VOLUME 9, NO. 1 • DECEMBER 2020

OXFORD MONITOR OF FORCED MIGRATION

Oxford Monitor of Forced Migration

The Oxford Monitor of Forced Migration (OxMo) is a bi-annual, independent, academic journal engaging in a global intellectual dialogue about forced migration with students, researchers, academics, volunteers, activists, artists, as well as those displaced themselves. By monitoring policy, legal, political and academic developments, OxMo draws attention to the realities of forced migration and identifies gaps in refugee protection.

Editorial Board

Editors-in-Chief	Ana Powell Andrea Ortiz
First Hand Editor	Emma Walker-Silverman
Artistic & Creative Expressions Editors	Samuel Fouts Timo Schmidt
Academic Editors	Lawrence Huang Domiziana Turcatti Emma Walker-Silverman Lauren Crawford Alix Biggs
Policy Editors	Domiziana Turcatti Drashti Thakkar Sophia Iosue Lauren Crawford
Law Editors	Domiziana Turcatti Poonam Sandhu Stephanie Heng Ana Powell
Field Editor	Alix Biggs

Disclaimer

Opinions expressed by authors in OxMo do not necessarily reflect the views of the Board of Editors. Articles published in OxMo do not represent the views of the Refugee Studies Centre or the University of Oxford. Copyright for articles published in OxMo rests with the author(s). Materials may be downloaded, re- produced, and circulated in entirety provided that the title, author, and source (OxMo) is acknowledged. Unless indicated otherwise, the photos featured with each article were taken by the author(s).

The photo on the front and back cover featured on this issue was taken by Gláucio Dettmar for Agência CNJ.

A special thank you to Kats Tamanaha for the graphic design of this issue.

For more information about OxMo's past issues and upcoming deadlines, visit our website www.oxforcedmigration.com or follow us on Twitter: @oxmofm

Table of Contents

Letter from the Editors

Dear reader,

In this issue, we feature 18 contributions from thinkers and researchers around the world on issues related to academia, policy, law, research, and artistic and creative expressions in the field of forced migration studies. In the context of COVID-19, a pandemic facilitated by the movement of people and curtailed by staying in place, the articles in this issue serve as a strong reminder that many people do not have the opportunity to stay immobile, and that mobility has always been an integral part of what makes us human.

In the first hand section, we have a powerful testimonial from the ancestor of a forced migrant who survived the Greek-Turkish population swap of the early Twentieth Century. Through stories and images passed down by his grandpa, we explore the narrator's relationship to his past, and the inter-generational impact of mobility. Contributors to the Artistic and Field sections further explore the themes of boredom that often accompany the forced migration journey, and poetry that provide an escape from the ennui of perpetual waiting. In a first for OXMO, a researcher from Azerbaijan also addresses the issue of migration through the lens of music, weaving together the value of the art of Mugham and Ashiq and its inter-generational significance for displaced Azerbaijanis. We invite readers to watch the full-length documentary which accompanies this piece, available at the link in the article.

The issue's contributions also offer broader theoretical and personal insight into the impact of protracted displacement on people's lives and livelihoods, such as the case of Eritrean asylum-seekers in Israel, Palestinian camps in Lebanon, the Chin in Malaysia, and those faced with the prospect of returning to Rakhine State. Additionally, the issue also explores contemporary conditions of displacement and more recent transfigurations of statehood, including the impact of India's new citizenship law on its refugees, the changing nature of UK's border regime, the incoming arrival of displaced Venezuelans in Brazil and Colombia, and new anti-trafficking bills and its impact on exclusion in India.

The issue also interrogates how the law fails to capture the inherent nuance of forced migration. Contributions to the legal section of this volume focus on the need for constructing a protracted sanctuary status for refugees and the impact of soft law and local law on facilitating (or failing to facilitate) migrant protection. Issues of representation also feature prominently in this issue, whether it be from a small NGO questioning the leadership of its organization, or the absence of considerations of intersectionality and protections for LGBTQI refugees in legal refugee frameworks.

Finally, we would like to thank everyone who has worked tirelessly to put out Volume 9.1, and who continued to think and write about migration during an unprecedented time for humanity. In the next few months, as we emerge from this crisis and return to our normal lives, we encourage you to think about those who are not able to "return," and those for whom "normality" has been altered by forces outside of their control. A special thank you to Kats Tamanaha for the graphic design of this issue, and to the University of Oxford for their continual efforts to take migration seriously as an academic issue in and of itself. And finally, thank you to our readers for engaging in what is undeniably one of the most defining issues of our times.

Ana Powell & Andrea Ortiz
Co-Editors-in-Chief
Oxford Monitor of Forced Migration

Lost Children of the Population Exchange and My Grandpa's People

Sahin Yaldiz

'Ali, my great-grandfather, had never forgotten the beauty of Crete and died with this longing in his heart.'

In the last century--the age of extremes--the world has wholly changed; however, an emotion created by one forced migration has stayed inescapable for thousands including me--a longing for the sacred land.

It was after the French Revolution that the Ottoman Empire began to feel the effects of nationalism (Lewis, 2003: 315). As more nations gained independence from the Ottoman Empire in the Balkans, Turks living in the newly independent states began to experience the insecurity which was also felt by the Greek-speaking population in Anatolia. Rising nationalism, which created a threatening 'other', was creating waves of displacement, the last of which was the 1923 Population Exchange between Greece and Turkey. Greeks had already started to flee from Anatolia, the peninsula that was becoming modern Turkey. Balkan Turks also had to escape due to the severe social unrest caused by attacks from Greek and Turkish communities on one another. After the convention signed by Turkey and Greece, 500,000 Turks from Greece and 1.2 million Greeks from Anatolia were forcibly exchanged in two years beginning between 1923 and 1925.

After the exchange, a brand-new identity emerged: *mübadil/muhacir. Mübadil* refers to the people who were exchanged after 1923. *Muhacir* refers to Muslim people who fled from the Balkans and Caucasus to Asia Minor between 1878-1930 due to political tension and oppression. Their longing for their homelands haunted them for their entire lives. Turks from the Balkans were not accepted as Turks by the Turks in Anatolia, and Greeks from Anatolia were not recognised as Greeks in Greece. After the exchange, exchanged Greeks were called 'Turkish seed' in Greece and Turks were referred to as 'Greek seeds' or 'infidels' in Anatolia.

In my hometown, we are known as the grandsons of *Gavur*[1] Ali. Until I got into university, I had never wondered why we were known by that family name. However, one day my grandmother revealed the reason. She began telling the moving story her father had told her: the story of being Cretan. The family had escaped from Crete at the beginning of the 20th century because of political tension on the island. They arrived at a small seaside town in Asia Minor, where my great-grandfather was raised in a neighbourhood in which everyone spoke Greek and where *muhacirs* of Crete had already settled. However, his family had to put him up for adoption to a Turkish family whose language he did not know because they were too poor to take care of him after the escape. In his new life with the Turkish family he was called an 'infidel'--despite his Muslim religion--because of his accented Turkish.

As time passed the number of *muhacirs* and mübadils rose. Starting in the 1930s they began establishing

1 A term used to describe an Infidel or anyone who is not Muslim, which is used mainly as an insult

their own primarily Greek-speaking neighbourhoods.[2] However, they were afraid to speak Greek openly, because they were already called 'dirty Gypsies' or 'Greek agents'. Even in their houses, they drew the curtains sometimes if someone saw them speaking Greek. Ali, my great-grandfather, had never forgotten the beauty of Crete and died with this longing in his heart. Many Cretans were buried in a graveyard[3] in the middle of nowhere where other first-generation Cretans were interred. This once well-kept graveyard now lies in ruins, just as the modern Cretan identity does.

2 The language was forgotten in time. My grandmother born in 1935 and her sisters can fluently speak it; however, my father born in 1960 can only understand intermediate Greek.

3 The name of the graveyard is Patako, a word locally used to mock about Cretans' language. It can be translated as 'The Graveyard of Non-Turkish speakers'.

My mother's grandmother was also a *muhacir*. She also told the stories of the exchange when her relatives were loaded into ships infected with typhus. They had two choices: stay in Thessaloniki and remain invisible until the political tension calmed down, or get on board the vessel and perhaps catch typhus on the way to Asia Minor. In the end she had no choice; her brother-in-law was massacred by some Greeks the day before the ship departed, so the family left on the ship.

She always said that there are two unendurable pains: seeing your child dying and being a *muhacir.* The Aegean Sea has been filled with infants buried deep under the blue waters. Once upon a time the infants died on the ships because of typhus or hunger; now Syrian refugee children share the same fate as my ancestors. The sea has the universe's

PHOTO BY SAHIN YALDIZ

most beautiful blue colour because it has the naïve spirits of thousands of children.

While the calamitous memory of the population exchange was still fresh, the Turkish and Greek states had an armed conflict in 1974. At that time, my family lived in a seaside town near some Greek islands and endured blackouts at night because there was a risk that the Greek army would bomb the cities and villages they saw. Because of the panic, people immediately left the small towns and went to hide in the mountains. When my mother's family received the news, my mother's grandmother, Fatma, began to cry thinking that they were going to be exiled again. She said: 'You cannot ever take me anywhere. I will not be a *muhacir* again. Let God take my life now, let me die of hunger here alone but do not make me a *muhacir* again! I'd rather die than be a *muhacir* again!'

The second and third generations of *mübadils* and *muhacirs* have always dreamt of going to their holy lands. The ones who could not go died with a deep hole in their heart. Their stories of life in their sacred lands were so realistic that you would believe that they had actually lived there, especially when you saw their eyes filled with tears while talking about a land that they had never seen, their fathers had never seen, even their grandfathers had never seen. I am the third generation and the first one who had the chance to fulfil the dreams of my whole family: to go to the holy land, Crete!

After an accident in which nearly all the bones on the right side of my body were

PHOTO BY SAHIN YALDIZ

broken, I read Nikos Kazantzakis' *Zorba the Greek*, a great story about Crete and the courage to dare to do anything. I was confined to bed and Kazantzakis. As I read, I began to feel that Crete would help me out of the misery which I inherited from past generations. I saved enough money to go and see what the holy land was like, the land where our agonies were born. The plane landed at (appropriately enough) Nikos Kazantzakis Airport, and the first thing I did was walk to the grave of the famous author. It felt like my bag was filled with the dreams, the desires, the agonies of my great-grandfather, his children, and his grandchildren. As I walked up the hill to where Kazantzakis was buried, my burden felt heavier and heavier.

Finally, I was there. On top of the hill, Kazantzakis was sleeping his eternal sleep. I sat on the rocks by the grave and stayed there for hours. The hours spent there made me healthy again, and I have never felt weak again after seeing that grave. The weaknesses of my body and soul disappeared after touching it. He was the symbol of being Cretan; he was Crete himself. After a few hours, I stood up, slowly walked to the edge of the hill, looked at my beautiful Heraklion and shouted my grandmother's favourite phrase to the island: **κρητη** μ**ου**![4]

On the way back I intentionally booked passage on a ship which took nearly 20 hours to reach Turkey. I wanted to understand how my ancestors felt when they had to get on one of these ships. As the ship was leaving Crete, I began to sing a sorrowful song of the Population Exchange:

Grapes of Athens
My words were careless
While I was throwing the infants to the sea
I closed my eyes
Oh my crane, I cannot stay here anymore.

The hollow feeling in my heart was filled after touching the grave of Kazantzakis. I went back to the forgotten graveyard of Cretans with a bag of soil I gathered in Crete and sprinkled it on graves of the first-generation Cretans. I hope that their spirits are now satisfied. I sat on the bench by one of the graves and felt as if I were sitting by Kazantzakis's grave and began to think of the epitaph on his tomb:

I hope for nothing
I fear nothing
I am free!

Dedication

This paper is dedicated to my great-grandfather Ali and great-grandmother Fatma, both of whom suffered the great agony of forced migration. It is also dedicated to the millions of Greeks and Turks who perished in the population exchanges between 1923 and 1925.

4 'My Crete!'

The author

Şahin Yaldız is an MA student in Cultural Heritage Studies at Central European University. During his undergraduate studies in Translation and Interpreting Studies at Boğaziçi University (Istanbul) he founded a folklore club and acted as its head since 2013. In this context, he archived many Turkish folk tales, folk songs, dances, and myths about the Zeibeks (social bandits) by visiting villages in the Aegean Region, many heretofore undiscovered. Şahin also established an initiative called "Academic Zeibek Villages", summer camps in various Aegean villages, where he together with Boğaziçi students investigated, learned, and recorded local Zeibek music and dances.

Bibliography

Lewis, B., 1997. *The Middle East: a brief History of the last 2,000 years.* Reprint, New York: Scribner.

Beyond Text: Growing into Music

Sanubar Baghirova

photo by Sanubar Baghirova

'Dünya cənnətə dönsə yaddan çıxmaz Qarabağ'[1]

'Even if the whole world turned into paradise, I would not forget Qarabag'

Back in 2009-2012, by the invitation of SOAS/University of London, I worked together with a team of four British scholars on the research project 'Growing Into Music: Beyond the Text.' The 90-minute documentary, *The Ancient Arts of Mugham and Ashiq in the XXI Century*, was one of my major contributions to this project. The film is about Azerbaijani children from urban and rural areas who study traditional music to become professional musicians or to play it for their own pleasure. The film consists of three chapters: the first focuses on the children mastering the Mugham; the second follows young ashiqs in classrooms of Baku or outdoors in villages; and the third acquaints viewers with the traditional musical environment of Shirvan, the country's largest district.[2] The theme of forced

1 This is a line from the poem composed by Aqa Beyim Aqa (1782-1831), the daughter of Ibrahim Khalil Khan, the ruler of Qarabag (1732-1806), a beautiful and educated aristocratic lady who spoke Arabic, Persian and French. In 1801 her father married her to the Iranian Governor Fath Ali Shah Qajar (1772-1834). She was a favourite wife of Fath Ali Shah, who did everything to win her heart, but she nevertheless always felt nostalgia for her home and garden in Shusha (Upper Qarabag).

2 Music of Shirvan is presented in a special chapter not due to the size of the region, but rather because of particular features of its musical style that are spe-

migration is particularly reflected in the first and second chapters of the film.

It turned out that many heroes of the film, children and adults, whom I met and interviewed, came from refugee families from Armenia, as well as from the families who fled from the occupied regions of Azerbaijan. Though forced migration was not the main focus of the film, the massive migration at the end of the twentieth century affected all walks of life in Azerbaijani society, and traditional music was hardly an exception. Even in this film, this reality was impossible to avoid.

A small country with 10 million people,[3] Azerbaijan is located on the periphery of the global geopolitical system. Readers may, therefore, be unaware of the events that triggered the forced migration of almost 1.5 million people in this part of the world some thirty years ago and caused human sacrifice on both sides, not to mention the broken lives and psychological traumas of many, including children.

The conflict between the Armenians and the Azerbaijanis broke out in February 1988 in Upper Qarabag (or Naqorno-Karabakh Autonomous Oblast, the district of Azerbaijan with a majority Armenian population, approximately 75%) with the Armenian community demanding reunification of this district with Armenia. The indignation this demand caused among the Azerbaijani community led to a direct, violent confrontation between Armenians and Azerbaijanis starting on 23 February 1988. Further clashes between Armenians and Azerbaijanis resulted in total expulsion of Azerbaijanis from their own lands in 1989-1990. In those years, all Azerbaijani inhabitants of Armenia (over 200,000 people mainly from rural districts) became subject to ethnic cleansing and had to escape to Azerbaijan. The forced migration also affected the Armenian population of Azerbaijan. Some 300,000 out of a total 400,000 Armenians who lived in Azerbaijan before the conflict left the country.[4] So people from both nations had to abandon their homes and belongings. By 1993, Armenia occupied seven Azerbaijani regions adjacent to Qarabag and Armenia: namely, Lachin, Aqdam, Fuzuli, Gubadli, Jabrayil, Zangilan, and Kalbajar. The population of these regions, about a million people, was forced to leave their native lands under the threat of death.

Almost 25 years since their forced migration to Azerbaijan, some refugees and displaced people from this conflict have managed to organize their lives in a new place, but many still face difficulties and many often have no permanent jobs. The film *The Ancient Arts of Mugham and Ashiq in the XXI Century* shows some of the children and adults from migrant families who have managed, or still are trying, to knit back the broken yarn of their lives with the help of music.

The art of Mugham and the art of Ashiq represent the two main fields of Azerbaijani traditional music, each with a long history.[5] The art of Mugham

cific to this musical milieu.

3 The total number of Azerbaijanis globally is about 50 million, most of which live in their historical lands in Iran.

4 References from the article Azerbaijan. The Status of Armenians, Russians, Jews and Other Minorities, United States Bureau of Citizenship and Immigration Services, 1 August 1993, available at: https://www.refworld.org/docid/3ae6a6073.html [accessed 30 April 2020].

5 The art of Mugham and the art of Ashiq have been recognized by UNESCO as being of great cultural value: Both were inscribed on UNESCO's Representative List of Intangible Cultural Heritage, the art of Mugham in 2003 and the art of Ashiq in 2009 . Both these nominations were prepared by me. For more

stems from musical traditions of the medieval Muslim East, while the art of the Ashiq ties the Azerbaijani musical culture to the Turkic world. Both genres are widely popular in Azerbaijan, though an audience's preferences will vary by region or origin. For example, the inhabitants of Baku and the surrounding villages, as well as the upper and lower Qarabag and the area bordering Iran (Lankaran and Nakhichevan), habitually prefer Mugham. In turn, the western regions of the country--Ganja, Gedabey, Tovuz, Gazakh, Shamkir, Kalbajar--have historically been and remain the most important area of Ashiq art in Northern Azerbaijan.

I use the term 'Northern Azerbaijan' since the major historical centres of Ashiq art also exist in Southern (Iranian) Azerbaijan. The division of Azerbaijani lands into Northern and Southern parts dates to the 19th century. It resulted from the wars between the Russian Empire and Iran when, according to the peace treaties of 1813 and 1828, Persia ceded the Azerbaijani lands in the South Caucasus to Russia, while the lands in northwest Iran remained with Iran. The separation remains to date. The Republic of Azerbaijan, a secular state headed by a president, was established in the northern (Russian) part of Azerbaijan after the collapse of Soviet Union in 1991.

Whilst the art of Mugham is the mainstream of traditional urban musical culture, the Ashiqs have always played the leading role in the musical life of the Azerbaijani provinces; these country bards were and are a vital part of every wedding and festive event there.

With the flow of migrants from so called 'Ashiq regions' of Azerbaijan and Armenia to the cities,[6] and particularly to Baku, the Ashiq culture began to play an unusually important role in the musical life of the city. Baku, one of the largest centres of Mugham art that has never had its own local Ashiq traditions and school, has, since the nineties, been turning into the hub of Ashiq art. Concerts, festivals and Ashiq competitions are held regularly at sold out venues, with audiences consisting in large part of migrants and country folk. Ashiq art has always been an integral part of their traditional way of life. Now that they find themselves in an unusual environment, in a large modern city,[7] it responds not only to their cultural needs, but also their sense of local identity. To a certain degree, it binds and unites their past and present into a cultural continuum.

Demand generates supply, so an influx from rural areas led some Baku music schools to include Ashiq classes in their curricula. The parents would send their children and grandchildren to these schools to learn Ashiq songs and play the *saz,* the principal musical instrument of Ashiqs.
I recorded many interviews with children from migrant families and their parents.

information about Mugham or Ashiq art, see my article 'The One Who Knows the Value of Words: The Ashiq of Azerbaijan,' (Yearbook for Traditional Music, 2015, Vol.47, pp. 116-140), and 'Guide to Mugham' by Simon Broughton in the British musical magazine Songlines (2013, # 7).

6 Historical centres of Azerbaijani Ashiq art, each with their distinguishing figures that were known wherever the Azerbaijani language was spoken, have existed in Armenia since the 16th century. As the result of recurrent ethnic cleansings of Azerbaijanis (in 1918, 1948 and especially 1988-89) they ceased to exist.

7 According to official statistics, there are about three million people living in Baku, though unofficially the city accommodates almost half of the country's populace.

For example, the second chapter of the film features an episode when refugees from Armenia talk about the reason why they are so committed to this art and what it means for them. 'We keep our traditions; we have never lost them,' say the eldest members of the family as they begin to tell me a long story of their former life, of the songs they used to sing, of their home and garden they had to leave, and, of course, of their mountains. They told me this story sitting at a tiny one or two bedroom apartment in one of the dormitory areas of Baku. Their son and grandson, Elchin Veliyev, a young Ashiq who was born in Baku, said, 'When I play this music I think of the mountains, I picture those places, where my family used to live. When my grandmother tells me about it, I really enjoy it.' His teacher, Neymat Qasimly, an Ashiq, gives a more comprehensive explanation: 'The Ashiq tradition is strongly connected to the countryside. Mountains, rivers, green forests…their images inspire the ashiq. While living in a city environment he is not quite in tune with them. Parents tell their children born in the city about it. So they just imagine these places, since they can't visit them due to the current occupation.'

