

Precarious Legal Status

Despite the new Government of Kenya Refugee Act, refugees still occupy a nebulous space of legality in the country. As stated in the Refugee Act, refugees are now entitled to permanent identification documents that provide them with legal status and the right to work in certain sectors. Such documentation affords refugees a level of protection, mobility and access to livelihoods, in theory. However, in practice this is not the case (RCK, 2008). The system has yet to be implemented on the ground, as the documents have yet to be distributed, and are not recognized by local authorities like the police. As such urban refugee women are still at risk of having inadequate documentation, they may not have the new permanent documentation, and/or

because they only have the previously unrecognized documentation, which is still unrecognized (RCK, 2008). Additionally, the police and authorities dealing with refugee populations have little to no knowledge and training on the specifics of the new Refugee Act, and are unfamiliar with what the new permanent ID documents would look like (RCK, 2008). As such urban refugee women are branded as ‘illegals’ and have to resort to a clandestine lifestyle in order to survive.

Livelihoods

Due to their unstable legal status and a lack of documentation with which to obtain work permits, urban refugee women often have to engage in precarious, unsafe and unstable forms of labour. As such, urban refugee women are relegated to low paid menial labour primarily in the informal economy such as: “washing clothes and cooking in homes; working in restaurants or food kiosks, as domestic workers; or as farm labourers in the Dagoretti area”, and also as petty traders, sex workers and street vendors (RCK, 2008; Pavanello et al., 2010). The informal sector refers to “activities that are unrecognized, unrecorded, unprotected or unregulated by public authorities” (Becker, 2004, p.8). As such women who engage in work in the informal labour sector may be subject to abuse, low wages, exploitation, little to no benefits and excessively long work hours. Thus, urban refugee women are often subject to violence, harassment and exploitation at their work, due to the precarious nature of their employment as well as their vulnerable status. The majority of the work done by urban refugee women such as live-in domestic work, cooking, washing and sex-work are home-based, thus they occur in locations where women are at risk of maltreatment by their employers. In a home-based context, the employer is the sole authority and often the owner of the home, and thus women have no one to turn to and nowhere to run in the event of abuse, especially in light of their uncertain legal status.

Additionally other forms of work such as agricultural labour, factory work and work in restaurants may occur in work environments that have little to no labour and health standards. Despite the reality that the majority of poor Kenyan women have to engage in this form of work, the fact remains that within the limited choices afforded poor Kenyan women, urban refugee women are even more constrained as a result of their precarious legal status.

Housing

As a result of a lack of documentation, money or income, urban refugee women, either by themselves or with families and siblings, often have difficulty finding housing. They can only afford insecure and inadequate housing in the informal settlements of Nairobi, if they have housing at all:

I started sleeping outside UNHCR because I really needed more help from them. They kept telling me that now I was better I had to go back to camp. But I could not go back to either camp—those places were not good for me. I slept in front of UNHCR for one month and seventeen days.

(Parker, 2002, p. 36).

The housing available for the majority of urban refugee women is in the informal settlements and slums of Nairobi, where much of the urban poor reside. Human Rights Watch describes the housing units occupied by a large number of refugees as, “rectangular sheds constructed out of corrugated tin sheets, divided into a single row of two to seven rooms, each with a door to the outside and either tin, wood or cement walls dividing the rooms.” (Parker, 2002, p. 29). Whole families live in a single room the size of fifteen by fifteen feet. Most

accommodations have a communal pit latrine and restricted access to piped water and electricity (Parker, 2002). According to the 2010 study by the Humanitarian Policy Group, refugees living in the informal settlements and refugee-populated areas are often subject to rent hikes and forced evictions.

Security

In addition to the lack of amenities and squalid conditions of housing available, urban refugee women are also victim to heightened levels of insecurity. This is as a result of the location of their homes in slum neighbourhoods with high rates of crime and their perceived vulnerability as women (single or otherwise).

I took a truck to Kenya with my little sister. I slept outside the UNHCR compound for one night then a Good Samaritan kept me for one week in her house. Then, she told me I had to look for a place to stay. I found a small shelter, where we pay Kenyan shillings 500 [US \$ 6], but I cannot pay this yet.

...There are some thieves who terrorize the neighbours, and I am very scared when they come. They have come four times and I am in my little shelter with a very small child. The last time the thieves came was last Thursday. They cut someone very badly in the head with a panga [machete]. They took that person's television, and made demands for other things. So, they have stolen things from my neighbours of not yet from me, maybe they know I have nothing to give them?

(Parker, 2002, p. 37)

Refugees are often subject to harassment and extortion by the police. In fact police officers often go to areas with high refugee populations such as Eastleigh, as a means of supplementing their income by way of extortion. Refugees are periodically stopped and charged with “idling with intent of committing a crime” or with being an “unlawful presence”(Pavanello et al., 2010). According to a report by the Humanitarian Policy Group, police officers ask for 2,000 KES (28 US \$) for a woman and 1000KES(16 US \$) for a man. The discrepancy in pricing is due to the fact that family and community members would pay more for the hasty release of women as they fear sexual violence and mistreatment. If refugees are unwilling or unable to pay the bribe, the price escalates as the case goes further:

I witnessed another incident in which the police arrested four women, one of whom was pregnant, again in March 2002. The police asked each woman for Ksh 5,000 [US \$ 64], but they didn't have that money. They were held while their families tried to raise the money for them. The families and friends eventually paid the police Ksh 8,000[US \$ 102] to free the four women.

(Parker, 2002, p. 45)

Refugee communities have come up with multiple strategies to avoid police harassment and detention. In the community of Eastleigh, refugee women avoid walking on the streets after 6pm, and if they absolutely have to, they carry a baby with them, who might be borrowed from a neighbour. However, as demonstrated by the preceding quote, having a child in hand is not always a deterrent to police abuse and detention. Additionally in Eastleigh, once a refugee, particularly a woman is detained, community members immediately start collecting bribe money (Pavanello et al., 2010).