The matter of forced migration is reflected likewise in the first chapter, in relation to the Qarabag musicians. Qarabag was famous in the South Caucasus and Iran for being the 'cradle of mugham art'; it is the oldest historical centre of Azerbaijani mugham culture. Dozens of distinguished Azerbaijani performers of mugham who have made the history of this art were natives of upper or lower Qarabag: of Shusha, Aqdam, Fuzuli, and Aqjabedi. Qarabag singers are celebrated for their amazing voices. Almost every other child here knows and sings Mugham, though they may not comprehend the full depth of its meaning, as it requires a certain emotional maturity from the performer. The film tells the story of one such Qarabag boy, Samir Jalilov, who was endowed

with a unique voice, but the Qarabag war, housing problems and general insecurity caused by forced migration halted his career at its peak, soon after his highly successful performance in the U.S. in 1987. Fate was kinder to another boy from Qarabag, Gochag Askarov, who managed to fight his way to world concert scenes, including the stage of Royal Albert Hall. Nevertheless, he has also had his share of suffering: migration for many years threw him out of normal life, and the war rewarded him with a bullet wound.

In this film, we see music as a living practice of cultural memory, as something of true value, though it remains intangible and immaterial. For these migrants, music stands as one of the few precious things that they have managed to save and take away--other than their lives. And it does matter to them. Because many of the social obstacles that migrants face, particularly the lack of jobs and housing, are yet to be resolved, in this film I wanted to speak about music, and the way it brings hope and some harmony to the unsettled lives of those who have been displaced.

For full length clips, please visit: http://www.growingintomusic.co.uk/azerbaijan-music-of-ashiq/films-of-growing-into-music.html

The author

Sanubar Baghirova is the author of the documentary film "The Ancient Arts of Mugham and Ashiq in the XXI Century" highlighted in our journal. She specializes in research and promotion of Azerbaijani traditional music, holds a PhD degree in music art, and works at the Department of history and theory of Azerbaijani traditional music of the Azerbaijan National Academy of sciences. She has published three books on Azerbaijani music and traditional musical heritage and more than 70 works. Besides, she has contributed to the UNESCO Lists of intangible cultural heritage (2003, 2009, and 2012), to BBC Radio 3 programs on Azerbaijani music (2007, 2008, 2013), initiated, organized and hosted worlwide more than 50 concerts of Azerbaijani traditional musicians. Since 2008 to date she has recorded and produced 28 CD albums on Azerbaijani music, including a number of internationally recognized ones released in the UK, France, Italy, and Australia. Sanubar Baghirova is a member and liaison officer of the International Council for Traditional Music (ICTM), a "Merited Art Worker of Azerbaijan".

Boredom and Meaning in a Refugee Camp

Aqsa Khalid

Sitting on a floor mat of my camp
Hands clamped together
Yawning from this boredom and endless fatigue
A lot of time at hand but no aim
Neither will nor any meaning.
I ask, what can I desire today?
Not pleasure,
But one thing to do each day.

My existence is a repetition and an endless wandering
This wandering takes me to an empty and gloomy land
It reminds me of my loss.
What charm is there in being dull and bored?
It's neither interesting nor does it attract attention
I ask, what can I desire today?
Something must happen, must I stay, or must I go?
I should know, and not be in a limbo.

Am I absorbed by the crowd,
Or do I still have my will?
Are my thoughts and my spirit free?
This boredom echoes something back at me.
I must wisely listen and face it
Lest it get me.
I ask, what can I desire today?
Will to thrive, not just survive.

I am afraid to want, to wait, to hope
Afraid of the nothingness that might follow.
All the excitement has said good-bye,
For better or for worse.
I tell myself; my wonder must not die.
And today again,
I ask, what can I desire today?
Desire for a desire, perhaps.

PHOTO BY AQSA KHALID

The author

The author Aqsa Khalid (born in Faisalabad, Pakistan) is a Psychosocial Counselor with a focus on humanitarian and emergency settings. She has a background in mental health and migration studies. Her professional and academic journey in the past few years has allowed her to work and interact with migrants in different countries including Pakistan, Turkey, Germany, and South Africa. She wants to write about overlooked but important issues. This poem revolves around the thoughts of someone who is in a constant state of boredom due to prolonged and uncertain circumstances, and bring in reflections about the will to have meaning in a presently purposeless life.

PAST, PRESENT, AND FUTURE

NOSTALGIC MEMORIES FROM THE PAST

My homeland Syria through my five senses

Every morning I have homemade foul and drink coffee with Arabic sweets.
I see a busy marketplace outside my house, where people go to work, and children go to school.
There are beautiful trees and parked cars.
I kiss my mother's and father's hand every morning before going to work.
I hear the sounds of water from the pond, the flowers drink this water.
I also hear the sounds of birds singing in my garden.
I smell the scent of flowers from my balcony, beautiful roses, orange carrots, cloves and jasmines.

Abu Michel

My Chevrolet

I used to have a Chevrolet back in Aleppo. I would sometimes taxi people around in it.
One day a missile from a plane flew down and hit my car.
Thankfully no one was hurt.
But that was the end of my business.

Abu Michel

HAIKUS FROM HOME

Port Sudan is great.
Small markets, fish, meat and veg.
Hot fish, sweet coffee.

Sami Mohamed

I took a big bus.
The village has high mountains.
White sheep and black cows.

Somia

JOURNEYS

My world turned upside down

One day my whole world turned upside down, and from there my crazy life started, because from then everything has been going downwards. There are times when I ended up homeless with no food.

I did not know where to go; we started moving from one place to another. I felt like I lost my mind and moved from one country to another. Everywhere I went I faced crazy people like the police and politicians.

They took me to prisons and detention centres; I travelled through five countries, six police stations, seven detention centres, and eventually I ended up in the United Kingdom.

I didn't know what to do, even still – to this day – I do not know what I am doing.

Mohammad Abdallah

PAST AND PRESENT TENSE

What is my name?

What is my name?

Who am I?

Where did I come from?

I was born in the middle of nowhere. Some people call it a village, but I call it a little paradise, because there are so many things and so many places like mountains, forests, rivers and many wild animals and farms.

A lot of fields with different kinds of fruits that belong to no one but belong to everyone around there.

I used to jump in the trees like a little monkey, I was an extremely happy little boy, but suddenly everything blurred and I found myself somewhere – I don't know where.

Can someone explain to me where I am?

Mohammad Abdallah

HOPEFUL FUTURES

Earth Poem

There are lots of animals, and above in the sky
there are lots of stars, like the sun.
Earth is where we all live.
Lots and lots of countries and continents.
There are people, cars
in a beautiful downtown.
Lots of angels looking down on us.
There are trees, bees.
Humans are all the same.

Nagat, 8 years old

The authors

The authors above are all refugees based in the UK who are part of the HopeTowns Group UK, a community-led organization aimed at providing guidance and mentoring support to asylum seekers and refugees in the UK.

Precarious Living, Absent Livelihoods: LGBTQI Refugees in 'First Asylum Cities'

Sarah Khalbuss

Abstract

This paper explores the challenges that LGBT refugees face in 'first asylum cities'--a term I use to denote the cities in countries where LGBT refugees tend to migrate first with the objective of registering for resettlement to other countries later. Even though LGBT people often migrate to cities, the academic literature on LGBT refugees tends to focus on resettled refugees, largely ignoring the experiences of those awaiting resettlement in first asylum cities. By drawing from the few studies conducted on the everyday life of LGBT refugees in first asylum cities and my personal experience of teaching English to LGBT refugees in Istanbul in 2018, this paper presents the motivations for why LGBT individuals migrate to first asylum cities and the challenges they encounter in the migration process. It then shows how Gender-Based Violence (GBV) influences LGBT refugees' access to protection in first asylum cities in addition to illustrating how LGBT refugees deal with the traumas of the asylum process. The paper continues by highlighting the reasons behind the limited literature on LGBT refugees' livelihoods in first asylum cities and emphasizes the need for adequate interventions to enhance LGBT refugees' livelihoods. Finally, it offers recommendations to practitioners for initiating a livelihood intervention that is sensitive to LGBT refugees' specific needs and vulnerabilities. Ultimately, this paper calls upon practitioners working with refugees to have a deeper understanding of the unique position of LGBT refugees.

Introduction

In 2016, the LGBT refugee community in Istanbul was shaken when Muhammed Wisam Sankari, a gay Syrian refugee, was gang raped, beheaded, and mutilated in Istanbul while he awaited resettlement (Agence France 2016). As reported by the Guardian (Kingsley 2016), Sankari had also been kidnapped and raped five months before his death. Sankari had filed a police report before the second attack which was ignored. He had also been fired from a job because of his sexual orientation. He tried to relocate to another Turkish city but failed to find a safe place to live. In both attacks, there were no arrests. In Turkey, news of Sankari's death struck fear in the hearts of other LGBTQ refugees. Sankari's story is that of a LGBT refugee, who, while awaiting resettlement in Istanbul for hopes of a better life, was met with harassment, violence, and sexual assault.

Stories like Sankari's are the reason why places like AMAN shelter are established. Located in Istanbul, AMAN provided support for homeless LGBT refugees from 2017-2019[1]. I came across AMAN shelter in 2018, when I was working as the Executive Coordinator at Istanbul&I, a volunteering and social inclusion organization founded in 2016. At the time, AMAN was providing shelter to LGBT refugees for three months, weekly food allowances, group therapy appointments, and legal services including supporting tenants while they

1 AMAN closed its doors at the beginning of 2020, but people are still organizing around this community.

registered with UNHCR and applied for resettlement. Istanbul&I had come to AMAN shelter to establish a language learning project for the tenants of the shelter. In 2018, our organization began offering Turkish and English classes twice a week, for a total of four weekly classes, delivered in the living rooms of AMAN's apartments by volunteer teachers with experience in language instruction. I was one of the teachers.

The term 'LGBT refugee' was used by AMAN shelter to describe its tenants. The term LGBT refers to those whose identities do not necessarily comply with binary gender categories or depart from heteronormativity. Each letter of the term LGBT represents a specific subgroup: Lesbian women, Gay men; Bisexual men and women, and Transgender people. LGBT refugees refer to LGBT people who have left their home country due to fear for their safety and who may have different legal statuses. In Turkey, international refugee status cannot be granted to non-Europeans (Simesk and Corabatir 2016). Up until February 2018[2], registered Syrian refugees were given temporary protection--a special status awarded exclusively to Syrians, which granted them basic rights to healthcare and education (Human Rights Watch 2018). Non-Syrians who are legally registered with UNHCR for resettlement are awarded conditional refugee status, which grants them basic rights to healthcare while awaiting resettlement. Neither status offers official permission to work and most refugees work within the robust informal economy (Leghtas 2019).

2 In February 2018, Istanbul and several border cities in Turkey stopped offering temporary protection registration, forcing Syrians who want to come to Istanbul to either register in smaller cities or not register at all (Human Rights Watch 2018).

At the time I was working at Istanbul&I, AMAN shelter housed 15-25 LGBT refugees, mostly gay, bisexual men, and trans women who had come to Istanbul in search of a better life. While some tenants had left war situations, all of them were leaving high-risk situations of violence and persecution due to their sexuality or gender identity. AMAN's tenants were mostly Syrian or Iranian. There were also tenants fleeing persecution from countries such as Yemen, Tajikistan, and Morocco. Refugees often consider Istanbul a more 'liberal' city compared to other places in the MENA region where homosexuality is illegal (Deza 2018). Istanbul is also a 'first asylum city' as many refugees relocate first to Istanbul with hopes of leaving the MENA region and resettling in a third country (Gessen 2018).

This paper aims to shed light on the challenges that LGBT refugees face in first asylum cities. The academic literature on LGBT refugees tends to focus on resettled refugees, largely ignoring the experiences of those awaiting resettlement in 'first asylum cities,' like the tenants of AMAN's shelter. In my year teaching at AMAN, I came to understand some of the unique challenges my students faced. Indeed, while they had fled from situations that were less safe than Istanbul, many often did not know that the Turkish public can be xenophobic, homo- and transphobic. This context created major challenges to LGBT migrants' protection, mental health, and livelihoods--all means of making a living and securing the necessities of life.

By drawing from the observations I made while teaching at AMAN and from the scarce literature on LGBT refugees in first asylum cities, I first present the reasons

why LGBT migrate to first asylum cities and the challenges they encountered in the migration process. I then discuss how Gender-Based Violence (GBV) influences LGBT refugees' access to protection in first asylum cities. I continue by exploring how LGBT refugees deal with the traumas of the asylum process and the reasons for the limited literature on LGBT refugees' livelihoods in first asylum cities. Finally, I will suggest tools and interventions to support LGBT refugees in securing the necessities of life while keeping them safe.

Urban migration and LGBT refugees

As more countries establish repressive laws against sexual minorities, there is a strong desire for LGBT people to leave their hometowns (Weston 1995; Ayoub and Bauman 2019; Lovin 2019). Following larger trends related to all refugees[3], LGBT people have a strong preference for migrating to cities. Cities offer a degree of anonymity, more developed LGBT networks, and a higher likelihood of finding work. LGBT activists have coined the surge of LGBT asylum seekers the 'Pink Migration' (Houdart and Fagan 2014). Internal migration is the most common: sexual minorities leave the conservative cultures of small towns and villages and move to cities, which are more tolerant to sexual identities (Weston 1995). However, in countries where homophobia is strong, some LGBT people seek to start anew by migrating across a border to cities in more relatively liberal countries (Rosenberg and Meyers 2016).

At the AMAN shelter, my students were primarily Syrian and Iranian, both countries bordering Turkey. When I asked them why they chose Turkey, they commonly mentioned that Turkey is known as a secular country with a more European culture. Many had seen beautiful views of the city in cutaway scenes from popular Turkish television shows dubbed in Arabic or Farsi. Others mentioned it as a pathway to entering Europe as entering Turkey 'illegally', while dangerous, is relatively easy. The journey starts with domestic buses to border towns. There, smugglers bring refugees across the border through less protected pathways. Though it is common knowledge that the Turkish soldiers protecting the borders do not shoot, or shoot above groups of people, there are instances where soldiers become violent to refugees attempting to cross the border.

Many of my gay students had the privilege of being able to 'hide' their identities to the public. As Mehmet[4], one of my gay Syrian advanced-English students, once explained to me: 'In here, I'm gay. As soon as I am on the street, I'm as straight as anyone'. The issue becomes more dangerous when someone 'outs' them or when they are 'caught'. Faris, who lived with his family in a conservative neighbourhood of Istanbul, faced near-death when his family saw him dancing with a trans friend on Istiklal boulevard, a liberal touristic area of Istanbul. 'I never thought they would come to Istiklal', Faris told me. Faris recounted how his brother began yelling and running after him. Faris escaped and immediately went home to gather his belongings. His father sent him several text messages, telling him that if he ever saw Faris again, he would either kill him or have him killed. A few months after staying with different

3 In 2017, UNHCR reported that nearly 60 percent of all refugees were seeking safety in cities (Brandt et al. 2017).

4 All the names in this article are pseudonyms.

friends, he found the AMAN shelter. Faris's only connection to his family is his sister, who secretly communicates with him and sometimes sends him pocket money. LGBT refugees like Faris may find refuge in urban LGBT networks. However, this does not mean that they will not encounter multiple forms of violence and difficulties in accessing protection in first asylum cities.

GBV in first asylum cities and lack of protection

Everyday Violence

In 2016, the Women's Refugee Commission's (WRC) interviewed LGBT refugees in the urban centres of Ecuador, Lebanon, and Uganda for their report on Gender Based Violence called *Mean Streets*. Across all cities, refugees reported violence '[ranging] from verbal abuse on public buses, to being denied housing and employment, to physical abuse and rape by members of the host community and other refugees, to instances of fellow LGBTI[5] refugees being killed' (Rosenberg and Meyers 2016: 73). The WRC report concluded that LGBT refugees are exposed to violence at higher rates than local LGBT people, as they are both foreign *and* a sexual minority (Rosenberg and Meyers 2016).

The rates of violence against LGBT refugees is staggering. In 2014, Heartland Alliance International conducted a study on the experiences of violence of 60 LGBT Syrian refugees in Lebanon. The study revealed that 56% of the participants have been physically assaulted, but only 7% reported the crime to the authorities. Of the Syrian refugees living in Lebanon included in the 2014 Heartland Alliance International's study, 29% have been threatened, extorted, or blackmailed due to their sexual orientation or gender identity. Most agreed that they could not imagine living safely as LGBT individuals anywhere in the Middle East.

It is important to note here that the LGBT community is not a homogenous one. There are distinct differences in levels of oppression within the community. These often depend on whether LGBT people are open about their identities or choose to 'pass' as straight. Trans people face the most challenges and risk of violence throughout the world due to higher visibility. Jennifer Rosenberg (2015) is one of the few scholars to emphasize trans refugees' distinct needs and to call for their protection:

> [A]s conversations around LGBTI refugees gain momentum and humanitarian actors, and even some host governments take steps to enhance their protection, it is crucial that policymakers pause to separately consider the experiences of trans*[6] refugees and how to respond to the particular rights violations they face every day (Rosenberg 2015: 77).

Rosenberg (2015) makes it clear that trans refugees and individuals have unique challenges that should be considered separately from other LGBT individuals. At AMAN shelter, police harassment and detention, and threats and actual acts of

5 LGBTI is another form of the LGBT term that includes intersex individuals, or those born with both sex organs.

6 The asterisk in trans* is used to denote transwomen, transmen and those individuals who are gender fluid, genderqueer, bigender, transsexual, transvestite, and to other non-cisgenders (Rosenberg 2015).

violence were common occurrences for my trans women students, in contrast to the majority of my other students, who were primarily gay men. Most of the gay men at AMAN could 'pass' as straight on the street. Yet, this does not mean they were not at risk of violence. Nonetheless, they faced violence and harassment when their identity was 'found out', like in working or housing situations.

Housing

Not only are LGBT refugees subjected to everyday violence, they also face challenges in accessing housing. Refugees in Turkey often struggle to find housing, as many landlords do not want to rent their spaces to foreigners or refugees (Kaya 2020). For LGBT refugees, housing is even more difficult to find. My AMAN students often stayed with relatives or friends for short stints, usually having to keep their identities secret. Those with small amounts of savings reported having a hard time finding people willing to rent to them, and are often forced to live in temporary dorm-style housing. Housing situations are often unstable, as LGBT refugees can be easily 'outed' by any roommate and kicked out by landlords. The 2014 Heartland study on the experiences of Syrian LGBT refugees in Lebanon found that housing instability was an additional source of psychological stress and took time away from LGBT Syrian refugees' efforts to secure employment.

While working at AMAN, my students told me the safest option was to search for housing with other LGBT refugees. However, this was challenging for those without access to networks or financial capital. In all cases, trans people face additional difficulties in securing housing (Rosenberg, 2015). In her 2015 study on trans refugees, Rosenberg showed how:

> Unlike other refugees who often take up temporary shelter with family, friends, or fellow refugees, most trans* refugees arrive in cities knowing no one and having little information about trans*-friendly organisations or social networks (Rosenberg 2015: 80).

The importance of social networks in accessing safe shelter is best exemplified through the way in which my students learnt about the AMAN shelter, which could not widely publicize its services. They usually heard about AMAN shelter from their networks, several months after living in Turkey. In my time teaching at AMAN, its staff often emphasized how they were at risk of being raided and forced to close by the Turkish government, whose current administration has cracked down on LGBT organizing (Fishwick 2017).

Challenges for accessing services and participating in the public sphere

The 2016 WRC study found that in most cases LGBT refugees isolate themselves from the overall refugee community, as the refugee community also perpetuates violence against its LGBT members. In the study, LGBT refugees in Lebanon, Ecuador, and Uganda reported fear of being attacked, harassed, or outed by other refugees. Hence, unlike for straight/cis refugees, diaspora networks may not be necessarily welcoming spaces. This has important consequences: it can hinder LGBT refugees' access to basic services

such as legal services or livelihood training that are offered by government bodies and international and local NGOs. Furthermore, many refugees in the WRC's study reported homophobia or transphobia and harassment from NGO workers themselves. In the same study, even UNHCR staff were found to have stigmatized and harassed LGBT refugees.

In addition to GBV, the trauma of the resettlement process

Due to the everyday violence and the difficulties in accessing protection, LGBT refugees tend to seek resettlement to Western countries where LGBT rights are generally more mainstreamed and protected (Gessen 2018). Even though the Turkish government has been responsible for handling the resettlement process since September 2018, the UNHCR continues to manage LGBT resettlement applications (Leghtas and Thea 2018). Whether handled by the Turkish government or by UNHCR, the resettlement process can trigger traumatic memories. Most of my students at AMAN were in different stages of a gruelling waiting game in the UNHCR credibility process. This process involves multiple interviews with UNHCR case workers, where the burden is on the refugee to prove their credibility as a person who fears their life. The forced retelling and constant questioning about credibility can trigger traumatic psychological responses for all refugees (Berg and Millbank 2009).

These interviews get even more complicated in the LGBT context. LGBT refugees not only have to demonstrate that they are entitled to asylum, but also have to 'come out' as a sexual minority (Lee and Brottman 2013). While examining the refugee determination process for LGBT asylum seekers in the Canadian context, Lee and Brottman (2013) found that LGBT individuals applying for refugee status in Canada often felt pressured to display or perform stereotypical Western aspects of queer sexual identity even when their typical behaviour did not align with those stereotypical characteristics. Lee and Brottman (2013) also explained that for trans refugees, their 'outing' often occurs before they speak, as their gender expression does not correspond to their legal names and the gender reported in the documents needed to make their asylum claim. Throughout the process, many trans people most likely had to misgender themselves (claim their birth gender rather than their gender identity) to receive the necessary documents needed for the asylum process (Lee and Brottman 2013).

In my observations at AMAN, my students were more than willing to take part in these interviews to escape the deep vulnerability of living in Istanbul as LGBT refugees. During our classes, they would often leave to answer phone calls from UNHCR and come back excited to share their news concerning their status in the resettlement process.

Unfortunately, the truth is that these processes take a long time and not every claim is successful. In general, less than 1% of resettlement claims lead to resettlement worldwide (UNHCR 2018). In a politicized world where refugee resettlement is becoming increasingly hard, many LGBT refugees are still waiting in their first asylum city with hopes for a safer future. This waiting, which occurred while my students feared for their safety, imposed a considerable psychological toll on which was exacerbated by the

absence of financial freedom due to lack of access to safe livelihoods.

LGBT refugees and livelihoods: a glaring need

While searching for academic literature on the experiences of LGBT refugees in first asylum cities, I was at first surprised by the lack of attention on LGBT refugees' livelihoods. The few articles I found that used the term 'livelihood' or 'employment' mostly discussed the lack of safe livelihood options for LGBT refugees in first asylum cities. The 2016 WRC study shows that LGBT refugees in Lebanon, Ecuador, and Uganda who were employed experienced sexual harassment at work and were pressured to have sex with their employers (Rosenberg and Meyers 2016). The 2016 WRC study also revealed how many feared being 'found out' to be gay, as it would mean losing their jobs (Rosenberg and Meyers 2016).

The 2014 Heartland study found some distressing statistics on Syrian LGBT people's livelihood in Lebanon: only 29% of the LGBT Syrians interviewed were currently working, in stark contrast to the reportedly 70% of Syrians working. All the refugees interviewed for this study reported that they had encountered employment discrimination since arriving in Lebanon because of their nationality *and* sexual orientation or gender identity. Within the 29% of the Syrian LGBT refugees that were working, 29% were working in manual labour, 21% in beauty, 7% in clothing, 14% in freelance technical work, 14% in teaching, and 35% were generic employees. From my observations in Turkey, it is safe to assume that those who are within the minority of LGBT refugees who are working hide their identities or orientation in the workplace.

The term livelihood or employment is mostly found in the recommendation sections of academic articles, and governmental and NGOs' reports examining the living conditions of LGBT refugees in first asylum cities or refugee camps. These conclusions often highlight the importance of providing LGBT refugees safe shelter and employment training. However, I could not find articles that showed case studies of successful interventions aimed at enhancing the livelihoods of LGBT refugees. As I dug deeper into the literature, I began to understand why. As a Syrian American who has personal experience with displaced Syrian family members and friends, I could appreciate how hard it is for refugees to find any kind of job in Turkey, especially one that is not exploitative. This is particularly the case in first asylum cities, where one's legal status can prevent refugees from pursuing formal employment. In countries where refugees can access the informal economy, such as Turkey, LGBT refugees still remain unsafe. After reading more about GBV and protection issues, it became clear to me that exposing LGBT refugees to host or refugee communities in the hierarchal positions of power present in any company can result in danger, especially when LGBT refugees cannot easily 'pass' as cis or straight. This dilemma forces LGBT refugees to regularly choose between their economic livelihoods and personal safety.

What the literature does touch upon is LGBTQ refugees' lack of access to training and services that foster skills for future employment. In the 2016 WRC study, LGBT refugees reported not feeling safe or welcome in job training sessions, language skills classes, or other programs aimed at developing refugees' skills (Rosenberg and Meyers

2016). Participation risks discrimination and violence from service providers as well as other refugees who participate in these trainings (Rosenberg and Meyers 2016). Furthermore, livelihood interventions suited to refugees are often not applicable to LGBT refugees, as public exposure to the refugee and host community is still risky, making many programs irrelevant to them (Rosenberg and Meyers 2016). In cases where organisations seek to add LGBT specific programming to their work, 'they clearly lack the capacity to implement them, in a safe way that puts LGBT refugees at the centre of the design of such programming' (Rosenberg and Meyers 2016: 16). Organisations must train their staff on the specific needs of LGBT people and have the capacity to create segregated programs for this community in order to serve LGBT refugees safely.

It is not surprising that in such a challenging livelihood environment, many LGBT refugees resort to survival sex (UNHCR 2015). I had heard rumours at AMAN from my students that made it seem that some of them were engaging in sex work, usually with wealthier Gulf tourists looking for entertainment experiences. My observations are in line with the 2014 Heartland study conducted in Lebanon and the 2016 WRC study carried out in urban centres of Ecuador, Lebanon, and Uganda. In these studies, more than half of the respondents participated in sex work. Sex work, of course, is work and is a consensual act between two adults. However, the issue becomes murkier where the risk of violence is high and where alternative jobs are scarce. The 2016 WRC study found that LGBT refugees opted for sex work because of the lack of alternative livelihood options: 'If I don't sleep

PHOTO FROM "LGBTQIA+ REFUGEES WELCOME" FACEBOOK PAGE FOUND AT: HTTPS://M.FACEBOOK.COM/LGBTQIREFUGEESINGREECE/?TN-STR=K%2AF"

with people, I cannot get money to feed myself' said one LGBT sex worker in Kampala. Many LGBT refugees, including nearly all transwomen, also reported having been in situations where they were coerced to exchange sex for food or shelter (Rosenberg and Myers 2016). Given these circumstances, it is clear that livelihood interventions are vital.

Recommendations for livelihood interventions for LGBT refugees

Considering the lack of successful livelihood interventions for this vulnerable group, I have outlined the following recommendations for development, humanitarian, and migration practitioners to enhance LGBT refugees' livelihoods in first asylum cities:

1. Subject NGO workers to sensitivity training
2. Conduct research first
3. Map networks of safe spaces and strengthen LGBT networks
4. Create employment opportunities
5. Provide initial cash support

Subject NGO workers to LGBT sensitivity training

First and foremost, all NGOs wishing to establish programs for LGBT refugees must first receive LGBT mainstreaming and sensitivity training to understand their specific needs. At the minimum, UNHCR workers should be trained on LGBT issues to better serve the community, with special attention to trans sensitivity, as trans issues are some of the least mainstreamed. This may mean that organizations offering services to refugees may need to offer segregated services to LGBT refugees to avoid harassment from other refugees.

Conduct research first

To begin addressing and moving towards successful livelihood interventions for LGBT refugees, an analysis of the cultural and socio-economic position of LGBT people in first asylum cities is needed. In Istanbul, this kind of analysis could be conducted with the help of LGBT refugee organisations like PozitifYasam, which provides legal psychosocial aid to LGBT refugees. A participatory needs assessment attempting to identify the skills, resources, and assets of LGBT people in first asylum cities in addition to their livelihood priorities needs to be conducted. These needs assessments should aim to trace the livelihood strategies that displaced LGBT households develop to meet their needs, priorities, and goals (WRC 2009). By hearing directly from the greater refugee community, practitioners can organize more effective livelihood interventions for LGBT refugees.

Practitioners should also conduct an analysis of the Turkish labour market, paying particular attention to mapping the Arabic- and Farsi-speaking Middle Eastern businesses within Istanbul where LGBT refugees could be potentially inserted. The WRC (2009) previously highlighted the importance of carrying out market analyses identifying the challenges LGBT refugees face when accessing the labour market and seeking information that can help practitioners identify niches in the labour market for LGBT refugees. The key for this kind of market analysis is to involve non-LGBT refugees and ask: what are the livelihoods of non-LGBT refugees in this city? What parts of the informal economy are they currently working in? How did they find the job? Where are areas of growth for refugee livelihood? What

are the safety issues surrounding this work? Through interviews with a variety of refugees living in Turkey, practitioners could begin to elucidate pathways where LGBT people, especially non-trans individuals, could work in public spaces. Trans individuals may need to seek alternative livelihood interventions that shield them from public judgement.

Map networks of safe spaces and strengthen LGBT networks

Another key step towards designing livelihood interventions for LGBT refugees consists in having practitioners work closely with local LGBT organisations to map out LGBT-friendly safe spaces in first asylum cities. These may include: businesses, business owners, neighbourhoods, lawyers, doctors, and mental health professionals who support and are open to LGBT refugees. This mapping could help lower risks of harassment, refusal of services, or violence in urban spaces since LGBT refugees may learn what areas they should avoid and where they can find support. Furthermore, creating a network between host and refugee communities is vital, as it can provide new opportunities to foster LGBT rights. In their study of migration and transnational queer activism in Europe, Ayoub and Bauman (2018) found that strong connections between LGBT migrants and LGBT networks of host communities provided migrants with a space to explore their LGBT identities further and become politically and socially active in queer politics.

Apart from mapping LGBT-friendly safe spaces in first asylum cities, practitioners should consider supporting financially LGBT-friendly businesses in organising community events aimed at widening LGBT refugees' networks. I witnessed an informal safe space in an Anarchist hostel in Istanbul. Many LGBT refugees would convene there to play games and eat snacks, strengthening the ties within the LGBT refugee community. Using LGBT-friendly spaces, practitioners could help establish support groups for Arabic and Farsi speaking refugees, where Arabic or Farsi speaking psychologists could help guide discussions about the challenge facing LGBT refugees and possible ways to deal with these. Every month, practitioners can partner with lawyers at legal aid organisations to hold protection seminars in refugees' languages to guide them through the registration and resettlement process. These safe spaces can be key to enhancing LGBT refugees' networks and knowledge on how to sustain themselves in first asylum cities.

Create employment opportunities

After conducting research, mapping out LGBT safe spaces, and strengthening networks between refugee and host communities, practitioners must consider market-based approaches to help LGBT refugees find employment. To create opportunities, the first step would be to establish a safe training space. An example of a safe space with a LGBT-friendly history of employment in Istanbul is Arjin café. With the right start-up funds, LGBT organisations could rent out a similar large cafe, or use an already operating LGBT-friendly business as a training space for LGBT refugees. There could be positions within the cafe or restaurant staff (e.g. servers, cooks, daily manager, bookkeeper, and events manager) that new refugees could cycle through within their three months of working there. Two or three local full-time staff could assist in training the new foreign (refugee) staff members.

More vulnerable members could focus on 'back of the house' duties. LGBT refugees could have either dayshifts or nightshifts four times a week and receive a part time salary for their daily expenses. When the LGBT refugees finish their time at the shelter, they could better gear themselves for similar work at other LGBT-friendly cafes.

Home-Based Businesses (HBBs) may be another type of business which may enhance LGBT refugees' livelihoods. HBBs are businesses geared towards the production of artisanal goods and food and can be run at home. HBBs have the capacity to make products that have a strong consumer demand: the global market for artisanal goods is more than $30 billion and two thirds of these goods are made in the developing world (Palmer 2019). Apart from helping refugees generate income, HBBs help people who have experienced displacement preserve their cultural heritage and identity because they can showcase products or designs from their own cultures (Palmer 2019).

Throughout the developing world, there exist examples of how HBBs have been used to empower displaced households to generate income. For instance, CARE international, a global humanitarian firm, held HBB development training for refugee women in Jordan in September 2017 (Prieto 2018). The best candidates went to advanced business development training to create a business plan. When plans were accepted by the CARE staff, the women received a grant to start up their HBBs (Prieto 2018). Other organisations found ways to support Jordanian women's HBBs. In 2016, USAID funded an initiative to start a website that aggregates artisanal products produced by HBBs throughout Jordan, integrating logistics, payments, sales and marketing using a local grocer's online platform (USAID Jordan 2018). Similar interventions could be used to foster LGBT refugees' employment in first asylum cities. For example, LGBT refugee shelters could provide training to their tenants in product development, marketing, packaging and branding, skills necessary to start HBBs.

Apart from HBBs, coding and online marketing seem to be promising fields for refugees. For example, the organisation reCoded has recently opened doors in Istanbul and is helping refugees to enter the digital economy. ReCoded offers four-month long bootcamps on tech skills, such as web development and coding, enabling students to acquire the skills needed to enhance their employability. After the bootcamps, students get paired with companies for apprenticeships or internships that help them gain vital experience before entering the job market. Practitioners in Istanbul could partner with reCoded to offer an LGBT-specific boot camp twice a year. This would enable LGBT refugees to have the opportunity to gain the skills needed to find remote and freelance work online.

Another initiative similar to reCoded is taking place in Kenya's Kakuma Refugee camp. International Trade Centre and the Norwegian Refugee Council organized trainings in social media marketing for interested refugees. Facebook and Instagram marketing are highly in-demand for small businesses and understanding digital marketing is relatively easier than other kinds of marketing. Furthermore, since social media is a space for expression and activism, LGBT refugees are likely to have a basic understanding of social

media marketing as many have already been exposed to these social media sites. Throughout the training in Kenya's Kakuma camp, students were paired with a local client and used their newfound skills to help market their goods. At the end of the course, the online work platform Upwork offered a five-week freelancing boot camp, giving the newly trained freelancers the chance to improve their profiles, interact with clients, apply for jobs, and even earn small amounts of money for performing a sampling of tasks that help integrate them into the platform (ITC News, 2019). Similar interventions may allow LGBT refugees to work safely from home while building their portfolio for future employment in their future host country.

Provide initial cash support

To be successful, a livelihood intervention ought to lift vulnerable LGBT refugees out of poverty first. This could be done following the UNHCR Graduation Approach, a long-term process that includes cash transfers for basic needs along with an assessment of refugees' human capital, education on saving money, and livelihood training aimed at enhancing their technical and entrepreneurial skills (Ayoubi et al. 2017). Refugees participating in the UNHCR Graduation Approach also receive close mentorship from professionals to help them develop soft skills and self-confidence. Livelihood interventions for LGBT refugees could follow the graduation approach of UNHCR which not only gives initial cash support, but improves refugees' skills and employability in first asylum city and future host countries.

Conclusion

This paper explored the challenges that LGBT refugees face in first asylum cities. By drawing from the observations I made while teaching at AMAN and from the scarce literature on LGBT refugees in first asylum cities, I discussed the difficulties LGBT refugees face in accessing protection in cities like Istanbul. I also addressed the livelihoods challenges LGBT refugees confront on a daily basis while living in first asylum cities and awaiting resettlement to a third country. Given the distinct lack of livelihood interventions for LGBT refugees in first asylum cities, this paper provides recommendations for livelihood interventions for this vulnerable population.

In this paper, I have illustrated how LGBT refugees face a whole host of unique challenges to their safety in ways that differentiate them from other refugees. When LGBT people migrate, they often seek asylum in 'first asylum cities' in the region, which are assumed to be more liberal and open towards LGBT people and rights. Yet, upon arrival, LGBT refugees are confronted with a host community that is hostile to their status as refugees *and* to their sexual identities. LGBT refugees are also faced with hostility from their own refugee community, which can deter LGBT refugees from seeking basic services and training offered to displaced people. Hostility can translate into violence and create significant barriers to accessing protection, safe housing, and employment. Safe housing, like AMAN shelter, is only the first step towards helping LGBT refugees obtain a better life.

Despite this situation, livelihood interventions are barely touched upon in the academic literature. Yet, they are urgently needed. As I suggested in this paper, before refugee organisations take on programs for the LGBT refugee community, it is integral that NGO workers receive LGBT mainstreaming/sensitivity training to understand the needs of this vulnerable population. Livelihood interventions must be catered to this community, considering their needs, assets, and skills, while maintaining their safety. In order to achieve a successful intervention, preliminary work also needs to include: a market analysis of refugee employment within the informal economy, strengthening the connections between local LGBT networks and LGBT refugees networks, and mapping safe spaces and businesses. A successful livelihood intervention must also consider how best to foster LGBT refugees' employable skills while lifting them out of poverty. Without a careful focus on this vulnerable community awaiting a new life in first asylum cities, we are in danger of leaving LGBT refugees behind.

The author

Sarah Khalbuss is a Syrian-American educator and changemaker dedicated to improving the social inclusion of refugees and expanding education for development. Supported by a Fulbright scholarship, in 2015 she spent time in Turkey observing the rising tensions between locals and displaced Syrians. In 2016, Sarah helped found a non-profit youth empowerment organization, Istanbul&I, to work with refugees in Istanbul. She is currently an MPA Development Practice student at Columbia University, specializing in humanitarian policies and peacebuilding and lives in Harlem.

Bibliography

AGENCE FRANCE-PRESSE (2016) 'Missing gay Syrian refugee found beheaded in Istanbul'. The Guardian. August 4. Available from: <https://www.theguardian.com/world/2016/aug/04/body-missing-gay-syrian-refugee-muhammed-wisam-sankari-found-beheaded-istanbul>.

AYOUBI, Z., HASHEMI, S., HEISEY, J. and DE MONTESQUIOU, A. (2017). Economic Inclusion of the Poorest Refugees: Building Resilience Through the Graduation Approach, FinDev Gateway. Available from: <https://www.findevgateway.org/paper/2017/03/economic-inclusion-poorest-refugees-building-resilience-through-graduation-approach> (accessed 10 May 2020).

AYOUB, P.M. and BAUMAN, L. (2019) 'Migration and queer mobilisations: how migration facilitates cross-border LGBTQ activism', Journal of Ethnic and Migration Studies 45: 2758–2778.

BERG, L. and MILLBANK, J. (2009)

'Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants', Journal of Refugee Studies 22: 195–223.

BRANDT, J., JONES, B., and KATZ, BRUCE (2017) What makes displacement different today? Brookings Institute. Available from: <https://www.brookings.edu/blog/metropolitan-revolution/2017/09/13/what-makes-displacement-different-today/> (accessed 10 December 2019).

DEZA, D (2018) 'Where LGBTQ War Refugees Finally Feel Safe'. Narratively. Available from: <https://narratively.com/where-lgbtq-war-refugees-finally-feel-safe/>.

GESSEN, M. (2018) 'The L.G.B.T. Refugees in Turkey Who Refuse to Be Forgotten.' The New Yorker. Available from: <https://www.newyorker.com/news/our-columnists/the-lgbt-refugees-in-turkey-who-refuse-to-be-forgotten>.

HEARTLAND ALLIANCE INTERNATIONAL (2014) 'No Place for People Like You, Beirut, Lebanon.' Available from: <https://www.heartlandalliance.org/wp-content/uploads/sites/13/2016/02/no-place-for-people-like-you_hai_2014.pdf> (accessed 4 December 2019).

HOUDART, F., FAGAN, J. (2014) 'Pink Migration - rising tide of LGBT migrants?' World Bank Blogs. Available from: <https://blogs.worldbank.org/peoplemove/pink-migration-rising-tide-lgbt-migrants> (Created 28 July 2014, accessed 10 December 2019).

HUMAN RIGHTS WATCH. (2018) Turkey Stops Registering Syrian Asylum Seekers, Human Rights Watch. Available from: <https://www.hrw.org/news/2018/07/16/turkey-stops-registering-syrian-asylum-seekers> (accessed 10 December 2019).

ITC News (2019) ITC - Refugees in Kenya tap global freelance job markets online, eTrade for all. Available from: <https://etradeforall.org/itc-refugees-in-kenya-tap-global-freelance-job-markets-online/> (accessed 10 December 2019).

KINGSLEY, P. (2016) 'Flatmates of gay Syrian refugee beheaded in Turkey fear they will be next' The Guardian. Available from: <https://www.theguardian.com/world/2016/aug/07/flatmates-of-gay-syrian-refugee-beheaded-in-turkey-fear-they-will-be-next>.

KAYA, A. (2020) The Scope of Reception Policies and Practices in Turkey: Housing, Respond Migration. Available from: <https://www.respondmigration.com/blog-1/reception-policies-practices-turkey-housing>.