Access to Services

UNHCR provides only basic needs assistance to refugees in urban areas and states that “only exceptional clients who cannot remain in camps can be assisted” (RCK, 2008, p.28). As such UNHCR and its partner agencies provide little to no medical assistance to urban refugees. The GTZ-Urban refugee Program provides medical services to refugees in urban areas, however this is unavailable to the majority of urban refugees as they require a referral letter from the UNHCR. As UNHCR limits the provision of medical services only to exceptional cases, and directs everyone else to seek assistance in camps, urban refugees are unable to obtain free medical services (RCK, 2008).

Urban refugee women are highly criminalized and targeted by police for extortion, sexual assault and accused of lacking proper documentation. Even with the right papers, their status is de-legitimized and they are branded as 'illegals'. When pursuing livelihoods, they are often exploited for their labour and subject to sexual violence at work. They dwell in extreme insecurity in the slums and informal settlements of Nairobi, and are also victims of xenophobic violence and harassment. These women also have limited to no access to health, education, legal and settlement services (RCK,2008). This all occurs in a context of extreme violence and insecurity where urban refugee women are perceived to have little or no standing culturally, socially, politically and economically.

Chapter Five: Findings and Discussion

This chapter provides an analysis of the 2006 Kenya Refugee Act, using a policy archaeology framework as guide. The objective in this chapter is to address my central research questions which are: what are the intersecting vulnerabilities faced by urban refugee women in Nairobi, Kenya? What are the policies available for the protection of urban refugee women? What are the gaps in policy? Why are there such policy gaps? Thus my analysis looks at Scheurich's first arena, the history and construction of the social problem. It also examines the social regularities arena, and how the identified social regularities construct what is seen as a viable policy solution. Lastly, in this particular study, the role of the Refugee Act within the Kenyan policy landscape is also examined.

My chapter is organized as follows. First, is a discussion of the analytical frameworks I use, governmentality and transnational feminism, and how these inform my analysis. Then, a brief summary of the different elements of the Act is presented. This is followed by an interrogation of the history of the Act, and an exploration of whether and in what ways urban refugees are visible and constructed in the Act. An examination of the multiple, intersecting vulnerabilities experienced by urban refugee women then follows. The social regularities which define how the social problem is named and identified are then highlighted. Lastly, the role and purpose of this particular act, within the context of competing values, political needs and objectives is interrogated, as well as the potential rationale, motives and reasoning behind the construction and treatment of urban refugee women, within the policy document.

Analytical Frameworks Applied

The analytical frameworks I employed, governmentality and transnational feminism, provide a lens through which to view the multiple vulnerabilities experienced by urban refugee in Nairobi. These approaches framed the study within a historical context that was both critical and descriptive as well as shed light on the absences, silences and marginalizations within the policy- particularly in relation to urban refugee women. Additionally these perspectives, transnational feminism specifically, identify solutions to address the multiple vulnerabilities experienced by urban refugee women. Transnational feminism locates this in the adoption and incorporation of international women's and human rights instruments into Kenyan national legislature.

In this analysis, governmentality points to the various ways in which refugee populations are regulated, managed and controlled. An important strategy for the management and regulation of refugee populations is the use of 'identities'. Defining refugee 'identities', as is done in the 2006 policy, outlines the rights they are privy to, their access to services, where they can reside, and what types of livelihood opportunities they are able to pursue. Additionally, governmentality highlights the tensions around sovereignty, evident within the text of the policy, with the Government of Kenya negotiating concerns for national security, the sustainability of the refugee system, while at the same time struggling to maintain its commitments to the international human rights instruments it acceded to.

Transnational feminism on the other hand, speaks to the fact that women, particularly women in the Global South have historically been ignored, misrepresented or invisible within scholarship and national and international policy. Transnational feminism highlights these gaps

within the Act, where women and urban refugee women in particular, are not present, and their concerns are not addressed. Such an approach seeks to identify, represent and voice the specific struggles of women in the Global South. A transnational feminist lens was useful in this study, as it sees the importance of processes of globalization, global and regional politics, and global economics as directly resulting in the transnational movements of these women. These phenomena also structure and inform their experiences of flight, their search for livelihoods, and life in the city.

Policy Archaeology Applied

I analyse the 2006 Kenya Refugee Act, using Scheurich's policy archaeology framework as a guide. I did not adopt all of Scheurich's methods, but selected those that seemed very relevant to my study. I did not explore Scheurich's fourth Arena, which he articulates as examining the broader functions of policy studies itself. Although an examination of the way policy processes privilege certain groups and not others was key in my analysis, a reflexive examination of the entire field and functions of social policy analysis was not central to my study. Thus my arena four explores the roles and functions of the Kenyan Refugee Act, within the Kenyan political landscape. My concern was on the ways in which the Act functioned within the local context, and the power inequities and negotiations inherent within it. Indeed, this is all framed within an understanding and acknowledgement of the fact that the process of policy analysis itself is embedded within a system of structural oppression and power asymmetries- whereby experts perform policy analysis on subjects who are marginalized groups and communities- and is influenced by social regularities.

The most important concepts Scheurich elaborates upon were employed in this analysis. This included the concept of social regularities as well as the four arenas described previously: history and construction of social problems, social regularities, how regularities influence policy solutions, and the role of policy. My emphasis, when conducting the analysis was to ensure that my major research question and all the sub-questions were sufficiently answered.