LEE, E.O.J. and BROTMAN, S. (2013) 'Structural Intersectionality and Anti-Oppressive Practice with LGBTQ Refugees in Canada', Canadian Social Work Review, Ottawa, 30: 157–183.

LEGHTAS, I. (2019) Insecure Future: Deportations and Lack of Legal Work for Refugees in Turkey, Refugees International. Available from : <https://www.refugeesinternational.org/reports/2019/9/18/insecure-future-deportations-and-lack-of-legal-work-for-refugees-in-turkey>.

LEGHTAS, I. and THEA, J. (2018) Turkey Must Not Ignore Non-Syrian Refugees,

Refugees International. Available from: <https://www.refugeesinternational.org/reports/2019/1/2/turkey-must-not-ignore-non-syrian-refugees>.
LOVIN, C.L. (2019) 'Pathways of desire: the sexual migration of Mexican gay men', Social & Cultural Geography 20: 597–599.

PALMER, C. (2019) 'How artisan skills can empower Syrian refugee women' Financial Times. Accessed from: <https://www.ft.com/content/5da9d1aa-9f42-11e9-9c06-a4640c9feebb>.

PRIETO, A. (2018) 'I am better off having established my home-based business, says Syrian refugee' Jordan Times. Available from: <http://www.jordantimes.com/news/local/i-am-better-having-established-my-home-based-business-says-syrian-refugee>.

RECODED (2019) Training conflict affected youth to become technology leaders (online). Available from <https://www.re-coded.com> (Created 2019, accessed 20 January 2020).

ROSENBERG, J. (2015) 'Like a Stray Dog on the Street": Trans* Refugees Encounter Further Violence in the Cities Where They Flee.', LGBTQ Policy Journal 6: 76.

ROSENBERG, J. and MYERS, A. (2016) 'Mean Streets: Identifying and Responding to Urban Refugees' Risks of Gender-Based Violence, Women's Refugee Council'. Available from: <https://www.womensrefugeecommission.org/gbv/resources/1272-mean-streets> (accessed 4 December 2019).

ŞIMŞEK, D. and ÇORABATIR, M. (2016) 'Challenges and Opportunities of Refugee Integration in Turkey, Research Centre on Asylum and Migration (IGAM)'. Available from: <https://tr.boell.org/sites/default/files/hb_rapor_duezlt_1904173.pdf> (accessed 4 December 2019).

WESTON, K., 1995 'Get Thee to a Big City: Sexual Imaginary and the Great Gay Migration', GLQ 2: 253–277.

UNHCR (2015) Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR's Efforts to Protect Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum-Seekers and Refugees. Available from: <https://www.refworld.org/docid/5661xfun40454.htm> (accessed 4 December 2019).

UNHCR (2018) Resettlement. Available from <https://www.unhcr.org/en-us/resettlement.html>.

USAID JORDAN LOCAL ENTERPRISE SUPPORT PROJECT (2018) Building an Integrated Market Solution for Home-Based Businesses in Jordan: Trial, Error, Success. Available from: <https://medium.com/@USAIDLENS/building-an-integrated-market-solution-for-home-based-businesses-in-jordan-trial-error-success-1e89cfab6074> (accessed 4 December 2019).

WOMEN'S REFUGEE COUNCIL (2009) Building Livelihoods: A Field Manual for Practitioners in Humanitarian Settings, WRC. Available from: <https://www.unhcr.org/4af181066.pdf> (accessed 4 December 2019).

Gender-Based Violence in Palestinian Camps in Lebanon: Barriers to Access Support and Processes of Change

Menaal Safi Munshey

Abstract

This article analyses barriers to accessing justice and protection in cases of domestic violence within Palestinian camps in Lebanon from an ecological standpoint. Using qualitative data from interviews conducted with a range of actors in five Palestinian camps in Lebanon, this article finds that barriers are rooted in protection concerns, camp-based vulnerabilities and gender inequality. Specifically, camps are isolated, restricted spaces with a lack of support options. NGO referrals to key services remain difficult due to restricted freedom of movement outside camps and access to protection or justice remains difficult due to economic, social and legal barriers. While many of these barriers apply to Lebanese women as well, vulnerabilities are exacerbated within Palestinian camps.

The governance structure within camps is characterised by the popular committees' patriarchal nature which remains largely inactive on the issue of gender-based violence. Discriminatory state policies towards refugees form the basis for a lack of trust in the security sector and fear of public authorities. Most significantly, women remain trapped in violent marriages due to legal obstacles presented by the personal status laws which favour paternal custody. Despite the promulgation of domestic violence legislation (Law 293) for the first time in 2014, the law appears to have limited effect in Palestinian camps due to the particular governance frameworks and isolated nature of camps. However, processes of social change have led to an increase in women's political participation, economic empowerment and awareness of gender inequality and gender-based violence.

Introduction

This article explores gender-based violence within Palestinian camps in Lebanon, by identifying the barriers to access justice and protection in cases of domestic violence, and processes of change. Using qualitative data from interviews conducted with a range of actors in five Palestinian camps in Lebanon, the article will shed light on the protection concerns, camp-based vulnerabilities, and legal obstacles which contribute to gender-based violence and trap women in a cycle of domestic violence.

This article views gender-based violence through an 'ecological model' to consider how 'layers' of entitlement and permission – laws within a State and social attitudes held by communities, families and individuals – promote violence against women (Heise 1998; Fergus 2013; Gormley 2019). The ecological model views violence not as the outcome of any single risk factor but of multiple risk factors and causes interacting at all four levels of a nested hierarchy made up of the levels of the

individual, relationships, community and society (Violence Prevention Alliance 2010; Violence Prevention Alliance 2010a; Terry 2014; WHO 2012).

Gender-based violence against women is defined as 'violence that is directed against a woman because she is a woman, or violence that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty' (CEDAW Committee General Recommendation 19: para. 7).

This article analyses sexual and gender-based violence (SGBV) in Palestinian camps in Lebanon within the larger context of Lebanon's legal system and socio-legal frameworks governing refugee protection. This analysis relates to the ecological model of understanding intimate partner violence, with a particular focus on community and societal aspects.

Lebanese context

Lebanon is uniquely religiously diverse: there are 18 official religious sects (United States Department of State 2011). Independence was obtained in 1943 when a sectarian power-sharing mechanism termed consociationalism was adopted (Muhanna 2017). Men dominate positions of power across sectors. There are six women in Parliament out of over 100 MPs (The Daily Star Newspaper 2018). Lebanon is ranked 135 out of 144 countries in terms of the gender gap (World Economic Forum 2016).

Lebanon acquired, and retains, the main elements of its judicial and legal systems from the French mandate (Mallat 1997). There are several codes for civil, criminal and commercial law. Lebanon does not have a civil code regulating personal status (or family law) matters. Areas that are considered matters of 'personal status' relate to personal affairs of individuals such as divorce, marriage, inheritance, custody, etc. These matters are regulated by 15 separate personal status laws for the country's different recognized religious communities including twelve Christian, four Muslim, the Druze, and Jewish confessions, which are administered by separate religious courts (Human Rights Watch 2015). The law does not provide for gender equality in many areas, including the minimum age of marriage, guardianship of children, and marriage and divorce (UN ESCWA, UNFPA, UN Women and UNDP, 2019).

Personal status laws determine family law matters such as divorce and custody. The application of age limits of maternal custody are particularly discriminatory towards women across all sects. For example, within the Catholic church, the age limit is two for boys and girls. Within the Shia sect, it is two for boys and seven for girls. After this age, custody is automatically given to the father unless a judge can determine it is in the best interests of the child for the child to stay with their mother – a bar which is rarely reached in court. Custody law contributes to women's fear of losing their children if they report domestic violence (Munshey 2018).

Domestic violence legislation titled Law 293, passed for the first time in 2014, criminalises various forms of interpersonal violence, particularly intimate partner violence. The law established urgent protection measures, such as restraining orders and the

provision of emergency accommodation for victims (International Alert 2014). The domestic violence law, however, states that in the case of any conflict between the new law (Law 293) and personal status laws, personal status laws would take priority (Kafa 2015).

Law 293 was passed after significant civil society campaigning from NGOs such as Kafa[1]. However, implementation and related legal activity, particularly strategic litigation, has remained limited (Saghieh and Nammour 2017). Survivors face numerous hurdles including family and community pressure, potential personal, social and economic costs of reporting, and limited access to support services (International Alert 2014). A further hurdle is the perception that security sector institutions would not take claims seriously. This intersects with lack of trust in the ISF (International Alert 2014). These barriers to access justice and protection are further exacerbated in the case of refugees.

Palestinian refugees in Lebanon

Lebanon has a population of approximately six million, which includes: 174,442 Palestinian refugees from Lebanon, 17,806 Palestinian Refugees from Syria (Government of Lebanon 2017) and 910,256 registered Syrian refugees (UNHCR 2020). Palestinian refugees have been present in Lebanon for seven decades. Lebanon is not a signatory to the 1951 Refugee Convention. While Lebanon has taken in a significant number of Palestinian and Syrian refugees, there have also been discriminatory state policies in place regarding employment and housing policy (Carnegie Middle East Center 2018).

45% of Palestinians live in 12 recognized Palestinian refugee camps which all suffer from serious protection concerns, including poverty, overcrowding, and lack of infrastructure (UNRWA 2018). Palestinian refugees in Lebanon are restricted from working in 39 occupations and from owning any property outside the boundaries of their camps (UNRWA 2018c). Lebanon denies Palestinian refugees citizenship rights (Brynen 2006; Chaaban et al. 2010; Hanafi & Long 2010). Palestinians also cannot attend Lebanese public schools, use Lebanese health services, or enroll in the social security system. UNRWA is the main relief and health provider (Leake 2014). However, in 2018, the Government of the United States cut all contributions to UNRWA, severely jeopardising the agency's ability to provide services (Mshasha 2018).

For these reasons and others, there is rampant distrust towards the state (Khawaja et al. 2006) and mistrust within the camps due to exposure to intense violence and trauma, political infighting, overcrowding, competition over scarce resources, and a crisis of governance (Hanafi and Long 2010).

Gender-Based Violence in Palestinian camps

Previous studies have found that the majority of Palestinian refugee women are subjected to physical or emotional abuse at some point in their lives (Hammoury et al. 2009). In Palestinian camps, core types of SGBV (sexual

1 KAFA is a feminist NGO in Lebanon which is one of two main gender-based violence service providers. The other major civil society organisation working on gender-based violence is 'Abaad'. Please see: https://www.kafa.org.lb/en/about and https://www.abaadmena.org/.

photo by Menaal Safi Munshey

and gender-based violence) reported by UNRWA (2015) in 2014 are: sexual assault, (21%) physical assault (33%), and psychological, emotional abuse (23%).

Studies show a high prevalence of violence among women attending health care services or clinics (UNFPA 2010). Khawaja and Hammoury (2008) found that more than one quarter of women (26.2%) in the sample had experienced forced sexual intercourse over one year. Association Najdeh (an NGO) found that nearly one third of women experienced beating by their husbands (2000). In 2011 and 2013, a quarter of women surveyed reported physical violence and 7% of women in 2013 reported sexual violence (Najdeh 2016). This discrepancy in figures may be related to the sensitive nature of the topic, and participants' reluctance to report gender-based violence specifically of a sexual nature.

Although there have been a few studies on the prevalence of gender-based violence within Palestinian camps, there is a lack of literature on help-seeking behaviour and pathways to access protection and justice for women.

Methodology

This article aims to analyse how Palestinian women refugees in Lebanon access justice and protection in cases of domestic violence, and identify any promising interventions that may lead to social change.

This article is based on fieldwork data from a wider qualitative study. A purposive and snowball sampling strategy was used to gain a diverse range of opinions from women who performed different roles in various camps. This article is based on nine semi-structured interviews which took place in 2018 in five Palestinian refugee camps. The sample includes one female Palestinian survivor of domestic violence (based in Rashidieh Camp), four Palestinian social workers, one of which was male (based in Nahr el Bared, Beddawi and Burj al Barajneh camps), two NGO representatives who run large programs in all 12 camps, and two female Palestinian community leaders (based in Rashidieh and Ain el Helweh camps). A translator accompanied the researcher for some of these interviews, which were subsequently transcribed and translated prior to analysis. Informed consent was obtained from participants and do-no-harm principles were respected throughout the fieldwork process. However, negotiating access was challenging and required a significant amount of trust building due to the sensitivity of the topic.

An inductive approach to analysis was used. Interview data was analysed using thematic analysis with the starting point being the initial research questions and interview schedule. Interview transcripts were then used to identify patterns, code and classify data, and interpret the resulting thematic structures by seeking relationships and explanatory principles (Mills, Durepos and Wiebe 2010). Limitations may include translation inaccuracies, which have been mitigated by a two-step process of translation by one qualified translator, and re-checking the translation for inaccuracies by the original interpreter. Another limitation is a small sample size which is difficult to remedy in qualitative studies on sensitive topics within fragile contexts. Specifically, the population of female survivors of domestic violence is a hard to reach population. However, the sample size was drawn from those

active within the field of gender-based violence in five Palestinian camps, who are themselves female residents of the camp and practitioners. They were able to provide an expert opinion on the subject.

Barriers to access protection and justice

Personal status laws

The broader framework of the personal status laws operates as a hindrance to justice for women in Lebanon in situations of domestic violence. As one NGO worker notes, 'the problem is that we are under the mercy of the personal status laws…It is the same laws, same courts, and same discrimination [for both Lebanese and Palestinians] so if one judge discriminates against women he will discriminate [against] all of them irrespectively' (NGO Representative 1 Interview, 7 December 2018). All judges in personal status courts are men. Sunni law pertaining to divorce is more favourable to men as there are no monetary repercussions for men filing for divorce, whereas if women file for divorce they have to forego the haq mahr[2] paid to them at the start of the marriage (Human Rights Watch 2015). The discriminatory nature of the personal status laws in terms of divorce and custody hinder women from exercising their agency:

> Divorce is a woman's last resort … First of all, she worries whether they might take her children away from her. She also worries if she is not employed, because she will start thinking how will she provide for herself and her children? How will I live? Women always feel guilty when they want to take this step (to get a divorce) especially if she is forced to leave the kids and they grow up and ask her why did you abandon us? (Rashidieh Female Leader, Interview, 1 May 2018).

A survivor interviewed for this study makes the threat of the personal status laws particularly apparent. In her interview, she spoke about the feared loss of custody of her children, and her husband's abusive treatment impacted her decision to refrain from seeking legal help at first:

> He kept beating me and humiliating me, and I could not leave him because of the children … In the end, my eldest son (9 years old at the time) said, "Mom we don't want you to live in suffering. We prefer that you go to Grandpa's house and stay safe and we will stay strong. We would rather say that our Mom is alive rather than dead" (Female Survivor, Interview, 3 May 2018).

Eventually, she left her husband and was strongly supported by her family, specifically her brothers. She then filed for divorce in Sunni Court, where a judge assigned to her case provided support after she filed for divorce:

> When my case reached the judge, he set a court

2 In Islam, mahr is money or possessions paid by the groom to the bride at the time of Islamic marriage.

> hearing for both of us to attend, but he [my ex-husband] skipped it and did not show up for the three others, so the judge had to do what I wanted, but I told him [the judge] no I want him [my ex-husband] to come so that he [the judge] does not think I am lying. The judge told me no … what your husband did is attempted murder and when a woman is harmed then you can immediately divorce because it is not safe for her to stay with him, because he could kill her … I told him [the judge] that he [my ex-husband] deprived me and my children of living a normal life, of going out, of having people come over and we visited them, we have the right to live a normal life. The judge told me stop because he knew everything … So, he [the judge] told him [my ex-husband] that he does not have the right to say anything anymore and that it is up to me to make the decision because I am the truthful one. He said: "She did not say anything to you but you called her a liar. You are a monster, you have no mercy, and you are a tyrant and you don't deserve a woman like her, because you should have taken care of her and treated her and not have beaten her and humiliated her" (Female Survivor, Interview, 3 May 2018).

In this specific case, the judge was supportive of her claims and she was granted a divorce after approximately a year from filing the case. However, despite both the judge's and her family's support, she had to forego her haq mahr, did not receive alimony and did not receive custody of her children in accordance with personal status laws. As this case demonstrates, even in rare cases where women are able to obtain divorce with judicial and familial support, they continue to suffer at the hands of the discriminatory personal status laws which privilege male custodianship across religious affiliations (Human Rights Watch 2015).

Additionally, after a legal route is pursued and the case is over, the ordeal does not end due to a lack of legal and social support for women at the individual, community and society level. Even for women who access support through NGOs, there are limited options for women within their communities:

> The problem is when the women finish the case in Abaad, [a large feminist NGO] so it is a big problem for women, because they say okay I went to Abaad and I left my husband and my family and then what? It is a problem so what can I do? So, when we speak with them about this going to a centre she tells me that I won't go outside because if I go I will come back because if she come back it is dangerous for them … If she comes back she will be beaten again, so it is very difficult (Beddawi Social Worker, Interview, 23 April 2018).

Refugee status

In comparison to their Lebanese counterparts, Palestinians within camps in Lebanon, and Palestinian women in particular, often live their lives on the margins of the law due to a lack of citizenship, paperwork, and legal restrictions. This echoes Agamben's (1998) state of exception where the sovereign state has suspended the law, in the name of national defence or security, and Palestinian refugees live a 'bare life' 'on the margins of the law' with 'no voice in the legal formulation of his or her status' (Hanafi and Long 2010: 14). Therefore, when Palestinian women in Lebanon are in need of legal protection, their refugeehood forms an additional barrier to accessing protection and justice.

While both Lebanese and Palestinian women face obstacles in accessing justice and protection, Palestinian women face particular and heightened protection concerns due to their precarious legal status. This precarity is often exacerbated by a lack of legal documentation[3] which presents an additional obstacle for Palestinian women. Recounting one particular example, another NGO worker pointed out that, 'we have one case of sexual abuse, we referred her to Abaad, like incest, which is very dangerous, and she also doesn't have legal documents which made the case more complicated' (Burj al Barajneh Male Social Worker, Interview, 18 April 2018).

As a result of the legal discrimination faced by Palestinian refugees, including restrictions in employment, there is a lack of trust in Lebanese law and scepticism that Lebanese law would be fairly applied to Palestinian refugees:

> When it comes to Lebanese laws it is not a surprise that there is not trust, because we don't trust that they would apply the law on Palestinians. The simplest example is the law which forbids Palestinians from working. Can you say that there have been any improvements in this or any attempt to remove that law? (NGO Representative 1, Interview, 7 December 2018).

Participants highlighted the legal exceptionalism and exclusion felt within the camps. In terms of the domestic violence law passed in 2014 (Law 293), one interviewee noted that 'there were a lot of loopholes and gaps with the law and a lot of people in the camps kept saying that how are we going to benefit from it' (NGO Representative one). As one NGO representative put it, 'there are so many issues with applying Law 293 outside the camp imagine how difficult it must be to apply it inside the camp, which is an isolated community with its own laws and rules' (NGO Representative one, Interview, 7 December 2018).

Protection concerns in camps

Palestinian refugees in Lebanon face multiple protection concerns within overcrowded camps relating to their economic, security and legal status.

3 According to UNRWA in 2016, there were approximately 35,000 unregistered Palestinians and 5,000 undocumented Palestinians in Lebanon, as well as the majority of Palestinian refugees from Syria who are also undocumented (UNHCR 2016). For more information on the distinctions between undocumented and unregistered legal status, please see: https://www.refworld.org/pdfid/56cc95484.pdf.

These factors impact on violent behaviour and legal cynicism among refugees. Participants felt that a range of community pressures contributed to an increase in violence and violent behaviour among men:

> In addition to the limited space and the large number of inhabitants within the camp, there are a lot of issues that we face in our camps, especially the Ain el Helweh camp, which has been witnessing a lot of security problems lately. There are also high levels of unemployment, a phenomenon that has been increasing over the years, and from which our youth are suffering, even those who are getting married. They can't find any available housing within the camps, they can't build something next to their families' house, and if they leave outside the camp, they don't have the right to own anything. All of these are reasons that might have been playing a role in increasing the violence among our youth and our men. Not everything is an excuse to the violence that has been happening, but a lot of these issues have been pressuring the males in our community and making them violent as a result (Ain el Helweh Female Leader, Interview, 5 May 2018).

Camp-based governance structures

In addition to the difficult living conditions in camps, the governance framework within Palestinian camps also carries its challenges. Camps are largely governed by popular committees which are made up of representatives from the Palestinian factions. The popular committees hold power and control on activities and actors within the camps, and function as the arbiter of which ideas and influences are suitable for camp residents:

> Popular committees are the "key" to the camps. Anyone who wants to enter or visit the camp must go through them so that they know what kind of work do they want to do and what is the objective of their visit (Rashidieh Female Leader, Interview, 1 May 2018).