First, I did a brief reading of the policy, to summarize the key points of the document and pull out core elements that were important to the research. In examining the first arena, I looked at the history of the Refugee Act. Here I explored the question “What are the conditions that make the emergence of a particular policy agenda possible?” Thus, I provided a framing of the history of the Refugee Act as well as the context of its creation, who authored it, and the explicit and implicit objectives of the document. In examining the way that urban refugee women were constructed in the text of the Act, I explored the means by which they were named, identified, defined and made visible. The naming and invisibility of certain refugee populations was also interrogated.

Next comes an exploration of the multiple vulnerabilities experienced by urban refugee women and how this is addressed in the Act. The concept of vulnerabilities has been elaborated on in diverse disciplines to address a range of topics including: natural disasters, poverty and health, the AIDS crisis, as well as on conflict and refugees. The traditional treatment of vulnerabilities within refugee studies literature has been concentrated primarily within the livelihoods approach to refugee studies (Jacobsen, 2005). A livelihoods approach looks at the structures which limit a refugee’s access to assets, the vulnerabilities they experience as a result of this lack of access and the outcomes of this. In my analysis, an analysis of the social structures

and underlying networks of ideologies is addressed through the social regularities approach. The emphasis on vulnerabilities is to identify the specific lived realities and conditions faced by refugee women. Thus, I define vulnerabilities as follows: the conditions that result in and/or the experience of multiple forms of violence in an urban refugee woman's lives. Here, violence is not only physical and emotional but also systemic.

The second arena comprises social regularities. Here, I identified two social regularities which influence the ways in which urban refugee women are treated and perceived within this social policy. They are: the norms and values embedded in gender and class oppression, which influence the construction and framing of urban refugee women and their treatment within the 2006 Kenya Refugee Act. .

The final section of this analysis assesses the role of this particular social policy within the Kenyan policy landscape. It identifies the actors involved in the policy decision-making process, as well as the competing values, interests, roles, commitments and power dynamics that shape policy formulation.

Limitations

Limitations to my study included access to available data, and the scope of the investigation as one centred completely on policy analysis. The first challenge was that I had limited information as to how exactly the Refugee Act was being enacted. There was a marked level of inconsistency in information. The Department of Refugee Affairs website stated that they were processing refugee status determinations. On the other hand, reports and recent articles stated that the UNHCR was still in charge of refugee status determination. Perhaps such inconsistency is a reflection of the transition from a UNHCR administered process to that

performed by the Government of Kenya. A final limitation of this study was the lack of urban refugee women's own analysis of and reactions towards the Refugee Act, their details of its impact, and how the Act intersects with the multiple vulnerabilities they experience. Such a study has yet to be done, and would be an important next step in pushing for the visibility and presence of urban refugee women within the policy landscape.

Background to the Act

Kenya has long been implicated in efforts to find policy solutions for the protection and care of refugees on the continent. The Kenyan government was one of the main proponents of the Organization of African Unity's (now African Union) African Convention Governing the Specific Aspects of Refugee Problems in Africa, which addressed the movement of refugees on the continent in the wake of independence struggles (Odhiambo, 2007). As host to one of the largest refugee populations on the continent, Kenya is a signatory to a number of international instruments including the International Convention and the Protocol (Odhiambo Abuya, 2007). However, this has not necessarily resulted in the institutionalisation of a national refugee policy on the ground.

Prior to 1990, Kenya had a relatively small influx of refugees, and no real refugee policy to speak of. As well, it adopted a fairly laissez-faire approach towards the entry and presence of refugee populations (Parker, 2002). In the aftermath of the numerous conflicts in the Horn of Africa in the 1990s, and the resultant mass flow of refugee populations, Kenyan policy changed towards one of camp confinement for all refugees (Parker, 2002). The camp confinement policy was an unwritten executive policy, not codified in law, which restricted all refugees to camps.

Since then, there have been multiple efforts to formalize a written national refugee policy and law. Resistance towards establishing a framework for refugee protection could be attributed to the fact that the Kenyan government felt burdened by the current care they were providing for refugees, and thus were reluctant to commit additional resources towards refugee protection. Additionally, there has been an overwhelming concern for national security as a result of the 1998 terror attack of the US embassy in Nairobi (Burns, 2011). This concern for national security is now exemplified most dramatically by the Kenyan government's recent invasion of Somalia, in an operation dubbed Linda Nchi (Protect the Motherland), to rout the terrorist organization Al-Shabaab.

Thus, for several reasons there has been a long history of resistance towards the drafting of a national refugee policy. Finally, after several years of lobbying by civil society groups, NGOs and government partners, primarily led by the Refugee Consortium of Kenya, the 2006 Refugee Act was passed.

The 2006 Kenya Refugee Act In Brief

The 2006 Refugee Act delineates the parameters of protection offered to refugees in Kenya, defines who qualifies as a refugee or asylum seeker, as well as the conditions for the cessation of such protection. The Act also details the establishment of various new structures and offices for the protection of refugees in Kenya. The Act makes a distinction between statutory and *prima facie* refugees. As such, a statutory refugee is a person who:

- (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 it⁹.

(The Refugee Act, 3. (1)(a), 2006)

The Act defines a *prima facie* refugee as follows:

A person shall be a *prima facie* refugee for purposes of this Act if such a person owing to external aggression, occupation, foreign domination or events seriously disturbing public order in any part or whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

(The Refugee Act, 3. (2), 2006)

Thus, the definitions included in the Act are very much in keeping with the original Conventions. The Refugee Act however includes the addition of sex as a category by which an individual may be persecuted. This is an element that was not present in the original International Convention. The Kenyan government in its Act acknowledges the reality of gendered persecution.

⁹ Definitions in section 1(a) and (b) of the Kenya Refugee Act follow the UN Protocol definition of a refugee.