> The popular committee is under the Palestine Liberation Organisation (PLO)…The coordination is between UNRWA and the popular committees and the PLO and the Union for Palestinian Women…Of course, we are in Lebanon and its laws are the highest authority, but as Palestinians, the PLO is our legal representative, and within the PLO there are the popular committees… this popular committee is responsible about various things regarding the residents of each camps, whether it was education, social, or day-to-day issues (Ain el Helweh Female Leader, Interview, 5 May 2018).

The popular committees are male-dominated entities and the camp-based context is particularly patriarchal. One participant observed that 'we live in a patriarchal society with patriarchal traditions and values that are being passed down from one generation to another…which is also leading to increased violence' (Ain el Helweh Female Leader, Interview, 5 May 2018). This in turn affects the entire community: 'So it has become a circle of violence that starts with the father, is transmitted to the mother, from the mother to the child, and from the child to another child' (Beddawi Social Worker, Interview, 23 April 2018).

Women have limited political participation, despite PLO law to the contrary, which translates into a lack of women's representation, decision-making or action on issues that largely impact women. This creates additional barriers to accessing justice and protection, including in cases of domestic violence. For example, 'a major issue is that men from the popular committee are too shy to interfere if there are such issues happenings within a family, so they can't just knock the door and walk in to the house and resolve such an issue, that is why women [representatives] are important' (Rashidieh Female Leader, Interview, 1 May 2018). The inclusion of women in popular committees is one potential strategy to bring about social change within camps.

Relationship with Lebanese law enforcement agencies

Within the popular committee, there is a security committee which is in charge of safety and security issues within the camps. The security committee coordinates with the ISF (Lebanese police) or Lebanese Army if a crime occurs. 'The ISF does not come in to the camps at all, (and) the government does not interfere with what happens inside the camps' (Ain el Helweh Female Leader, Interview, 5 May 2018). Lebanese law enforcement agencies' authority stops at the gates of the camps, and the security committee exerts authority within the camps. Coordination between the ISF (Lebanese police) and camp-based security committee varies depending on the issue. For Palestinians, 'when you call the ISF, the ISF is not allowed to enter the camp and for them to do that you need the ISF to have a collaboration with the popular committee, this is why this law has not been applied here' (NGO Representative 1, Interview, 7 December 2018).

Citing examples of cases where men have murdered their wives, one participant stated that 'in Ain el Helweh it happens more because there is less ISF (coordination) there and there are more extreme groups with weapons and no one can interfere' (Rashidieh Female Leader, Interview, 1 May 2018). If women are to access protection, they are primarily at the mercy of the security committee which is unlikely to take cases of domestic violence seriously.

In cases of child protection, there appears to be a proactive attitude by the security committee, with one interviewee noting that '…in cases of sexual assault [of children], the security committee catches the perpetrators and hands them over to the Lebanese forces' (Beddawi Social Worker, Interview, 23 April 2018). However, in cases of domestic violence, the protection provided under the security committees varies. 'For women, we don't have a similar [protection] system, we refer

to NGOs' (Rashidieh Female Leader, Interview, 1 May 2018). NGO's provide protection to women, rather than the security committee or ISF. If legal aid is required, it is not the state that steps in. Instead, UNRWA 'provides a lawyer if the woman asks for one, but the process takes a long time' (Rashidieh Female Leader, Interview, 1 May 2018).

Due to the critical perception of and mistrust towards existing security institutions, the ISF or camp-based equivalents are often not the first port of call to access protection. One participant argued that 'the ISF or Security Committee don't get involved unless the woman goes directly to them and asks them to…women usually go to a trusted NGO in the camp where they try to mediate and get some family members involved' (Ain el Helweh Female Leader, Interview, 5 May 2018). Many gender-based violence matters are therefore dealt with within an informal, family or private setting. For example, one participant observed this regarding the way most women seek or receive support:

> [The popular committee] is not always [supportive]. We rely on family elders to interfere, because the popular committee sometimes argues that they have no business interfering between man and wife… But elders often try to solve everything over a cup of coffee, they tell the woman it is okay come you are in your home and that's how they finish the problem and the problems continue (Beddawi Social Worker, Interview, 23 April 2018).

For women, the informal settings in which law enforcement takes place are disadvantageous, the formal settings are often inaccessible, and legal routes, when available, are unjust.

Isolation of the camps

The isolation and inaccessibility of the camps is cited as a hindrance for women's access to justice and protection. In terms of court decisions, even when they are favourable, 'there are cases where the women get their rights and have the custody of her children but the father ends up taking them because he is inside the camp and the government and the police can't reach him so he does whatever he wants' (Beddawi Social Worker, Interview, 23 April 2018). In some cases, the writ of the Lebanese state also appears completely inapplicable:

> The security committee is the one responsible usually for all of this, they are the ones who hand people over to the Lebanese authorities … But our reality is complicated because… this group sometimes does not turn the person in and they refuse to, because they might know someone in the Lebanese authority, who serves as a connection (Ain el Helweh Female Leader, Interview, 5 May 2018).

Instead of the law, it is often nepotism and political connections that take precedence. For example, one interviewee recounted the following case: 'There was a case I recently worked with where the women got the

custody of her children, but her ex-husband belongs to a particular political faction and so he is supported by them. He refused to give her the children' (Beddawi Social Worker, Interview, 23 April 2018). As the governance system is patriarchal in nature, this severely disadvantages women:

> Sometimes when we notify the popular or security committees about cases of violence [against women] within the camps we don't always reach a solution because privilege, connections, and nepotism plays a role in who is held accountable and who is not (NGO Representative 2, Interview, 7 December 2019).

Processes of change

Several processes of change relating to gender equality and gender-based violence have been initiated in Palestinian camps in Lebanon in recent years such as awareness raising campaigns, service provision for GBV survivors, efforts to increase women's economic independence, and political participation within camp structures. This section details interviewees' reflections on prevention and protection services, and outlines where crucial gaps remain unaddressed.

Raising awareness

A fundamental problem is that 'not a lot of women speak up' (Rashidieh Female Leader, Interview, 1 May 2018). Awareness raising activities are meant to support women in speaking up. Yet, such activities proved challenging for various reasons:

> The first issue we faced is that women used to object when we started doing the awareness sessions because they would argue that they should be given to men and not to women, as they [men] are the problem. When we started doing awareness sessions for men as well, not a lot would show up and those who would show up would argue and complain and criticize everything. They would try to cite some verses from the Qur'an to prove their points and to justify their actions. But in our religion, the woman has her rights, but is people who misinterpret the verses (Ain el Helweh Female Leader, Interview, 5 May 2018).

Awareness raising programs related to sexual harassment have faced many difficulties in the camps. Such issues are often internalized by women, with religion weaponized against those who dare to speak up. One interviewee recalls the following encounter:

> A woman came with her husband the other day, and her husband hits her. So, we were asking him why do you hit her? He recited a verse from the Qur'an, which he thinks justifies that. They misunderstand and misinterpret our religion. They use religion to support such behaviours. And the woman is also on board with this, she is convinced

> that he has the right to hit her, so you need to sit them down and explain that this [is] wrong to them (Nahr el Bared Social Worker, Interview, 23 April 2018).

An additional challenge is that domestic and sexual violence is considered to be a personal matter, not to be discussed with others within the community, and thus receives little support from male-dominated community leaders:

> People in the camps always say that who are these people trying to interfere with our problems? It is also considered taboo to talk about such personal problems to strangers… the religious figures in the camp opposed the project (on sexual harassment) and we had to put the project on hold for 6 months. We kept thinking of ways to fix this issue and then finally we ended up changing the title of the project from 'sexual harassment' to 'family/domestic violence' (Rashidieh Female Leader, Interview, 1 May 2018).

Yet, when this happened in the patriarchal camp environment, community and religious leaders remained hostile. One interviewee recalls the response they received following the change of names of activities:

> The religious figures, the political figures, the popular committee all supported each other to shut it down … And women started getting scared and stopped attending the awareness sessions. So, we had to do multiple meetings with the popular committees and with religious figures who are more understanding of such issues…we got a sheikh to talk about women's rights and violence against women in Islam (Rashidieh Female Leader, Interview, 1 May 2018).

Services

During the awareness sessions, participants are usually provided with a hotline number which connects them to a listening centre. In addition, they fill out forms in which they can indicate that they are interested in psychotherapy sessions at the listening centres. In terms of service provision, there are listening centres for women who have experienced domestic violence in a few camps which are run by a small number of NGOs. One example, recalled by a female leader in one of the camps, is this:

> In this centre there are also psychologists, but we can't provide all types of services so we collaborate with other organizations like the Democratic Union of Women who provide medical and legal services. We also coordinate with Kafa and Abaad (NGOs) … whenever we have cases where women need legal services…In other cases, there are some interventions that are usually done by someone who is related to

> the couple, so someone from their families…We don't directly speak to the family because that might backfire, instead we talk to the woman and ask her whether there are members of the family whom she can trust and to whom she can go to for support (Ain el Helweh Female Leader, Interview, 5 May 2018).

In addition to hotlines and psychosocial support services, some support activities also encourage women's economic independence. In cases of marital domestic violence, the approach at awareness sessions is described as this:

> We don't encourage women to get a divorce. There are cases of women where the women really need consultation and support, and we need to support her to make her more independent and to do her own projects. So, a woman who attends our awareness sessions began attending occupational workshops that helped learn a trade and she opened her own shop. This not only gave her independence and she started supporting her family, but it also made her husband slowly begin to change his treatment (Ain el Helweh Female Leader, Interview, 5 May 2018).

Political participation

Apart from these support activities and service provisions, another key effort to increase women's protection and access to justice has been to increase Palestinian women's participation in representative political bodies at a communal level. In light of these efforts, the number of women on popular committees has increased in recent years. As one interviewee notes, 'in 2007 there were only seven women in the popular committees in all of Lebanon, but now there are 46 women across the popular committees in the camps in Sour, Saida, Beqaa, etc' (Ain el Helweh Female Leader, Interview, 5 May 2018). Expanding female political representation across camps and communities serves multiple purposes:

> It is not about supporting women as much as representing them and to allow them to play an active role within the popular committee…We also work on the women on a personal level so that they can grow and develop, we don't just select them from the General Union for Palestinian Women and put them on the committee just so that we can say that we now have 46 women instead of 6 (Ain el Helweh Female Leader, Interview, 5 May 2018).

Increased female political participation and representation aligns with how many Palestinian women view themselves as equal partners in the resistance:

> All our people are fighters, not just men, all of them… The Palestinian woman is different from all the women in the world. The Palestinian woman has been part of the resistance for a long time, and they have

> two burdens, the burden of displacement, and the burden of the violence they have experienced, which has been inherited from one generation to another. The woman has played an active role and worked side by side with men…The woman is being represented in different committees and organizations, such as the popular committee, but it is not as much as she deserves and it is not proportionate to the effort she has put and the role she has played. We always say that women are half of the society and men are the other half, and the Palestinian woman has fought, battled, and was a martyr for many causes, yet the way she is being represented is still not enough (Ain el Helweh Female Leader, Interview, 5 May 2018).

However, despite these small successes and concerted efforts in recent years, other participants felt that limited progress had been made: 'we have been working on this [political participation] campaign since 2007…and until now we cannot really say that we have accomplished much in terms of how men view women in political roles, because they still think the same way' (NGO Representative 1, Interview, 7 December 2018). As another interviewee added, 'the problem with the popular committee is that some of the women assigned there are assigned due to them belonging to a particular political faction, so they are not assigned based on their merits…due to stereotypes women are usually assigned to committees such as the social committee' (NGO Representative 2, Interview, 7 December 2018). A woman who is a member of a popular committee also spoke of specific challenges which persisted, even after having been elected. 'We still face many challenges with them [the popular committee], because sometimes they don't tell us that there is a meeting or whether there is someone coming to visit the camps' (Rashidieh Female Leader, Interview, 1 May 2018).

Shelters

Finally, participants pointed to another major gap in women's ability to access protection from domestic abuse and gender-based violence, namely that there are no shelters within camps. Referrals to support organisations require women to leave the camp and travel to access these services which can be very challenging. Although transportation is often provided, in some areas 'they don't let women go out alone and someone from the family should accompany her' (NGO Representative 2, Interview, 7 December 2018). For these reasons, often women don't accept external services. 'Some women they don't want to go to Abaad or any other centre because they want to stay here… because she does not want to travel' (Nahr el Bared Social Worker, Interview, 23 April 2018).

However, as others pointed out, it is also dangerous to have a shelter within the camps due to their risk of being attacked. 'We don't have shelters, to speak frankly, you can go to the shelter but you can't go outside [the camp] No. And you can't stay there forever, and it will be difficult to go to your family, so we try to solve the problems first before we refer them to

the shelter' (Burj al Barajneh Male Social Worker, Interview, 18 April 2018). The social worker explains that there are no shelters inside camps, accessing shelters outside camps are also dangerous and only provide a short-term solution. As he points out, even if women are sent to an external shelter, this may create long-term problems for them. While these barriers to access justice and protection in cases of gender-based violence exist for Lebanese women as well, these issues are exacerbated in the case of Palestinian women due to the general protection concerns that they face within camps.

Conclusion

This article highlights the many barriers to accessing justice and protection in cases of domestic violence within Palestinian camps in Lebanon from an ecological standpoint. It finds that these barriers are rooted in legal obstacles for both Lebanese and Palestinian women as well as particular obstacles Palestinian women face in accessing justice and protection, and the structural context of violence and patriarchal governance structures in refugee camps.

Interviewees cited protection concerns such as the discriminatory state policies, lack of employment opportunities, overcrowding within camps, lack of funding, lack of services and general insecurity within camps as main causes of gender-based violence and hindrances to accessing support. Specifically, camps are isolated, restricted spaces with an acute lack of options for protection services in cases of gender-based violence. In addition, there are limited shelters and NGOs which tackle or prevent domestic violence. Referrals to services outside camps remain difficult due to restricted freedom of movement outside camps, and access to protection or justice remains challenging in light of economic, social and legal barriers. While many of these barriers apply to Lebanese women as well, vulnerabilities are exacerbated for residents within Palestinian camps.

The governance structure within camps is characterised by the popular committees' patriarchal nature which remains largely inactive on the issue of gender-based violence. Discriminatory state policies towards Palestinian refugees form the basis for a lack of trust in the security sector and fear of seeking support from public authorities. Most significantly, women remain trapped in violent marriages due to legal obstacles presented by the personal status laws which favour paternal custody. Despite the promulgation of domestic violence legislation in 2014, Law 293 appears to have had limited effect in Palestinian camps thus far due to the particular governance framework and isolated nature of camps. However, participants felt that 'change is always rooted in awareness and is a result of it' (NGO Representative 1, Interview, 7 December 2018). Efforts are being made to increase women's political participation, economic empowerment, and awareness of gender inequality and gender-based violence. Organizers hope these initiatives will have a tangible positive effect on women refugees' lives in Lebanon.

The author

Menaal Munshey is a lawyer and criminologist. She is writing up her PhD in criminology at the University of Cambridge, where her research focuses on access to justice for gender-based violence in Lebanon. Previously, she has worked as a policy researcher and consultant at United Nations agencies in Tokyo, Barcelona, Vienna and Beirut.

Bibliography

AGAMBEN, G. (1998) Homo Sacer: Sovereign Power and Bare Life, Stanford, Stanford University Press.

AMNESTY INTERNATIONAL (2015) Lebanon: Submission to the UN Universal Periodic Review. London: Amnesty International. Available from: < https://www.amnesty.org/download/Documents/MDE1821772015ENGLISH.pdf>.

AVIS, W. (2017). 'Gender equality and women's empowerment in Lebanon. K4D Helpdesk Report' 175. Brighton, UK, Institute of Development Studies.

BRYNEN, R. (2006). Palestinian refugee repatriation: Global perspectives, London, Routledge.

CHAABAN, J., GHATTAS, H., HABIB, R., HANAFI, S., SAHYOUN, N., SALTI, N., SEYFERT, K., NAAMANI, N. (2010) 'Socio-economic survey of Palestinian refugees in Lebanon'. Report published by the American University of Beirut (AUB) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

CEDAW COMMITTEE (1992). General Recommendation No. 19 on Violence Against Women. CEDAW/C/GC/19.

CAMMETT, M. (2014) Washington Post (online). Available from: <https://www.washingtonpost.com/news/monkey-cage/wp/2014/10/02/how-hezbollah-helps-and-what-it-gets-out-of-it/> (Accessed 1 March 2019).

CARNEGIE MIDDLE EAST CENTRE (2018) Policy Framework for Refugees in Lebanon and Jordan - Unheard Voices: What Syrian Refugees Need to Return Home. Carnegie Middle East Center (online). Available from: <https://carnegie-mec.org/2018/04/16/policy-framework-for-refugees-in-lebanon-and-jordan-pub-76058> (Accessed 7 March 2019).

DOBASH, R. E., DOBASH, R. P. ,(Eds.) (1998). Rethinking Violence Against Women, London, UK, Sage.

FERGUS, L (2013) What causes violence against women? Ending violence against women requires change at all levels of the socio-political system. Available from:< https://www.fokuskvinner.no/aktuelt/saker/what-causes-violence-against-women/>.

GORMLEY, L (2019) Module on Violence Against Women for Education for Justice Initiative. UNODC: Vienna.

GOVERNMENT OF LEBANON (2017). Key Findings of the National Population and Housing Census of Palestinian Camps and Gatherings in Lebanon 2017. Lpdc.gov.lb (online). Available from: <http://www.lpdc.gov.lb/statements/key-findings-of-the-national-population-and-housin/398/en> (Accessed 10 March 2019).

HAMMER, J., MAYNARD, M., (Eds.) (1987) Women, violence and social

control, Basingstoke, UK, Macmillan.
HESTER, M., KELLY, L., RADFORD, J., (Eds.) (1996) Women, violence and male power: Feminist activism, research and practice, Buckingham, UK, Open University Press.

HANAFI, S., & LONG, T. (2010) 'Governance, governmentalities, and the state of exception in the Palestinian refugee camps of Lebanon', Journal of Refugee Studies (23): 134–159.

HUMAN RIGHTS WATCH (2015). Unequal and Unprotected – Women's Rights Under Lebanese Personal Status Laws. Human Rights Watch (online). Available from: <https://www.hrw.org/report/2015/01/19/unequal-and-unprotected/womens-rights-under-lebanese-personal-status-laws> (Accessed 7 March 2019).

HAMMOURY, N., KHAWAJA, M., MAHFOUD, Z., AFIFI, R. and MADI, H. (2009) 'Domestic Violence against Women during Pregnancy: The Case of Palestinian Refugees Attending an Antenatal Clinic in Lebanon', Journal of Women's Health 18(3): 337-345.

HOLT, M. (2013) 'Violence against women in the context of war: Experiences of Shi'i women and Palestinian refugee women in Lebanon', Violence against women 19(3): 316-337.

INTERNATIONAL ALERT (2014) Gender, Security and SSR in Lebanon. Beirut: International Alert. Available from: <https://www.international-alert.org/sites/default/files/Lebanon_SSRGenderSecurity_EN_2014.pdf>.

KELLY, L., BURTON, S., REGAN, L. (1996) 'Beyond victim or survivor: Sexual violence, identity and feminist theory and practice' 77-101 in Adkins, L, Merchant, V.,(Eds.) Sexualizing the social: Power and the organization of sexuality, Basingstoke, UK, Macmillan Press.

KAFA (2015). Main observations on the mapping of violence against women. Civil Society Knowledge Centre (online) Available from: <http://www.civilsociety-centre.org/content/main-observations-mapping-violence-against-women> (Accessed 5 March 2019).
KHAWAJA M, TEWTEL-SALEM M. (2004) 'Agreement between husband and wife reports of domestic violence: Evidence from poor refugee communities in Lebanon', Int J Epidemiol (33): 526–533.

KHAWAJA, M., & HAMMOURY, N. (2008) 'Coerced sexual intercourse within marriage: A clinic-based study of pregnant Palestinian refugees in Lebanon', Journal of Midwifery & Women's Health (53): 150–154. Available from: <https://search-proquest-com.ezp.lib.cam.ac.uk/docview/2016974403?pq-origsite=gscholar>.

KHAWAJA, M., ABDULRAHIM, S., SOWEID, R. A. A., & KARAM, D. (2006) 'Distrust, social fragmentation and adolescents' health in the outer city: Beirut and beyond,' Social Science and Medicine (63): 1304–1315.

LEAKE, A. (2014) Palestinian Refugees in Lebanon: A Security Analysis (online) Polis.leeds.ac.uk. Available from: <http://www.polis.leeds.ac.uk/assets/files/students/student-journal/Winter-2014/Leake-Palestinian-Refugees-in-Lebanon.pdf> (Accessed 12 March 2019).