The Act further establishes the Department of Refugee Affairs. This is a public office in charge of “all administrative matters concerning refugees in Kenya”, as well as coordinating activities and programmes that address refugee matters. Another new office put in place by the Act is the Commissioner for Refugee Affairs. The Commissioner is the head of the Department of Refugee Affairs. His/her roles and responsibilities include: coordinating activities for the protection and welfare of refugees; refugee policy formulation; liaising with UN and other refugee-serving agencies for the provision and care of refugees; receiving, registering and processing refugees; providing identity documents; and managing refugee camps (The Refugee Act, 2006). The Act provides for the creation of a Committee for Refugee Affairs, to advise and assist the Commissioner, as well as a Refugee Appeal Board, to contest the decisions made.

History of the Social Policy

The 2006 Kenya Refugee Act emerged in a space where there had been no previously elaborated policy. It was a reflection of specific national concerns such as burden-sharing of refugee protection and national security (Burns, 2011). The Act also endeavoured to incorporate various aspects of international instruments to which Kenya was a signatory. Thus the Act uses the definition for refugees employed in both the OAU and the International Convention, with the addition of sex as a category in the Convention definition. Elements of the previous unwritten policy still persisted however, as the Act delimits the areas where refugees can stay, to be:

- a) Transit centres for the purposes of temporarily accommodating persons who have applied for recognition as refugees or members of

the refugees family while their application for refugee status are being processed; or

b) Refugee camps

The Act came to prominence in a period where the only treatment of urban refugee populations in international policy was in UNHCR'S 1997 *Policy on Refugees in Urban Areas*. This document characterized urban refugees as overly reliant on assistance, and as 'irregular movers', residing in urban areas without the authorization of the host country, or their country of previous asylum (Parker, 2002). Thus the restriction of refugees to camp settings within the Kenyan Refugee Act mirrors this trend.

The stated goal and objective of the Refugee Act is "to make provision for the recognition, protection and management of refugees and for connected purposes" (Refugee Act, 2006). This document seeks to protect individuals who fall under the statutory and OAU definitions of a refugee and it also provides for their family members. As an Act of Parliament, it was authored by the members of Parliament. According to the Act, the responsibility for Refugee Status Determination substantively rests upon; the Department of Refugee Affairs, the Commissioner for Refugee Affairs, and the Committee. This is not the actual situation on the ground as UNHCR is still primarily in charge of status determination; however the responsibility for this is gradually being transferred to the Department of Refugee Affairs (Campbell, Crisp & Kiragu, 2011).

The document employs official, bureaucratic language, which may make it inaccessible to a large majority of people, specifically the population it is dealing with. In addition, although it is

readily available via the internet, this does not make it more accessible because the majority of refugee populations have little to no access to electricity, much less the internet. The Act, however, is available in multiple languages, English, Oromo (for the Ethiopian and Somali Oromo population), as well as Somali (RCK, 2006). The fact that the document was made available in multiple languages, none of which include Kiswahili the Kenyan national tongue, is important to note. The document was translated into languages of two of the largest refugee populations in Kenya, Ethiopia and Somalia. This points to the fact that efforts were made to ensure that those affected by the policy are able to access it in their own language.

Urban Refugee Women in the Act

A central focus of this study is to explore the ways in which urban refugee women are constructed, and how the vulnerabilities they experience are framed. In this, a transnational feminist lens is key, as it helps to identify the ways in which women are present or absent within the document. Nowhere in the language of the Act however, are urban refugee women explicitly referred to. In fact the term is never used within the document. Neither is the plight of urban refugees in general made reference to.

Women are discussed in the Act in three specific instances. The first is the addition of sex as a category of persecution, which is incorporated into the Meaning of a Refugee section of the document. Gender-based persecution, however, is never mentioned again in the document, despite the fact that there are numerous elaborations on what constitutes a refugee throughout the text. The second instance in which women are addressed in the document is in the composition of the Refugee Affairs Committee, in which one third of the Committee is to be comprised of

women. One of the roles of the refugee officer, who is in charge of protection and maintenance of the refugee camp, is to: “protect and assist vulnerable groups, women and children” (Refugee Act, 17. (g), 2006). The final treatment of gender within the document occurs in the section on appointed officers. Appointed officers conduct the administrative duties of refugee determination such as taking fingerprints and conducting interviews. In the event of a strip search, this shall be conducted by an officer or employee of the same sex.

For the most part, within the document, gender is invisible, and issues affecting women, are barely highlighted, or mentioned fleetingly and sparingly throughout the text. This illustrates the fact that within the document men are the normative subjects to which the text refers to. This is evident within the document, where only male pronouns are used to refer to refugees, define them and to delineate what rights they are privy to. Gender is highlighted as a marker of difference, or as a means to codify ‘women-specific’ issues, when in reality these matters should be integrated throughout the entire document.

Gender is used to delineate a form of persecution, to speak to the makeup of the Commission, as a category of refugees who need special provisions for protection, and to assign to females certain duties to perform as an appointed officer. Although the addition of gender is a step in the right direction, this document does not actively engage with issues of access or real barriers that exist as a result of gender. For instance, the discomfort level for a refugee woman does not only occur at the point at which she might be subject to a strip search, but perhaps during the interview as well. Ensuring that women make up one third of the Committee is also an important measure, but this does not guarantee women’s voices as they are still in the minority. The document seems to be following an ‘add gender and stir’ formula, and does not adequately

engage with the real struggles refugee women are facing. Although, perhaps this highlights the role of the policy itself: the Act functions as a means of defining and delineating categories, and not necessarily as an instrument for social change.

Interestingly enough, the topic of urban refugees is treated even more sparingly, and with a degree of ambiguity. In the Offences section, any person who resides outside the ‘designated areas’ specified under the Act is subject to “a fine not exceeding 20, 000 shillings (approximately 243 Canadian dollars) or to imprisonment for a term not exceeding six months” (Refugee Act, 25. (f), 2006). Despite the fact that residence in ‘non-designated’ areas is defined as an offence, these spaces are never delimited. Neither is a rationale provided for why this is a penalizable offence, or why certain areas are ‘designated’ for refugee residence and others not. The reasons and motivations for this shall be explored further in the analysis. A governmentality lens identifies the ‘designated areas’ clause as a direct attempt to ‘problematize’ the presence of refugees in the cities, and frame them as a criminal element. Additionally, the ‘designated areas’ clause can also be referred to as a ‘technology’ of governing, a means by which populations are controlled and managed. In this particular instance, ‘designated areas’ serve to restrict the presence of refugee populations to the camps.

Therefore, the central question of this study, how are the multiple intersecting vulnerabilities experienced by urban refugee women addressed in this policy, is answered. The multiple intersecting vulnerabilities experienced by urban refugee women are NOT addressed. In fact urban refugee women as a group are not visible within the framework of this policy, and neither are the vulnerabilities they experience expanded upon, identified as a policy problem, or dealt with. Compounded with this is the fact that their very presence in the city or outside ‘designated

areas' is framed as illegal. Paradoxically, the elements of this regulation have no real teeth, as the parameters of the designated areas are never detailed, and as such a violation of this is never really defined or enforceable. However, this constructs and frames the presence of urban refugees in cities as criminal, and influences how they are treated by police, local authorities, their access to services, and reception by the host community.

The Refugee Act and Multiple Intersecting Vulnerabilities

Vulnerabilities speak to the conditions and contexts that make urban refugee women susceptible to violence; it is also the experience of violence in itself. They are multiple and intersecting in that one or several of them may result in another, and that they can be experienced at the same time. As such, as a result of a woman's residence in an insecure neighbourhood, she may be vulnerable to physical, sexual, and emotional assault. Similarly, systemic violence as evidenced in a refugee woman's precarious legal status may further result in criminalization and abuse by police.

An example that illustrates these multiple, intersecting vulnerabilities is provided in an excerpt from the Human Rights Watch study, detailed in Chapter Four. In this account, a young refugee woman spoke of her experience being homeless and seeking shelter across the street from the UNHCR offices- where she was hoping to access protection. One night, upon her return from the shops she was attacked by several men and raped. She was then returned to the roundabout in front of the UNHCR. The very fact that her attackers returned her to the UNHCR speaks to the reality that they were secure in the belief that, as their victim was a young refugee woman on her own, there would be little to no repercussion for their acts. Thus, the

vulnerabilities experienced by urban refugee women are complicated not only by the fact that they interconnect and oftentimes one invariably results in another, but also due to the reality that little protection or recourse through the law is afforded this group.

The particular vulnerabilities of note for this analysis are sexual and gender-based violence (SGBV) and security. The topic of livelihoods is discussed within the larger discussion on social regularities, as class oppression, one of the identified social regularities, informs the 2006 Refugee Act. In this, the livelihood opportunities of refugees are constrained by limits placed on wage-earning within the Act. Due to the fact that the Act is a legislative document with the stated objective for the “recognition, protection and management of refugees”, it is not within the scope of the document to address the two other vulnerabilities; housing and access to services. Housing and access to services fall within the area of social service provision, which the Act does not deal with, and is not meant to address. The intent of the document is to see to the protection and management of refugee populations, and not to the provision of services.

Within the Act, there is no mention of protection from SGBV, or indeed even references to the UNHCR Guidelines for the Protection of Women and Girls, or UNHCR's Guidelines for Prevention and Response to Sexual and Gender-based Violence against Refugees. This is an issue of paramount importance to refugee women, and the fact that this is markedly absent from a document addressing refugee populations is disconcerting. This is especially important in light of the fact that women in refugee contexts are susceptible to extreme acts of violence. There is little attempt within the Act to pay attention to women's safety.

This absence speaks again to the phenomenon of masculinity as an invisible norm. Here the issue of refugee women's vulnerability to types of gender-specific violence is never considered.

Indeed, steps to ensure the overall safety and security of the refugee population are never mentioned. This is of particular importance with regards to refugee populations, given the potential for violence that occurs in camps and many urban locations. In addition, there is the potential for conflict in the country of origin to carry over and play out in Kenyan settings.

The absence of such a key element in refugee protection points to the role of the policy in creating an overall institutional framework for refugee policy. As such it is not a document that is responsive to, or takes account of, the daily realities and struggles of refugees' lives.

The Social Regularities Arena

There are powerful 'grids', or networks of regularities that are constitutive of the emergence or social construction of a particular problem, regularities that constitute what is labelled as a problem and what is not labelled as a problem.

(Scheurich, 1994, p. 99)

Thus, regularities are the underlying interconnected systems of values and worldviews that influence the framing and constructing of social problems. Such regularities can often function to support and replicate power inequities. Social regularities become observable in the policy analysis process, through interrogating the policy process, the social structures supported by it, as well as the relationships of inequality it creates. In this particular case, the social regularities at play are: gender and class oppression. Gender and class oppression constitute what is seen as a social problem, and the available policy solutions to address them. They are the

underlying oppressive structural norms and values, which allow for the privileging and marginalization of certain groups within policy.

Gender and Class Oppression

As previously stated, regularities function to define what is made visible as a social problem and what is not. Gender oppression and class oppression function interdependently to define how issues affecting urban refugee women are constructed as a social problem within the 2006 Kenya Refugee Act. Feminist theorist Marilyn Frye defines oppression as: “part of an enclosing structure of forces and barriers which tends to the immobilization and reduction of a group or category of people” (Frye, 1983, p. 6).

I would argue that class oppression does effectively limit mobilization and reduce the opportunities and life chances of urban refugee women. The most obvious illustration of this within the Act is in the section on the Rights and duties of refugee in Kenya which states:

Every refugee and member of his family in Kenya shall, in respect of wage-earning employment, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya.