MAHMOUD, O. and ROBERTS, R. (2018). 'One camp, three refugee groups: challenges for local NGOs', Oxford Forced Migration Review (57):7–9. Available from: <https://search-proquest-com.ezp.lib.cam.ac.uk/docview/2016974403/

MALKKI, L. (1992) 'National Geographic: The Rooting of Peoples and the Territorialization of National Identity Among Scholars and Refugees', Cultural Anthropology 7(1): 24–44.
MALKKI, L.H. (1996) 'Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization', Cultural Anthropology 11(3): 377–404.

MSHASHA, S. (2018) Urgent UNRWA Statement, 01 September 2018 ReliefWeb (online). Available from: <https://reliefweb.int/report/occupied-palestinian-territory/urgent-unrwa-statement-01-september-2018> (Accessed 10 March 2019).

MUHANNA, E. (2017) Is Lebanon's New Electoral System a Path Out of Sectarianism? The New Yorker (online). Available from: <https://www.newyorker.com/news/news-desk/is-lebanons-new-electoral-system-a-path-out-of-sectarianism> (Accessed 6 March 2019).

MALLAT, C. (1997) The Lebanese Legal System. The Lebanon Report No 2 (online). Available from: <http://rocket.asoshared.com/~mallatco/sites/default/files/The%20Lebanese%20Legal%20System.pdf> (Accessed 5 March 2019).

MUNSHEY, M (2018) Access to SGBV Protection Services for Syrians and Palestinians in Lebanon (online) United Nations University. Available from: <https://gcm.unu.edu/publications/policy-reports/access-to-sgbv-protection-services-for-syrian-palestinians-in-lebanon.html>.

NAJDEH (2000) Domestic Violence among Some Palestinian Refugee Communities in Lebanon: An Exploratory Study and Ideas for Further Action. Prepared by Aziza Khalidi, ScD April.

NAJDEH (2016) Implementing CEDAW for Palestinian Refugee Women in Lebanon (online) Association-najdeh.org. Available from: <http://association-najdeh.org/en/wp-content/uploads/2017/01/Implementing-CEDAW-for-Palestinian-Refugee-Women-in-Lebanon-2016.pdf> (Accessed 1 March 2019).

ROBERT, W. (2017) Gender equality and women's empowerment in Lebanon (online). Available from: <https://www.alnap.org/system/files/content/resource/files/main/175-gender-equality-and-womens-empowerment-in-lebanon.pdf> (Accessed 17 Jul. 2019).

SAGHIEH and NAMMOUR (2017) Palestinian Refugees in Lebanon, Beirut, Legal Agenda. Available from: <https://legal-agenda.com/uploads/Palestinian%20Refugees%20in%20Lebanon.pdf>.

TERRY, M. (2014) Applying the Social Ecological Model to Violence against Women with Disabilities (online) Available from: <https://www.longdom.org/open-access/applying-the-social-ecological-model-to-violence-against-women-with-disabilities-2167-0420.1000193.pdf> (Accessed 17 July 2019).

DAILY STAR NEWS (2018) Lebanon elects six women to Parliament, Lebanon, Daily Star News. Available from: <http://www.dailystar.com.lb/News/Lebanon-Elections/2018/May-09/448633-lebanon-elects-six-women-to-parliament.ashx> (Accessed 10 March 2019).

WORLD ECONOMIC FORUM (2016) Global Gender Gap Report 2016 (online). Available from: <http://reports.weforum.org/global-gender-gap-report-2016/economies/> (Accessed 13 March 2019).

WORLD HEALTH ORGANISATION (2012) Understanding and addressing violence against women, Box 1. Forms of Intimate Partner Violence (2). (online) Available from: <https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf> (Accessed 13 June 2020).

UNITED STATES DEPARTMENT OF STATE (2011) International Religious Freedom Report – Lebanon, State.gov. Available from: <https://www.state.gov/documents/organization/193107.pdf> (Accessed 12 March 2019).

UNFPA, UNDP and UNWOMEN (2018) Gender-Related Laws, Policies and Practices in Lebanon (online). Available from: <https://lebanon.unfpa.org/en/publications/gender-related-laws-policies-and-practices-lebanon> (Accessed 13 June 2020).

UNESCWA, UNFPA, UNWOMEN and UNDP (2019) Gender Justice and the Law. Available from: <https://arabstates.unfpa.org/sites/default/files/pub-pdf/Lebanon.Summary.19.Eng_.pdf> (Accessed 13 June 2020).

UNHCR (2020) Syria Regional Refugee Response Data Portal. Available from: <https://data2.unhcr.org/en/situations/syria/location/71#_g

UNHCR (2016) The Situation of Palestinian Refugees in Lebanon (online).Available from: <https://www.refworld.org/pdfid/56cc95484.pdf> (Accessed 26 May 2020).

UNRWA (2018) Statement of the UNRWA Commissioner-General to the Pledging Conference | UNRWA (online). Available from: <https://www.unrwa.org/newsroom/official-statements/statement-unrwa-commissioner-general-pledging-conference> (Accessed 11 March 2019).

UNRWA (2018b) Protection in Lebanon | UNRWA (online) UNRWA. Available from: <https://www.unrwa.org/activity/protection-lebanon> (Accessed 10 March 2019).

UNRWA (2015) UNRWA experience in gbv programming (online). Available from: <https://www.unrwa.org/sites/default/files/content/resources/gbv_learning_document_final.pdf> (Accessed 10 March 2019).

UNFPA (2010) Review of GBV Research in Lebanon (online). Available from: <http://www.unfpa.org.lb/Documents/4-Review-of-GBV-Research-in-Lebanon.aspx> (Accessed 12 March 2019).

UNICEF (2010) Household survey on violence, Beirut, UNICEF. Available from: <https://civilsociety-centre.org/sites/default/files/resources/UNICEF%20household%20survey%20exec%20summary.pdf>.

VIOLENCE PREVENTION ALLIANCE (2010a) Conceptual Framework (online). Available from: <https://www.who.int/violenceprevention/vpa_conceptual_framework.pdf?ua=1.>

VIOLENCE PREVENTION ALLIANCE (2010b) WHO, The ecological framework (online). Available from: <https://www.who.int/violenceprevention/approach/ecology/en/> (Accessed 17 Jul. 2019).

Experimenting and Exporting the UK Border Regime

Frances Timberlake

A Study of UK Accountability at the Juxtaposed Controls in France

We want to extend the concept of exporting our borders around the world
– UK Home Office (2006)

Despite increasing academic interest in the impact of externalised border controls in recent years, the UK's 'exportation' of its border into France has received relatively little attention. A set of bilateral legal agreements have implemented juxtaposed controls on British and French territory. These have resulted in a blockage of prospective asylum seekers on the northern French coastline, who are faced with extremely hostile living conditions, structural violence, and a denial of access to UK asylum procedures. This paper argues that the practise of deflection from the border constitutes collective expulsion, denies the right to remedy, and may risk refoulement. Secondly, it proposes how the UK can be held legally accountable for this, given the extension of its jurisdiction into France through the exercise of extraterritorial administrative and legal control.

Introduction

The UK's implementation of its 'hostile environment'[1] – more recently rebranded the 'compliant environment' – policy for undocumented migrants[2] has gained notoriety for its attempts to deter 'undesirable' migration into, and residence in, the UK. The UK's experimentation with sovereign border control beyond its own territory, however, predates this current policy. Since the 1990's it has gradually exported and outsourced its border into French territory through a set of bilateral agreements known as 'juxtaposed controls' because they allow British immigration checks to take place beyond British territory and corresponding French checks to take place in Britain. Initially on the French coastline, they have since been expanded inland as far as Brussels and Paris (Home Office 2017).

The juxtaposed controls and successive bilateral border agreements have made a 'buffer zone' (Mould 2017) of the northern French coast with a tripartite immigration control strategy – prevention, dissuasion and removal. Presented under the auspices of 'border security' and 'crime prevention', the juxtaposed controls are in fact 'the very source of insecurity and lack of safety

1 Creating a 'hostile environment for illegal immigrants' was the declared aim of a package of immigration policies announced by then-Home Secretary Theresa May in 2012 (Goodfellow 2019). Goodfellow (2019) summarises: 'The plan was to make [illegal immigrants'] lives unbearable' (p. 2). The policies have been effected through many areas of life (eduction, housing, health, employment) and have had devastating effects on many people's lives (Goodfellow 2019; Liberty 2019), including those whose plight was exposed through the Windrush Scandal (Gentleman 2019).

2 The word 'migrant' is used inclusively throughout this piece to refer to those crossing state borders, regardless of whether they crossed for political, social or economic reasons. The term 'undocumented' is used instead of 'irregular' or 'illegal', except when illustrating how migrants are referred to by other bodies.

for hundreds of displaced people in the northern France area' (Welander 2019).

This article views the UK's extension of its border operations into northern France as an early model of wider migration management trends, encompassing the use of domestic dissuasion policies, external border securitisation, and containment in third countries. The bilateral agreements have served to create a harshly enforced zone of 'deterrence' (Cabinet Office 2007) acting as an extraterritorial precursor to the UK's own domestic 'Hostile Environment' policy (Edmond-Pettitt 2018). Daily life for migrants in the area has been made intolerable, through the perennial destruction of makeshift camps and the denial of basic rights such as shelter, food and sanitation (Bochenek 2017; Hagan 2018; Jenowein et al. 2019). The proliferation of security and surveillance technology across the region, often operated by outsourced private companies, has created a zone of containment and insecurity for those inhabiting it (Akkerman 2019).

The Europeanization of migration control

The exportation of border management to source or third countries, generally in return for development aid or for tacit political support, marks what Boswell calls the 'Europeanization of migration control' (Boswell 2003: 619, 622). This approach has since become popularised among governments attempting to contain prospective migrants in transit countries, such as the 2016 EU-Turkey deal, which vowed to return all new irregular migrants crossing from Turkey to the Greek islands (European Council 2016), and the later 2017 Italy-Libya agreement, funded by Italy, which required Libya to stem the number of migrants arriving to and departing from the country (Odysseus Network 2017). Exported border management is also evident in offshore detention practices, such as Australia's detention of migrants on various Pacific islands, or the US's containment of 'foreign enemy combatants' on Guantanamo Bay, as explored by Mountz (2011). The UK border policy itself is a paradigm of this, with UK detention centres operated abroad on French soil (Bosworth 2016). Interestingly, the UK Home Office itself is currently seeking advice from the Australian government regarding cracking down on the arrival of migrants by sea (Hymas 2020). This illustrates an ever-expanding process of extraterritorial migration dissuasion building on the precedents set by others.

However, while the founding UK-France border agreements act as an exemplar of externalisation, or non-entrée border policy, they rarely feature in academic literature on the topic. Focus on the harsh conditions for migrants in the border zone has too often been disconnected from the legal and political systems underpinning them. The unique legal status which the UK has constructed for itself has granted it exceptional power over its immigration controls, exporting them into France and thereby securing its border against the arrival of prospective asylum seekers.

States' practice of externalising their border controls and security infrastructure to third countries are criticised for violating both the right to seek asylum and *non-refoulement* obligations (Frelick, Kysel and Podkul 2016). Gammeltoft-Hansen and Hathaway have termed this deflection of potential asylum seekers the politics of non-entrée, a mode of

'insulating developed countries from de facto compliance with the duty of *non-refoulement* even as they left the duty itself intact' (2015: 235, 242). Indeed, for States, intercepting migrants before they reach their territories 'is one of the most effective measures to enforce their domestic migration laws and policies' (IOM and UNHCR 2003: 111, 115) and reframe the issue as 'illegal immigration' (Home Office 2019b).

This article examines the legal processes behind the 'illegalisation' of undocumented migrants in northern France. The first section analyses the development of the juxtaposed controls and subsequent bilateral border agreements, seeing them as driven by the UK's aim to control and reduce undocumented immigration by the exportation of its border controls. The second section considers the legal ramifications of these border arrangements and the lack of British accountability resulting from overlapping legal regimes. By scrutinising the UK's practices of prevention, dissuasion, and removal, it aims to challenge their legality using European case law and international legal standards.

Zone of deterrence

Geographically, the northern French coastline is an important site of mobility and commerce within Europe. As the closest point of mainland Europe to the United Kingdom – just 25 kilometres from Calais to Dover – the ports along the coastline have become principal sites not just of commercial but also human transit.

Since the early 1990's people fleeing conflict and instability in the Balkans, and later in the Middle East and North Africa, have arrived in the port areas seeking passage across the Channel, blocked from other legal routes. Throughout this time, migrant settlements have been established at various points along the French coastline, with the largest and most mediatised around the port of Calais. The majority of these have been makeshift tented camps, soon followed by securitisation measures and police with a mandate to evict the living sites, destroy belongings and move people onwards—many of whom then resettle locally.

Juxtaposed controls

The UK's primary response to this has been an ongoing attempt to enter into a series of bilateral border agreements with France--intended to prevent undocumented migration within its territory by moving its border into French territory and hardening that border through increased securitisation. The founding treaty for this process is the 1991 Sangatte Protocol, which introduced juxtaposed border controls at the respective entry and exit points of the Channel Tunnel ('Fixed Link'), in Coquelles, France and Folkestone, England.[3] These juxtaposed controls have been further extended by the Additional Sangatte Protocol, ratified in 2000, which covers fixed stops along the Eurostar line ranging from Paris to London,[4] and ferry ports along the

3 Protocol between the Government of the United Kingdom and the Government of the French Republic Concerning Frontier Controls and Policing, Co-operation in Criminal justice, Public Safety and Mutual Assistance Relating to the Channel Fixed Link (adopted 25 November 1991, entered into force 2 August 1993) TS 70 (Sangatte Protocol).

4 Additional Protocol to the Sangatte Protocol on the Establishment of Bureaux Responsible for Controls on Persons Travelling by Train Between the

French coastline under the subsequent 2003 Le Touquet Treaty.[5]

The Sangatte Protocol established the presence of reciprocal 'Control Zones' as far as London and Paris, in which officers of the adjoining State are permitted to carry out their own border control functions.[6] The UK Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003, which enacts these treaties into domestic law, allows for the creation of UK detention centres, or Short-Term Holding Facilities (STHFs), on French soil.[7] It also modifies the terms of the Immigration Order (2000) to add 'enters a Control Zone' after 'arrives in the United Kingdom',[8] effectively granting the UK extraterritorial power to refuse someone entry into the UK.

The bilateral agreements have served to 'displace the British border to France', and transfer responsibility for immigration management to the French (Baumard 2018). The French Commission Nationale Consultative des Droits de l'Homme (CNCDH) writes that these bilateral treaties intended to restrict migration to the UK are 'largely in violation of EU law' and result in 'Calais and the surrounding area becoming a zone of containment for

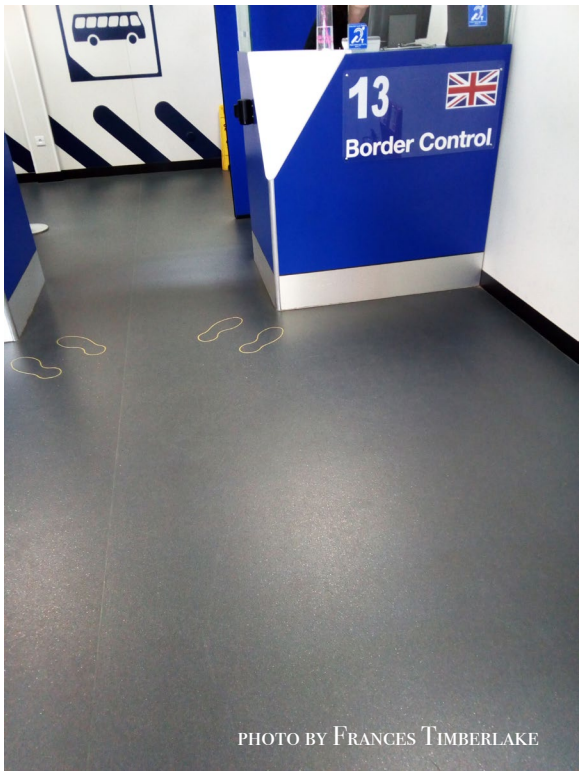

PHOTO BY FRANCES TIMBERLAKE

migrants with the security issues and humanitarian risks which that entails,' turning France into the 'policeman' of Britain's migration policies (2015: 1-2). Indeed, undocumented migrants hoping to reach UK territory in order to claim asylum now find themselves prevented from achieving this by a series of security measures, border checks, and finally, the Channel crossing itself. Instead, they remain stuck on the French coast, obliged to rely on irregular crossings in the hands of smugglers.

The former UK Home Secretary justified these measures on the grounds that 'it is far better to stop people entering the country illegally than to have to send them back, with all the time wasting and expense that that entails' (House of Commons 2002). Ongoing discourse from both States focuses on security and border protection, with language such as 'illegal migrants' and 'evil criminal gangs' evoking a threat to public order (Home Secretary and Ministère

United Kingdom and France (adopted 29 May 2000, entered into force 25 May 2001) UNTS 1747 I-30456 (Additional Sangatte Protocol).

5 Agreement between the Governments of the United Kingdom and of the French Republic concerning the Carrying of Service Weapons by the Officers of the UK Border Agency on French Territory in Application of the Treaty concerning the Implementation of the Frontier Controls at the Sea Ports of Both Countries on the Channel and North Sea' UKTS 21 (adopted 24 May 2003, entered into force 24 May 2003) (Touquet Treaty).

6 Sangatte Protocol, Part II Art 7.

7 The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003, art 13 (Juxtaposed Controls Order).

8 Ibid. schedule 2(4).

de l'Intérieur 2015: 10, 7, and passim). Recent announcements made by the UK Prime Minister (Davies 2019) and Home Secretary (Johnson and Hymas 2020) suggest that even those arriving on UK territory by boat are subject to direct return to France.

In reality, these bilateral treaties give both legal and financial backing to the securitisation, militarisation and surveillance of the UK-France border: they have doubled the number of physical immigration checks for those crossing to the UK from France, along with the increased border guards, control points and security infrastructure that this entails. Furthermore, Le Touquet treaty authorises UK Border Agency (UKBA) officers to carry service weapons in the Control Zones in France, 'in contrast to the national practice of the overwhelming majority of British law enforcement' (Bosworth 2016).

The most recent bilateral treaty, the 2018 Sandhurst Treaty, explicitly mandates increasing the return to home, or third, countries of those residing in the Nord and Pas-de-Calais departments without legal authorisation.[9] While this is the first of the major treaties to state 'humanitarian' provisions such as accommodation facilities in the Calais and Dunkerque areas and the legal transfer of unaccompanied minors, these fall under the stated aim to 'reduce migratory pressure at the shared border'.[10] The new, supposedly more migrant-centred framing of this border policy evokes Walter's (2011) notion of the 'humanitarian border', in which humanitarian language is intended to legitimise securitisation and immigration control.

9 Treaty Between the United Kingdom and France Concerning the Reinforcement Of Cooperation For the Coordinated Management of Their Shared Border (18 January 2018) (Sandhurst Treaty) art 7.
10 Ibid. art 1(2).

Legal outcomes

This securitised state of rights-lessness for migrants in northern France is engineered by a complex inter-web of administrative and penal processes that allow the UK to 'exercise considerable arbitrary power and discriminatory sovereignty at this border' (Tyerman 2017: 76). Administered under the juxtaposed controls agreements, processes of detention and removal produce migrant 'illegality' while carefully evading accountability under UK law. The agreements themselves, however, result in breaches of international human rights and asylum law, in particular the ban on collective expulsions and the rights to remedy and *non-refoulement*.

The systematic violence towards migrants in northern France has been rendered legitimate over time by the casting of migrants in the area as criminal subjects or as threats to be defended against. Didier Fassin's work on the 'production of illegality' focuses precisely on this construction of the 'illegal migrant' as a result of 'the development of an administrative apparatus at the borders and within the territory to control immigration and hunt down the undocumented' (2011: 213, 218). This is particularly relevant for expanding border zones such as that in northern France, where those already on the margins are pushed into growing spaces of 'illegality' in which they are classified as 'illegitimate' or 'criminal' simply by way of their presence there. At the same time, alternatives to residence in this zone have been restricted following the tightening of legal options such as visa applications (Home Office 2019a) and family reunification and child transfer procedures (Solicitors Journal 2017).