(Refugee Act, 16. (4), 2006)

Gainful employment, as well as wages earned, are restricted for urban refugee women, and their opportunities to earn their livelihoods are reduced to, and equated, with people who have no rightful ‘claim’ on Kenyan resources.

Another element of oppression is that it is:

...also discrimination systematically enforced through the use of social/economic and political power, in such a way that the status quo is maintained.

(McDonald and Coleman, 1999, p. 20)

As such, gender oppression is very much at play within the document. The use of gender within the Act, first mentioned only once in reference to the refugee definition, secondly to describe the composition of the Refugee Commission, and third in the event of a strip search does little to afford any real representation or power to the population that constitutes nearly a majority of the refugee population. One third of a committee does not speak to equitable representation; in fact women still remain firmly in the minority. Additionally, the haphazard references to gender may simply represent a move to placate, by throwing in a couple of phrases here and there, for those who would contend that the document is not gender-friendly – which it is not. Thus, the Refugee Act works to maintain the status quo by blocking women's voices and engaging at a superficial level or indeed not at all, with the issues that affect refugee women's lives.

Role of the 2006 Kenya Refugee Act within the Policy Landscape

The following section examines the role played by the Act in the field of social policy within the Kenyan context. It explores the power dynamics and relationships upheld by the Act, and interrogates who is included in the preliminary policy consultation process and to what end. It also examines the policy implementation arena- who is involved and how the determination of

refugee status occurs beneath the Act. This section explores the interplay and connections between different policy actors and their competing commitments, values and interests.

A range of actors were involved in the policy consultation process for the 2006 Refugee Act. These included the Parliamentary committee responsible for the Bill, the department of Refugee Affairs, UN agencies and several civil society organizations with the Refugee Consortium of Kenya at the helm (Ayiera, 2007).

Those in charge of defining who shall be determined to be a refugee under the Act were mainly government players. This included the Commissioner for Refugee Affairs as well as the members of the Refugee Affairs Committee. The representatives for the Refugee Affairs Committee came mainly from local, municipal and provincial governments, national security (as well as the various intelligence and police agencies) and the foreign affairs, immigration and refugee departments. The committee includes representatives from the host community as well as a civil society group, serving in an advisory capacity.

The majority of the Committee is comprised of agencies which focus on national security. It is also quite interesting to note that there are no seats on the Committee for a representative from the refugee community. The obvious assumption is that a civil society group can advocate for refugee issues. This deliberate exclusion of refugee voices speaks to the ways in which social policy can function to marginalize the very people who the social policy is meant to engage with. The reliance on experts, who are well-versed in the process and theatre of policy formulation, ends up replicating relations of inequality and systemic oppression. In this, the people who sit at the table have no real interest or engagement with people affected by the

policy. This is starkly evident as the non-governmental members on the Committee are relegated to a strictly advisory and non-decision making capacity.

In this context, the role of the Refugee Act is to provide a framework for refugee protection where none had existed before. As such, the document outlines general rules and regulations for the identification, treatment and status determination of refugees. But it pays scant attention to specific refugee populations, such as urban refugee women, or even refugee women.

Contained within the Act is the assumption that ALL refugees live in camps or transit centres. This broadcasts the underlying message that refugees should not live in cities and urban centres and it also labels their presence as criminal and illegal. The Refugee Act criminalizes the presence of refugees outside ‘designated areas’ without ever defining the parameters of these areas. This effectively constructs urban refugees as criminal elements in the eyes of the local authority or population, without actually penalizing them. Such a move allows for an image of humanitarianism and a commitment to international human rights statutes, in the eyes of the international community. As such, by not penalizing refugees outright, Kenya is perceived to be a benevolent host state, while at the same time delivering the message that a refugee’s residence in an urban area is substantively against the law. According to Gill, the legal ambiguity of the ‘designated areas’ clause fulfills a particular purpose:

The strategic ‘non-presence’ of the state allows states to simultaneously commit to a range of progressive international agreements concerning the rights of migrants and then to avoid the responsibilities that inhere in these agreements through the maintenance of zones of uncertainty and legal ambiguity.

(Gill, 2010, p. 636)

Much of the text of the 2006 Refugee Act deals with delineating the roles of the Commissioner, the Refugee Appeal Board and the Committee. While this is understandable as the Act must outline the new bodies and structures it creates, it has missed an opportunity to underline the fundamental importance of human rights and its own role as a human rights instrument. For example, it does not adequately address the issue of access to services or the programs that ought to be available to refugees. While it pays scant attention to the needs of refugees, there is a high level of preoccupation about the possibility that refugee communities will be harmful to the host community or the economy. Lastly, the Act merely pays lip service to the issue of gender without engaging in it in any real way.

The Presence of Urban Refugees in Nairobi

Although urban refugees have always been a visible presence in Kenyan cities, the government of Kenya has historically denied their existence. Government officials have gone so far as to insist that “there are no refugees in Nairobi” (Parker, p.18, 2002). Highlighting the presence of refugees in camps fulfills multiple purposes: the refugee population is corralled to one space, the government of Kenya fulfills its humanitarian commitments without compromising national security interests, and the camps function as locations where international aid is directed, as well as where non-governmental organizations and UN agencies can see to the day-to-day administration of refugee protection.

Such resistance to acknowledging the presence of urban refugees may stem from the fact that the Kenyan refugee protection system is already heavily burdened. The 2010 UNHCR

Global Trends report reveals that Kenya has the third highest number of refugees compared to its national economy (UNHCR, 2010). Coupled with this is the reality that Kenya can scarce afford to care for its own impoverished population, where 40 percent are unemployed, 50 per cent live below the poverty line and 60 per cent are accommodated in slums (Campbell, Crisp & Kiragu, p.1, 2011). This, as well as erroneous assumptions and perceptions, about the economic success of refugee populations (as exhibited by the conspicuous consumption of a few), as well as the military, political and terrorist threats they pose, has resulted in protectionist and restrictive policies. According to Mueller, such a shift and emphasis on national security, marks a recent trend in refugee policy:

The discourse has shifted from one of humanitarianism where questions of hospitality or cruelty may have entered in, or more identity based distinctions between the unknown alien and the familiar citizen; refugee politics has been drawn into a discourse of security and threat.