Sites of administrative control include four UK detention sites in northern France, established under the Juxtaposed Controls Order 2003.[11] These Short Term Holding Facilities (STHFs) on the French coast, one in both Calais and Dunkerque and two in Coquelles (Her Majesty's Chief Inspector of Prisons and Contrôleur Général des Lieux de Privation de Liberté [HMIP] 2020), would seem to fit Mountz's analysis of offshore detention centres as geographical and legal 'sites of exclusion' used to 'capture liminal populations … not able to legally become refugees or asylum seekers because of their location at a distance from sovereign territory' (2011: 118). However, as Bosworth (2016) notes, the UK STHFs in France in fact operate within the bounds of the UK-France juxtaposed controls agreements, which contain migrants outside of UK jurisdiction. These detention centres function thereby as a kind of 'black site', that is, not 'exceptional' in Schmittian terms of operating in suspension of the law (Schmitt 1985) but rather carefully enacting the aims of the bilateral border agreements.[12]

Indeed, no inspection visits were made to these centres for a period of almost ten years due to 'lack of jurisdictional clarity' (HMIP 2013: 5). Subsequent HMIP visits have found a concerning lack of safety, hygiene and access to independent legal advice. Nicknamed 'dog kennels' (Barrett 2006), they are described as 'unfit to hold adults and wholly inappropriate to hold children' (HMIP 2016: 2.8). Persistently poor conditions such as inadequate food provision (HMIP 2014: 1.45) and a lack of on-site healthcare (HMIP 2013: 1.4, 2.5) breach the Home Office's STHF Rules.[13] The regular detainment of children (HMIP 2016: 1.10, 2.8, 3.9) and no referral pathways for potential victims of trafficking (Ibid.: S2, 1.7) have drawn harsh criticism from HMIP throughout its reports. With the management of these detention centres contracted out to Tascor and Eamus Cork Solutions, the UK government attempts to 'avoid engaging obligations under international and national refugee and human rights law' (Reynolds and Muggeridge 2008: 41), eluding liability and mirroring the regime of private profit that has been implemented in UK domestic detention centres (Bacon 2005).

Not only is this space of 'illegality' constructed around migrants, but the law is also then moulded to punish them for it. In what Stumpf has coined the 'crimmigration crisis', global migration governance has turned to regulating migratory movements through reconfiguring them as criminal offences and enforcing criminal prosecution procedures (Stumpf 2006: 368). This is evident in both the discourse and law surrounding the UK-France border. Criminal penalties have been placed on immigration-related offences, such as the UK's sanctioning of vehicle drivers found to be transporting migrants, effectively outsourcing border checking responsibility to commercial and private vehicle drivers who are obliged to carry out their own vehicle inspections and remove or report 'stowaways'.[14]

On both a figurative and jurisdictional level, migrants in the border zone are trapped in a legal grey zone. The

11 Juxtaposed Controls Order, art 13.
12 See the later sections of this paper for a legal analysis of these detention sites.

13 Although these rules do not yet apply to the juxtaposed controls in Calais until an extended statutory instrument is in place, 'the spirit of the STHF Rules should nevertheless be followed there in the meantime' (Home Office 2018).
14 Immigration and Asylum Act 1999, section 32.

juxtaposed controls deflect them from UK territory and leave them in transit limbo in the border zone, in which they are subject to UK sovereignty yet have no recourse to the rights that this would normally entitle them to.

Extraterritorial control and jurisdiction

As described above, the juxtaposed controls permit the UK to impose extraterritorial criminal jurisdiction, enforce returns and operate detention sites in northern France while denying full legal responsibility for its presence in the area, leading to allegations of Calais becoming the UK's own Guantanamo (Lichfield 2009). At the same time, the series of overlapping and unclear legal regimes leave those caught in this zone with unclear recourse to justice. The CNCDH outlines the complexity of the juxtaposed controls which effectively create 'four legal regimes of border police, with different applicable rules for the same infraction' depending on where around Calais it is committed (2015: 18). UK border staff have themselves admitted to being 'unsure of the extent of the UK Control Zone in Calais' (Independent Chief Inspector of Borders and Immigration [ICIBI] 2013: 1.13).

This extraterritorial control has been examined by Mountz in the context of offshore island immigration controls, in which the 'partial sovereignty' of the territory is used to 'deter, detain and deflect migrants from the shores of sovereign territory' (2011: 118). However, while the US and Australian offshore controls examined by Mountz operate outside of domestic law, as Bosworth (2016) argues, the form of 'offshoring' implemented by the UK is more ambiguous. The UK has not attempted to withdraw its jurisdiction. Rather, it has extended it, selectively, in order to obtain greater criminal powers whilst evading responsibility under asylum law. Unlike the immigration controls that Mountz studies, which are 'beyond sovereign territory in 'grayer' zones offshore' and therefore act to deny and subvert international refugee law (2011: 120), in northern France the UK is still very much under its domestic, regional and international legal obligations to asylum seekers due to the extraterritorial jurisdiction it exercises.

Standards provided for in European case law can be used to ascertain the UK's own jurisdictional responsibility in northern France. Effective control of a territory, State agent authority and a State's exercise of public powers abroad are some of the factors that can trigger extraterritorial jurisdiction.

In European case law, 'effective control' of a territory has traditionally been applied to military occupations abroad – whether by nature of the direct control of armed forces or of a subordinate local administration (Loizidou v Turkey) – making it less relevant for border interceptions and *non-refoulement*. Hammeltoft-Hansen and Hathaway (2015) have argued, however, that the UK-France juxtaposed controls agreements allowing the UK to apply parts of its law to French territory may come close to this transfer of territorial control (262).

More pertinently to the UK's non-entrée politics, extraterritorial jurisdiction has evolved to encompass 'State agent authority'. The ECtHR's reasoning was that 'authorised agents of the State…not only remain under its jurisdiction when

abroad but bring any other persons or property 'within the jurisdiction' of that State, to the extent that they exercise authority over such persons or property' (Cyprus v Turkey: 8). Case law has expanded this to cover when an individual is taken into the custody of State agents abroad (Öcalan v Turkey: 91) or is under the 'exclusive and continuous' control of another State's authorities (Hirsi Jamaa v Italy: 81; N.D. and N.T. v Spain 2017: 54). In Al Skeini and others v UK, the Court of Appeal considered that being 'within the control and authority of [UK] agents' abroad triggered domestic UK law to apply (para. 81). As ruled by the Committee Against Torture, jurisdiction 'must also include situations where a State party exercises, directly or indirectly, de facto or de jure control over persons in detention' (J.H.A. v Spain: 8.2).

This principle is relevant for the UK's presence in northern France, where 'Border Force officers are there, 24 hours a day, every day of the year' (Home Office 2017). These officials intercept migrants in the UK Control Zone and may hold them in detention facilities for up to 24 hours.[15] During this time they are 'in the care of the UK Border and Immigration Agency', exclusively and continuously (Select Committee on European Union 2008: 7). Their movements are thus controlled by UK State agents, from the moment of interception, to detention, to removal to the French Police aux Frontières (PAF).

Extraterritorial jurisdiction may also apply when one is within one's own government's territory, yet another government 'exercises all or some of the public powers normally to be exercised by that Government' (Banković and others v Belgium and others: 71). Although this concept is not well-defined in international law, it does cover security administration as well as executive or judicial functions (Al Skeini and others v UK: 130-39, 143-48).

The Sangatte Protocol explicitly grants the UK criminal jurisdiction[16] as well as power of arrest in its Control Zones in France.[17] Those entering these zones are still regarded as 'illegal entrants' under UK law.[18] In addition, individuals suspected of illegal transportation, even when discovered in France, may be found liable under UK law (BBC News 2019). This allows the UK to exercise important public functions on French territory, alongside the exportation of its detention regime. Hammeltoft-Hansen and Hathaway propose that migration control itself, 'being a core law enforcement task and exclusive sovereign prerogative', constitutes a public power that would trigger extraterritorial jurisdiction when exercised beyond a State's own borders (2015: 268).

Accountability under refugee and human rights law

As this paper has shown, migrants in northern France are systematically prevented from being able to claim asylum in the UK through the detention and deflection of those who come close to its territory. This is achieved by the UK's externalised border locating British sovereignty 'beyond the territory of the State in such a way that empowers its border agents to administer bodies and materials according to British law but without certain reciprocal duties' (Tyerman 2017: 76). If UK extraterritorial

15 Juxtaposed Controls Order art 14.

16 Sangatte Protocol art 38.
17 Ibid. art 40.
18 Juxtaposed Controls Order, schedule 2 art 1(2)(ii).

jurisdiction is established in northern France, these non-entrée practices contravene the right to seek asylum under international and European law, as well as procedural safeguards such as the ban on collective expulsions[19] and the right to effective remedy.[20]

Collective expulsions

Collective expulsion is defined as 'any measure compelling aliens, as a group, to leave the country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group' (Khlaifia and Others v Italy: 237). The Hirsi Jamaa case was a landmark in clarifying the ban on collective expulsions for States exercising their jurisdiction abroad. It set a precedent that a country operating abroad and returning a group of people to another country without effective procedural guarantees, in this case Italian authorities returning a boat of migrants to Libya, would amount to collective expulsion (ibid.: 202-5).

The Additional Sangatte Protocol explicitly denies those being controlled by UK Border Force authorities the right to claim asylum from them.[21] This is reaffirmed by the 2003 Le Touquet Treaty, which states that any asylum claim made to the authorities of the destination State may only be considered by the State of departure, unless it is made after the departure of the ship.[22] This prevention of UKBF officials placed in French ports being able to process UK asylum claims applies equally even when people are detained in the UK STHFs (HMIP 2013: 1.23).

This denies individuals the possibility of having their claims for asylum heard in the UK, which the UK justifies by an insistence on the Dublin agreement's 'first safe country' system.[23] However, the French CNCDH (2015: 17-19) has criticised the UK's direct return of prospective asylum seekers to France for in fact bypassing this system, as well as an individual's right to challenge the 'safe country' criteria application. Indeed, the UK Home Office has also been reported as finding the Dublin agreement too 'restrictive' (Johnson and Hymas 2020), and has aimed to put a tighter alternative in place in the post-Brexit period (Home Affairs Committee: 17).

As Den Heijer argues, Hirsi Jamaa established that 'any interception activity that factually prevents migrants from effectuating an entry…may be construed as expulsion' (2013: 265, 283). Following this precedent, migrants' inability to claim UK asylum at its border in France would constitute collective expulsion as well as a contravention of European asylum law.

Non-refoulement

The ban on collective expulsion is closely tied to the principle of *non-refoulement*,[24]

19 Protocol No. 4 to the European Convention on Human Rights (adopted 16 September 1963, entered into force 2 May 1968) ETS 46 (ECHR Protocol 4) art 4; Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 32.
20 European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 (ECHR) art 13.
21 Additional Sangatte Protocol, art 4.
22 Touquet Treaty, art 9.
23 Parliament and Council Regulation 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection [2013] L 180/31 (Dublin Regulation).
24 Refugee Convention art 33; Convention against Torture and Other Cruel, Inhuman or Degrading

meaning the right to not be returned to a country where one's life would be threatened as a result of persecution[25] or where there is a risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment.[26] The *non-refoulement* principle is considered part of customary international law (UNHCR 2001). It is also enshrined in the 1951 Refugee Convention, of which Edwards asserts that 'Articles 1 and 33 read together place a duty on States parties to grant, at a minimum, access to asylum procedures for the purpose of refugee status determination' (2005: 293, 301). Without this, 'obligations of *non-refoulement*, including rejection at [a State's] frontier, could be infringed' (Edwards 2003: 192, 197).

Frelick, Kysel and Podkul argue that the practice of externalised border control itself 'prevent[s] migrants from ever coming under the jurisdiction of destination States' (2016: 196) and the protections which that would entitle them to, including that against *non-refoulement*, as it places them under heightened threat to life, security and health encountered as a result of dangerous journeys across high seas or securitised land borders.

While France is designated a safe country, individuals are generally returned directly from the UK Control Zone to informal camps (HMIP 2013: HE.38) where they are subject to persistent police brutality and inhuman and degrading treatment as ruled by several court cases over recent years.[27] Inspection reports of the STHFs find that detainees are released without verification of vulnerabilities or attempts to identify victims of trafficking (HMIP 2016: 1.7, 1.8). This presents a risk of refoulement under the auspices of European 'safe third country' returns.

The *non-refoulement* principle has been argued with regard to camps in northern France in the SSHD v ZAT case concerning four young Syrians from the Calais 'Jungle'. Child rights academic Sonja Grover (2018) contends that the refusal of entry to the UK for the four minors constitutes an act of refoulement to France and violates the prohibition on inhuman and degrading treatment. This is due to the denial of reunification with family members and the return of vulnerable individuals to a situation in which their safety and possibly lives are at risk (ibid.: 75). The same may be proposed for migrants refused entry at the border in France or returned directly from the UK having arrived by boat, without consideration of their identity, individual safety or family situation.

Right to remedy

A key safeguard against collective expulsion and refoulement is the right to remedy, as enshrined in ECHR Article 13[28] and Article 13 of the European Returns Directive.[29] This right, in combination with ECHR Article 3, entitles a person to have a means to challenge expulsion if it would expose her/him to real risk of inhuman or degrading treatment (Council of Europe 2013).

In the context of removals, ECtHR case law has found effective remedy to include 'independent and rigorous scrutiny of

Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) UNTS 1465 (CAT) art 3.
25 Refugee Convention art 33(1).
26 CAT art 3.
27 n 55.

28 Universal Declaration of Human Rights (10 December 1948) UNGA 217 A (III) (UDHR) art 8; ECHR art 13.
29 Parliament and Council Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [2008] L 348/98, art.

a claim' in view of treatment contrary to Article 3 as well as information on relevant procedures and legal advice (Hirsi Jamaa v Italy: 204) through an interpreter (I.M. v France: 145). A complaint must moreover be 'subject to close scrutiny by a 'national authority' (Shamayev v Georgia and Russia: 448).

The UK's practices of detainment and removal of migrants in northern France violate the right to an effective domestic remedy. The juxtaposed controls agreements deny the possibility of claiming asylum in the UK as well as of remedy against removal from the UK Control Zone. UKBF detain migrants in the STHFs with consistently no independent legal advice and 'irrelevant' or 'defunct' information on UK procedures (HMIP 2020: 1.42-1.46; HMIP 2016: 2.11, 3.13; HMIP 2013: HE.12, 1.23, 2.21, 3.28). They have little to no access to interpreters or translated information (HMIP 2013: HE.33, 1.34, 3.38; HMIP 2014: 1.40), occasionally have telephones confiscated (HMIP 2020: 1.65; HMIP 2014: 1.51) and a 2013 inspection found that the correct paperwork pertaining to the detention of those refused entry 'had been issued or retained in only 21% of cases' (ICIBI 2013: 1.10). In the general port controls, the inspection found an 'inadequate level of detail retained on the file or electronic record to provide justification for the [entry refusal] decision', with incomplete paperwork in one-fifth of refusal cases (ibid.: 1.9).

In the case of migrant push-backs from Melilla in N.D. and N.T. v Spain (paras 116-122), the ECtHR in 2017 ruled that a violation of Article 13 had occurred in light of the fact that applicants' identities were not established and that they were refused access to interpreters and legal assistance by Spanish authorities. While this case differs from the UK-France push backs in that it is an external frontier of Europe and thus cannot be argued to fit within the 'first safe country' justification, the case nonetheless set a precedent on countries adjusting their borders to prevent immigration. Pijnenburg (2017) argues that the implication of the N.D. and N.T. ruling was that 'if border guards prevent an individual from entering the State's territory, the State has the obligation to secure that person's right to apply for asylum and not to be pushed back'. This includes access to a domestic remedy against such an expulsion, and would apply also to the UK-France border where UK border guards prevent people from entering UK territory. While the Grand Chamber more recently overturned the N.D. and N.T. ruling, finding the pushback of migrants at the Spain-Morocco border to be legal because of the existence of procedures, albeit near impossible to access, to enter Spain legally (Raimondo 2020), the total lack of such procedures at the UK-France border would mean this ECtHR ruling does not necessarily undermine a similar case being brought with regards the UK's operations of its border.

The ECtHR has moreover established that an 'excessively short time' between the application to a court remedy and removal would not allow for a proper examination of the applicant's arguments, undermining the effectiveness of the remedy (De Souza Ribeiro v France: 95). In the UK Control Zone, 'illegal entrants' are handed directly back to the French authorities who may detain or release them (Bosworth 2016), leaving barely any time to lodge a complaint. These practices severely restrict the possibility of migrants challenging either detention

or removal--a vital safeguard against unlawful procedures.

The legal agreements governing the UK border have thus been used to deny migrants access to UK law. Challenging the violations of both human rights and asylum law taking place on this border requires challenging the basis of the bilateral treaties themselves, and emphasizing their incompatibility with international and European law.

Conclusion

The UK-France border zone appears as a paradigm of wider border securitisation and immigration dissuasion policies. The juxtaposed controls agreements have allowed the UK to carefully construct a hostile environment abroad, where the daily experience of harassment, physical violence, and oppressive security and surveillance structures often operated by private companies leads to exhaustion, forced 'illegality' and cyclical re-displacement.

The concomitant securitisation of the border and insecuritisation of migrants in northern France has created a zone of deterrence, aimed at detecting, detaining and removing migrants before they reach UK territory. Here, migrants are enclosed in camp-like spaces, trapped between the two States, forbidden both from settling and from leaving. The only feasible exit that many see – irregular entry to the UK – is placed out of safe reach by the juxtaposed controls' prevention of the right to claim asylum in the UK. The controls permit UK authorities to operate under the powers of their own domestic legislation in France, with few reciprocal obligations. This extends extraterritorial jurisdiction as set out in ECtHR case law, in particular with regard to State agent authority and the exercise of public powers.

A hostile environment is thus enforced on migrants, on their living spaces and on their legal rights in northern France. A process of offshored immigration control excludes prospective asylum seekers from nearing the UK, perpetually deflecting them from its exported borders. As such, legal accountability can and must be established for the UK's use of indiscriminate push backs as well as for its use of detention in northern France. The inability to register asylum claims violates the ban on collective expulsion, while the lack of regard for individual situations upon return may amount to refoulement. Throughout this process the poor procedural safeguards in place deny the possibility of effective remedy.

The author

Frances Timberlake is a campaigner and activist who has been working with displaced communities in northern France since 2016. She is currently working as the UK advocacy officer at Refugee Rights Europe, focusing specifically on UK accountability at its shared border with France. This follows several years doing community work with women and families based in the informal living settlements in Calais and Dunkirk. Frances holds an MA in Human Rights Law from SOAS, London.

Bibliography

AKKERMAN, M. (2019) Hunted. Detained. Deported.: UK-French co-operation and the effects of border securitisation on refugees in Calais, Manchester, Care4Calais and Stop Wapenhandel. Available from: <https://care4calais.org/wp-content/uploads/2018/09/hunted-detained-deported.pdf> (Accessed 17 May 2020).

BBC NEWS (2019) 'Dudley lorry driver fined £12k over Calais migrants' (online), BBC News 5 March. Available from: <https://www.bbc.co.uk/news/uk-england-birmingham-47457788> (Accessed 17 May 2020).

BACON, C. (2005) 'The evolution of immigration detention in the UK: the involvement of private prison companies', Refugee Studies Centre Working Paper Series, No. 27.

BARRETT, D. (2006) 'Immigration centres 'like dog kennels'' (online), The Independent 5 April. Available from: <https://www.independent.co.uk/news/uk/politics/immigration-centres-like-dog-kennels-472885.html> (Accessed 17 May 2020).

BAUMARD, M. (2018) 'La Grande-Bretagne nous paie pour que nous gérions, sur notre territoire, son immigration' (online), Le Monde 17 January. Available from: <https://www.lemonde.fr/societe/article/2018/01/17/la-grande-bretagne-nous-paie-pour-que-nous-gerions-sur-notre-territoire-son-immigration_5243206_3224.html> (Accessed 17 May 2020).

BOCHENEK, M. (2017) 'Like Living in Hell': Police Abuses Against Child and Adult Migrants in Calais, Human Rights Watch. Available from: <https://www.hrw.org/sites/default/files/report_pdf/france0717_web_3.pdf> (Accessed 17 May 2020).

BOSWELL, C. (2003) 'The 'External dimension' of EU Immigration and Asylum Policy', International Affairs 79(3).

BOSWORTH, M. (2016) 'Juxtaposed Border Controls and Penal Power on the French North Coast' (online), Border Criminologies. Available from: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/02/juxtaposed-border> (Created 24 February 2016, accessed 17 May 2020) Oxford Law Faculty.

CABINET OFFICE (2007) Security in a Global Hub, London. Available from: <https://www.statewatch.org/news/2007/nov/uk-border-review-report.pdf> (Accessed 17 May 2020).

COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L'HOMME [CNCDH] (2015), Avis sur la situation des migrants à Calais et dans le Calaisis, Paris. Available from: <https://www.cncdh.fr/sites/default/files/15.07.02_avis_migrants_calais_0_0.pdf> (Accessed 17 May 2020).

COUNCIL OF EUROPE (1950) European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS 5.

—(1963) Protocol No. 4 to the European Convention on Human Rights (adopted 16 September 1963, entered into force 2 May 1968) ETS 46.