(Mueller, 2004, p.51)

Despite this, Kenya recognizes its strategic importance as a regional power and a hub for international development and human rights agencies. As such, it engages with efforts to work with the various UN agencies and not to alienate them, by making a human rights misstep with the criminalization of urban refugees. Consequently, the government of Kenya does not explicitly penalize the presence of urban refugees.

This reluctance to deal with the question of urban refugees is quite interesting to note, as there currently seems to be an overall shift with regards to the perception and approach taken towards urban refugees. This is evinced by the 2009 revision of UNHCR's Policy on the

Protection of Refugees in Urban Areas. The document revises the 1997 policy that previously labelled urban refugees as illegal and irregular migrants. The new policy takes a human rights approach, asserting that refugees do indeed inhabit urban centres, and that they are privy to the same rights afforded all refugees (UNHCR, 2009). The UNHCR office in Nairobi has recently been lauded for its urban refugee program and released an evaluation report on the success of the program in January 2011 (UNHCR, 2011). Also, as mentioned in the introduction to this study there have been numerous articles and pieces around the subject of urban refugees. In light of all this, the field is ripe for an additional shift and revising of the 2006 Kenya Refugee Act. Over the past couple of years there have been concerted efforts from advocacy circles and academia, to acknowledge and highlight the presence and experiences of urban refugees. This shift has been instigated by a growing awareness of the gaps and lack of attention paid to the subject of urban refugees. The Nairobi Initiative in particular is a deliberate effort to mend historically strained relationships, with the large refugee population in Nairobi, as a result of the 2001 resettlement scandal, and overall feelings of distrust¹⁰. There also seems to be a general shift in UNHCR policy, which aimed to counter the negative backlash on the 1997 urban refugee policy from advocacy and academic circles. In this, there is a growing awareness of the large numbers of refugees who come to cities and an acknowledgement and acceptance of the fact that refugee camps intended as a temporary solution have since become a permanent fixture, and that life in cities offer refugees a multitude of opportunities for integration, livelihoods and better standard of living, as well as foster self-reliance and reduce the burden on the refugee protection system (Campbell et al., 2011).

¹⁰ In 2001 several UNHCR employees were found guilty of corruption after offering third-country resettlement spots to refugees for a price.

In summation, the various aspects of the Kenya Refugee Act betray specific political and social imperatives with regards to the management, treatment and protection of refugees in Kenya. There was a noted historical resistance towards the adoption of a national refugee policy, as well as an acknowledgement of the presence of urban refugees in Nairobi. The Act itself functions more as a bureaucratic and administrative tool than a human rights document. The main focus of the policy is on defining refugees and the rights they are afforded, as well as instituting various structures for their care, management and protection. Most importantly, within the Act, gender is invisible and, when addressed, treated superficially. The subject of urban refugee women or indeed the vulnerabilities they face are minimally engaged with in the document, except through the 'designated areas' clause which criminalizes their presence in cities. The document does little to address the multiple and intersecting vulnerabilities experienced by urban refugee women. The social regularities at play, gender and class oppression can serve to invisibilize urban refugee women, limit their mobility and block opportunities and access to power and resources. Lastly, the Refugee Act is evidence of the government of Kenya's struggle to contend with multiple and competing interests. In their refugee policy, Kenya attempts to balance international commitments with concerns over national security and an overburdened refugee protection system.

Chapter Six: Conclusion

The purpose of this study was to explore and identify the ways in which the multiple and intersecting vulnerabilities experienced by urban refugee women were addressed in the 2006 Refugee Act. Vulnerabilities speak to the conditions that result in the experiences of multiple forms of violence in an urban refugee woman's life. The vulnerabilities identified through the literature are: sexual and gender-based violence, insecurity, livelihoods and lack of access to housing and services.

The treatment of urban refugee women, very much like that of gender, was sparse and practically invisible within the Act. The text provides minimal representation of women on the organizational bodies created by the Act. It also engages with gender in a very superficial manner, applying the term sparsely and haphazardly throughout the text.

The issues of the vulnerabilities that refugee women are likely to experience were scarcely present, and certainly not highlighted within the Act. This lack of attention to vulnerabilities and neglect of specific measures to limit the vulnerabilities, speak to the purpose and use of the document as a bureaucratic tool and not necessarily as a human rights instrument.

Kenya's persistent reluctance to acknowledge the existence of urban refugee women in the city can be seen to result from competing values, national interests and international commitments. The government of Kenya believes its refugee system is already greatly beleaguered and thus is hesitant to commit any more resources to it, which the introduction of an urban refugee program might result in. As so often occurs with refugee protection, the largest burdens are borne by the poorest states (UNHCR Global Trends, 2010). Such is the case for

Kenya. This is particularly dire as the Kenyan government does not have sufficient resources to see to the needs of its own impoverished population, 60 per cent of whom live below the poverty line. Thus, the government of Kenya endeavours to balance its concerns for national security, with its international commitments, scarce financial resources for refugee protection and the dire need of its impoverished population.

New Approaches to Urban Refugee Policy

In the following section I explore a global citizenship approach as a way to reconceptualise and reconstitute the approach to refugee policy. I also follow this up with the concept of ‘protection space’ put forth in the UNHCR’s Policy on Refugee Protection in Urban Areas, as a means by which Kenya can ensure the freedom and visibility of refugees in urban areas, as well as allow for the economic and social self-reliance of refugees. This approach has the potential to ease the burden shouldered by the Kenyan state and result in economic returns.

Global Citizenship

There is such a thing as international citizenship which has its rights, which has its duties and which implies a commitment to rise up against any abuse of power, whoever its author, whoever the victims. After all we are all governed ...and by that token, our fates are bound up together.

(Foucault, as cited in Malkki, 1995, p.517)

The idea of global citizenship originally emerged with the concept of cosmopolitanism put forward by Immanuel Kant, and later expanded upon by Jurgen Habermas (Bowden, 2003). Global citizenship has taken a new form in light of colonialism, global capitalism and globalization.

One of the main advocates of global citizenship is sociologist Saskia Sassen. This concept rests on numerous factors and is reflective of contemporary global dynamics. According to Sassen (2003), as a result of international human rights laws, corporations, organizations, and states are subject to supranational obligations which they need to uphold and are held accountable for. Depending on the balance of power which is held by the nation-state, a violation of these agreements may result in sanctions, boycotts, criminal action, or a loss of status.

Another element expanded upon by Sassen is the fact that our current global context allows for a re-shaping, re-conceptualization and re-scaling of citizenship that is not necessarily tied to states. She notes that citizenship is de-nationalized as globalization pressures states to be economically competitive which results in them scaling back on programs and social spending, resulting in a loss of loyalty from their citizens (Sassen, 2002). Additionally, this de-nationalization is also exacerbated by cross-border exchanges and connections, multiple citizenship, transnational movements as well as diasporic communities with strong allegiances to their home countries.

Sassen also notes that the concept of citizenship has been exploded by the presence of numerous groups that do not fit into its traditional definition. She points to the self-determination of Aboriginal communities as well as the increasing numbers of refugees and stateless people (Sassen, 2002). Other aspects also distort the traditional conception of citizenship, such as the

ability of citizens (in liberal democracies) to sue their governments, as well as the fact that non-citizens are granted rights and privileges by states, such as in the case of foreign business people (Sassen, 2002).

Another axis in this idea of global citizenship is the global city. The global city is the site where the movement of culture, goods, and finances are conducted. Global cities as well as global slums are at the foundations of the infrastructure of the global capitalist system. According to Sassen (2002), this is a site of possibility where power can be negotiated as there is a mass concentration of marginalized populations including the overlapping categories of: irregular movers, women, refugees and slum-dwellers. This is the nexus where these different groups can come together and enact and demonstrate their presence. Sassen points out that we must not conflate this 'presence' with power; however, there is a possibility of civic activity and claims-making.

Another addition to the concept of global citizenship expanded upon by Sassen as well as Brian K. Murphy is the concept of open borders (Sassen 2006, Murphy 2008). In light of the existence of global international human rights instruments, as well as the free movement of goods, capital, technology and elite business representatives, the logical conclusion would be the free movement of ALL peoples.

A global citizenship approach recognizes that as a result of changing global dynamics, international human rights law and transnationalism, the realities of citizenship are shifting. As such the international community needs to enshrine and implement in actuality, what it has committed to on paper in various international human rights documents and conventions. In regards to urban refugee women, there is a strong case for utilizing a global citizenship approach,

for as stateless people, the rights of refugees and responsibilities of host countries fall directly under international human rights law.

One such international human rights document that can provide a framework for the crafting of a Kenyan urban refugee policy, or adopted wholesale as an instrument is UNHCR's Policy on Refugee Protection in Urban Areas. As such the UNHCR document approaches the presence of refugees in cities with the concept of expanding the protection space. As such, the policy is based on the notion that:

...the rights of refugees and UNHCR's mandated responsibilities towards them are not affected by their location, the means whereby they arrived in an urban area or their status (or lack thereof) in national legislation. The Office considers urban areas to be a legitimate place for refugees to enjoy their rights, including those stemming from their status as refugees as well as those that they hold in common with all other human beings. (UNHCR, II, 14, 2009)

The widening of protection space opens up areas in which refugees can reside and earn livelihoods. Along with this, follows the concept of self-reliance. As such, by opening up the space for protection, refugees have the potential to become autonomous and rely less on assistance from UNHCR and the host community. If the government of Kenya's concern is that the refugee protection system is over-taxed, such a solution would improve the financial and economic autonomy of refugee populations, as well as economic growth for the host community.

The Ugandan Refugee Act provides an interesting counterpoint to the Kenyan refugee policy, and builds upon the concepts of widening of the protection space and self-reliance. Also

written in 2006, the Ugandan Act came into force in 2008. It has been described as a ‘progressive’ piece of refugee legislation as it allows refugees to reside outside of camps in rural settlements and provides agricultural plots for refugees’ economic self-reliance. The Act also allows for their increased mobility, and sees local integration as a viable permanent solution after the refugee crisis has ended (UNHCR, 2009).

The implementation of the UNHCR policy, also allows for the adoption of UNHCR's Guidelines on the Protection of Refugee Women (1991), as well as UNHCR's Guidelines for Prevention and Response to Sexual and Gender-based Violence against Refugees, Returnees and Internally Displaced People (2003). This is particularly important, as gender does not attain any visibility within the present document. The adoption of these previously listed policies is a crucial first step in addressing the multiple intersecting vulnerabilities of urban refugee women in Nairobi.

Recommendations

- That the government of Kenya devise and implement an urban refugee policy or adopt UNHCR’s Policy on Protection in Urban Areas.
- That the categories of sex and gender be more fully incorporated into every definition of refugee in the 2006 Kenya Refugee Act, and subsequent refugee policies.
- That a gender-sensitive approach be used in the revisions of the 2006 Kenya Refugee Act, as well as all future formulations of refugee policy.
- That the employment and wage-earning restrictions are lifted from the 2006 Kenya Refugee Act.

- That the 'designated areas' clause be removed from the Act

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