—(2013) Guide to good practice in respect of domestic remedies.

DEN HEIJER, M. (2013) 'Reflections on Refoulement and Collective Expulsion in the Hirsi Case', International Journal of Refugee Law 25(2).

DAVIES, P. (2019) 'Boris Johnson warns illegal Channel migrants: We will send you back' (online), ITV News 23 August. Available from: <https://www.itv.com/news/2019-08-23/pm-warns-migrants-trying-to-illegally-enter-uk-we-will-send-you-back/> (Accessed 17 May 2020).

EDMOND-PETTITT, A. (2018) 'Territorial Policing and the 'hostile environment' in Calais: from policy to practice', Justice, Power and Resistance 2(2).

EDWARDS, A. (2005) 'Human Rights, Refugees, and The Right 'To Enjoy' Asylum', International Journal of Refugee Law 17(2).

—(2003) 'Tampering with Refugee Protection: The case of Australia', International Journal of Refugee Law 15(2).

EUROPEAN PARLIAMENT AND COUNCIL (2008) Parliament and Council Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [2008] L 348/98.

—(2013a) Parliament and Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection [2013] L 180/60.

—(2013b) Parliament and Council Regulation 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection [2013] L 180/31.

—(2016) EU-Turkey statement <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (Accessed 24 May 2020)

FASSIN, D. (2011) 'Policing Borders, Producing Boundaries. The Governmentality of Immigration in Dark Times', Annual Review of Anthropology 40(1).

FRELICK, B., KYSEL, I., and PODKUL, J. (2016) 'The Impact of Externalization of Migration Controls', Journal on Migration and Human Security 4(4).

GENTLEMAN, A. (2019) The Windrush Betrayal: Exposing the Hostile Environment, London, Guardian Faber.

GOODFELLOW, M. (2019) Hostile Environment: How Immigrants Became Scapegoats, London, Verso.

GROVER, S. (2018) Child Refugee Asylum as a Basic Human Right, Cham, Springer.

HAGAN, M. (2018) 'Disassembling the Camp: The Politics of Policing Exiles in Calais, France', Criminal Justice, Borders and Citizenship Research Paper No. 3274536.

HAMMELTOFT-HANSEN, T. and HATHAWAY, J. (2015) 'Non-refoulement in a World of Cooperative

Deterrence', Columbia Journal of Transnational Law 53(2).

HER MAJESTY'S CHIEF INSPECTOR OF PRISONS and CONTRÔLEUR GÉNÉRAL DES LIEUX DE PRIVATION DE LIBERTÉ [HMIP] (2013) Report on unannounced joint inspections of Coquelles and Calais non-residential short-term holding facilities, London.

—(2014) Report on an unannounced inspection of the short-term holding facility at Dunkerque, London.

—(2016) Report on unannounced inspections of the UK short-term holding facilities at Coquelles and Calais, London.

—(2020) Report on unannounced inspections of the UK short-term holding facilities at UK-France borders, London.

HOME AFFAIRS COMMITTEE (2020) Oral evidence: Home Office Preparedness for Covid19 (Coronavirus), HC 232. Available from: <https://committees.parliament.uk/oralevidence/411/default/> (Accessed 31 May 2020).

HOME OFFICE (2006) Borders, Immigration and Identity Action Plan: Using the National Identity Scheme to strengthen our borders and enforce compliance within the UK, London. Available from: <http://www.statewatch.org/news/2007/jan/uk-borders-id-card-plan.pdf> (Accessed 17 May 2020).

—(2015) 'Joint action between the UK and France on migrant pressure' (online). Available from: <https://www.gov.uk/government/news/joint-action-between-the-uk-and-france-on-migrant-pressure> (Created 29 July 2015, accessed 17 May 2020).

—(2017) 'Fact sheet: The UK's juxtaposed border controls' (online). Available from: <https://homeofficemedia.blog.gov.uk/2017/07/11/fact-sheet-the-uks-juxtaposed-border-controls/> (Created 11 July 2017, accessed 17 May 2020).

—(2018) Short-term Holding Facility Rules, London. Available from: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721583/STHF-rules-operational-guidance-v1.0-EXT.pdf> (Accessed 17 May 2020).

—(2019a) UK Visa requirements, London. Available from: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818794/UK_Visa_requirements_July_2019.pdf> (Accessed 17 May 2020).

—(2019b) Statement: migrant crossings, London. Available from: <https://www.gov.uk/government/speeches/statement-migrant-crossings> (Accessed 24 May 2020).

HOUSE OF COMMONS (2002) Debate 2 December 2002, vol. 395, col. 614 (Northern France), London. Available from: <https://api.parliament.uk/historic-hansard/commons/2002/dec/02/northern-france> (Accessed 17 May 2020).

HYMAS, C. (2020) 'Home Office approaches Australian Border Force chief who helped mastermind return of sea migrants' The Telegraph 25

May. Available from: <https://www.telegraph.co.uk/politics/2020/05/25/home-office-approaches-australian-border-force-chief-helped/> (Accessed 2 June 2020).

INDEPENDENT CHIEF INSPECTOR OF BORDERS AND IMMIGRATION [ICIBI] (2013) An Inspection of Juxtaposed Controls, London.

IOM and UNHCR (2003) 'Refugee Protection and Migration Control', Refugee Survey Quarterly 22(2 and 3).

JENOWEIN, D., WHITAKER, J. and LINDNER, H. (2019) Forced Evictions in Calais and Grande-Synthe, Human Rights Observers Project. Available from: <https://helprefugees.org/wp-content/uploads/2019/06/Forced-Evictions-in-Calais-and-Grande-Synthe-ENG-1.pdf> (Accessed 17 May 2020).

JOHNSON, J. and HYMAS, C. (2020) 'Government planning new laws to force Channel migrants back to France' The Telegraph 20 May. Available from: <https://www.telegraph.co.uk/politics/2020/05/20/government-planning-new-laws-force-channel-migrants-back-france/> (Accessed 31 May 2020).

LIBERTY (2019) A Guide to the Hostile Environment: The border controls dividing our communities – and how we can bring them down. Available from: <http://www.libertyhumanrights.org.uk/wp-content/uploads/2020/02/Hostile-Environment-Guide-%E2%80%93-update-May-2019_0.pdf> (Accessed 17 May 2020).

LICHFIELD, J. (2009) 'The Calais 'Guantanamo'' (online), The Independent 21 March. Available from: <https://www.independent.co.uk/news/uk/home-news/the-calais-lsquoguantanamorsquo-1650592.html> (Accessed 17 May 2020).

LOUGHNAN, C. (2019) 'Active Neglect: The New Tool for the 'Externalisation' of Refugee Protection' (online), Border Criminologies. Available from: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2019/07/active-neglect> (Created 16 July 2019, accessed 17 May 2020)
Oxford Law Faculty.

MOULD, O. (2017) 'The Calais Jungle: A slum of London's making', City 21 (3-4).

MOUNTZ, A. (2011) 'The enforcement archipelago: Detention, haunting, and asylum on islands', Political Geography 30(3).

ODYSSEUS NETWORK (2017) Libya-Italy Memorandum of Understanding. Available from: <http://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf> (Accessed 17 May 2020).

PIJNENBURG, A. (2017) 'Is N.D. and N.T. v. Spain the new Hirsi?' (online), EJIL:Talk! Available from: <https://www.ejiltalk.org/is-n-d-and-n-t-v-spain-the-new-hirsi/> (Created 17 October 2017, accessed 17 May 2020) European Journal of International Law.

PRIME MINISTER'S OFFICE (2010) Press Notice: United Kingdom-France Summit 2010: Declaration on Immigration, London. Available from: <http://image.guardian.co.uk/sys-files/Politics/

Law Cases

Al Skeini and others v UK [2011] ECtHR 55721/07
Banković and others v Belgium and others [2001] ECtHR 52207/99
Cyprus v Turkey [2001] ECtHR 25781/94
De Souza Ribeiro v France [2013] ECtHR 22689/07
Hirsi Jamaa v Italy [2012] ECtHR 27765/09
I.M. v France [2012] ECtHR 9152/09
J.H.A. v Spain [2007] UN Doc CAT/C/41/D/323/2007
Khlaifia and Others v Italy [2016] ECtHR 16483/12
Loizidou v Turkey [1996] ECtHR 15318/89
N.D. and N.T. v Spain [2017] ECtHR 8675/15
N.D. and N.T. v Spain [2020] ECtHR 8697/15, Grand Chamber
Öcalan v Turkey no 46221/99 (ECtHR, 12 May 2005)
Shamayev v Georgia and Russia no 36378/02 (ECtHR, 12 April 2005)
SSHD v ZAT [2016] EWCA Civ 810

Deconstructing the Victimization Narrative: the Case of the Chin in Malaysia

Chuah Hui Yin and Melati Nungsari

In the main narratives perpetuated by the mainstream media, refugees are often labelled as passive victims who are dependent on handouts for their livelihoods (KhosraviNik 2010). This logic is also ingrained in many of the operations conducted by humanitarian agencies, where refugees are not engaged in the policy-making that affects them most (Malkki 1996; Rajaram 2002). While it is undeniable that many refugees are inherently victims of terrible situations – forcibly displaced due to atrocities and conflicts that happen in their country of origin – being a victim does not, and should not, define the entirety of their identity. Representing refugees as victims often serves to reduce them to 'mute bodies' (Rajaram 2002) and obscures the fact that they have their own voices and are capable of exercising agency and improving their circumstances.

In Malaysia, the representation of refugees and asylum-seekers is also largely influenced by media discourse. They are often lumped together with undocumented migrants—being deemed as a single homogenous group – with media reports focusing on their 'illegal' status and involvement in criminal activities (Kaur 2007). This 'us versus them' sentiment is constructed through the positioning of refugees as a threat to the current political and social order, and is compounded by legal ambiguity surrounding policies related to refugees in Malaysia. Government-linked mainstream media outlets often present narratives that perpetuate the stigmatisation of refugees, which then help legitimise the official government desire to make refugees unlawful and invisible in public discourse (Don and Lee, 2014; Lego 2018).

On the other hand, alternative voices from independent media, civil society organisations, and humanitarian actors tend to place emphasis on the plight of refugees and on government actions which violate human rights laws (Kaur 2007; Lee 2016). These entities' efforts to ensure better protection and humanitarian action on refugee issues have also unintentionally reduced them to victims. This has disempowered refugees and asylum seekers, and positioned them as vulnerable victims who are passive and reliant on help from the others. A study by Lee (2016) also discovered that many refugees have internalised the victimisation narrative and have faced difficulties in establishing a sense of identity. They tend to perceive themselves as helpless victims, incapable of making any change to their circumstances. This article will present a contrast to this victimisation narrative by presenting a case study outlining how the ethnic Chin refugee community in Malaysia exercised their agency and played an active role in influencing a major policy decision on their refugee status.

Who are the Chin?

The Chin are an ethnic minority from Chin State, which was annexed into Myanmar (then Burma) during British colonisation in the late 19th century. They are predominantly Christian. This is relevant as it sets them apart

from most ethnic Burmese people in Myanmar, who are Buddhists (Tiam 2010). Under the umbrella identity of Chin, there are many different sub-ethnic groups which are defined by tribal and linguistic affiliations, such as Asho, Mara and Zotung. As part of the negotiation process for independence from Britain, the ethnic minority groups from Chin, Kachin and Shan States signed the Panglong Agreement with the interim Burmese government in 1947. According to this agreement, these ethnic minorities were granted full autonomy in their internal administration in the post-independence period.

Nonetheless, this agreement, which is celebrated every year as a national holiday on Union Day, has failed to reconcile deeply rooted ethnic tensions in the country (Lynn 2017). Myanmar fell into internal conflict shortly after they gained independence from the British in 1948. Forced assimilation of minorities into mainstream society led to restrictions on how they could practice their own culture and religion – a phenomenon which is still ongoing. Aggressive 'Burmanisation' policies have contributed to the violation of human rights, prompting mass migration of Chin and other minorities outwards from Myanmar since the 1960s. Additionally, the increased militarisation of Chin State following the military coup in 1988 led to instances of forced labour, torture and sexual violence that has further fuelled the displacement of Chin people from Myanmar (UN General Assembly 2010).

The Chin community today is dispersed across different countries, making it challenging to gather an accurate and comprehensive demographic picture of the population. According to the correspondence with Chin political leaders reported in Tiam (2010), Chin people can be found in at least 38 countries. Some of them have been resettled to third countries such as the United States, Australia and Canada, while the majority are still seeking refuge in countries of asylum such as India, Malaysia and Thailand. The state of Mizoram in India alone hosts an estimated population of 80,000 to 100,000 Chin as of 2010 according to the same source, of which most are not registered formally with United Nations High Commissioners for Refugees (UNHCR). In Malaysia, the Chin community is largely concentrated in urban areas, with some Chin working in farms outside of the city. While the official data by UNHCR states that there are over 30,000 registered Chin refugees in Malaysia (UNHCR 2018), Chin refugee-led organisations' records indicate that that the population is larger than 60,000 (McConnachie 2018). The Chin community's diverse pre-exile identities are largely maintained mainly in Malaysia as they are organised based on tribes and clans in this country. Forty-nine of these organizations have coalesced into two key coalitions, while five others have remained independent organisations.

Cessation of refugee status

Like most nations in Southeast Asia, Malaysia is not a signatory to 1951 UN Refugee Convention and its 1967 Protocol. In the absence of a formal legal framework, refugees are deemed illegal immigrants who have no rights and who face penalty and eventual deportation if they are arrested. Despite this, Malaysia has authorised UNHCR Malaysia to fill the void for humanitarian reasons, with the understanding that refugees will eventually be either repatriated or resettled to a third country. UNHCR's mandate while in Malaysia is to

determine a person's refugee status as well as to provide support and assistance for refugees and asylum seekers. While the refugee card issued by UNHCR does not confer refugees any legal standing or basic rights such as the right to work and access to public education in Malaysia, it is commonly respected by local authorities and grants minimal protection from arrest and detention. The UNHCR card also allows refugees limited access to healthcare and other basic support services provided by UNHCR and other humanitarian actors.

In 2015, the Myanmar government and the Chin National Front, alongside eight other ethnic armed groups, signed a landmark Nationwide Ceasefire Agreement – a positive sign of national reconciliation after almost seven decades of civil war in the country (Institute for Security & Development Policy 2015). This was coupled with the peaceful transition from military dictatorship to democratically elected government in 2016. These significant political reforms are understood to have initiated the decision to terminate refugee status for the Chin worldwide. Since 2016, UNHCR has stopped processing new asylum claims from Chin refugees. (McConnachie 2018). Chin community leaders have also claimed that thousands of Chin refugees have had their status renewal application rejected since then. Matters also escalated in June 2018 when UNHCR issued community messaging claiming that Chin State is safe, that Chin refugees are no longer in need of protection, and that host countries may start repatriating them back to Myanmar. The official decision to terminate their refugee protection took the Chin community in Malaysia by surprise. According to sources from the Chin community group, no consultations with the community were conducted prior to this decision.

With the cessation of protected refugee status, Chin refugees, who form the second largest refugee ethnic group in Malaysia, were presented with two options: to have their refugee status withdrawn by the end of 2019 or to reapply for refugee status through the process of refugee status determination (RSD) on an individual basis. Under both options, the termination of refugee protection status meant that Chin refugees would either be compelled to return to Myanmar, or risk staying in Malaysia as illegal migrants. This unforeseen move would have affected 30,530 Chin refugees who were registered with UNHCR in Malaysia as of June 2018 (UNHCR 2018), in addition to a broader population distributed in India, Nepal, and Thailand. While the decision was eventually revoked in March 2019, this article examines how the Chin community took initiative and reshaped the policy discourse during the interim period.

Divergence from the cessation clauses in 1951 UN Refugee Convention and the standards of voluntary repatriation

According to the cessation of refugee status guidelines stipulated in the Articles 1C (5) and (6) of the 1951 Convention, UNHCR or States may issue official declarations of cessation when the circumstances that warrant refugee status no longer exist. However, the claim by UNHCR that their decision was backed by the assessment of social, political and security developments in Chin State over the course of several years did not align with field observations on the ground. Among these, the United Nations Special Rapporteur's report on

the human rights situation in Myanmar (UN General Assembly 2018) had raised serious concerns over the ongoing conflicts in Chin, Kachin, Rakhine and Shan states. Similar findings were also reported by Human Rights Watch (2019) which documented instances of human rights abuse and violence in Chin. These abuses clearly violated the cessation clauses in the 1951 Convention, which specify that the assessment procedures on cessation has to be 'fair, clear, and transparent' by considering all appropriate information available.

Substantive, durable change has yet to be realised in many parts of Myanmar, despite the pledge by the Myanmar government to institute peace in the country. In addition to the precarious start to much of its reform agenda, national reconciliation remains a struggle as the government has only managed to secure agreements from 10 out of 21 ethnic armed groups to the Nationwide Ceasefire Agreement (Institute for Security & Development Policy 2015; Thar 2018). Taking into account the cessation guidelines which clearly set forth the requirement of a 'fundamental and enduring nature of change' for cessation to apply, reports of continuing atrocities and violations of human rights in Chin State clearly suggest that durable peace is still a long way in the future. It is evident that the decision to terminate the recognised refugee status and international protection of Chin refugees was premature.

Furthermore, the principle of non-refoulement under international human rights law should not be compromised in any scenario including the case of cessation declaration. According to UNHCR, Myanmar government welcomes UNHCR's cessation decision in recognition of the basic right to return to one's home country (Chow 2019), while on the other hand, there appears to be a communication gap between the Malaysian government and UNHCR as presented in the statement by National Security Council which claims that they were not formally informed of the cessation policy by UNHCR (Chow and Yee 2019). The absence of tripartite commissions between UNHCR and the governments of Myanmar and Malaysia depicts a shortfall in the core preconditions that justify voluntary repatriation as set out in the Voluntary Repatriation Handbook (UNHCR 1996). In addition, civil society organisations remain sceptical about the commitment of Myanmar government given the lack of a concrete plan for the return and settlement of Chin refugees by the government in addition to the ongoing conflicts reported in Chin state.

Reclaiming agency

Against this backdrop, Chin community groups came together and took ownership in contesting the decision made by UNHCR. An interview with a Chin refugee community leader in Malaysia revealed that Chin refugees do not oppose repatriation (Chuah, personal communication, 19 April 2019). Many saw Malaysia as a temporary shelter and expressed their wish to go home to Chin State someday. This corresponds to a study conducted on 72 Chin respondents in Thailand, which found that most Chin refugees do not feel a sense of belonging in Thailand and that 91 percent of the respondents want to return to their home in Chin State (Lian 2018). Notwithstanding the positive steps taken by the newly-elected Myanmar government in restoring domestic peace, changes had been, and continue to be, insufficient to allay the fears that led to the original flight

of the Chin people. Without fulfilling conditions conducive for voluntary repatriation with safety and dignity, any cessation of refugee status would violate the principle of non-refoulement.

In the late 2017, the Chin community decided to reach out to the mass media in order to make their voice heard. This secured the attention of a local media outlet in Malaysia, R.age. Their collaboration led to a series of advocacy campaigns (R.age, n. d.). This included Refugee No More, an in-depth documentary on the stories of ethnic Chin refugees in Malaysia and the impacts of cessation on the community. One of the feature stories exhibited how the policy announcement by UNHCR caused serious consequences, especially a steep increase in anxiety and depression among Chin refugees. During 2019, there were several suicide cases which were thought to be associated to excessive stress invoked by the fear of deportation.

Following the online release of the documentary, a screening and town hall discussion was also organised by the R.age team in collaboration with Chin community. The Refugees No More project not only won two international journalism awards, but, more importantly, presented the topic in digestible multimedia content that helped to stimulate conversation on Chin refugee issues among a wider audience involving multiple stakeholders including UNHCR, the Malaysian government, local NGOs, civil society, and the Chin community.

Beyond mass media, the Chin community also organised a peace demonstration in front of the UNHCR Malaysia office on 29 June 2018 to voice their concerns which were largely overlooked at the time the decision was made (Bedi, Chow and Yeap 2018). Given the diversity of the Chin community, mass mobilisation takes considerable effort and resources. Nevertheless, the peace demonstration in 2018 was led by seven refugee community organisations in Malaysia (McConnachie 2018). Following the demonstration, five Chin community leaders were also able to meet with UNHCR representatives to convey their concerns about the cessation decision.

The Chin community also worked with multiple civil society organisations to come together and call for a withdrawal of the cessation policy. The Chin Up Project, a petition started by a coalition of ten organisations including R.age, managed to gather 2,561 signatures calling upon UNHCR and the states of Myanmar and Malaysia to review the Chin refugee policy. The project also presented a collection of conversations with Chin refugees on how they envisioned themselves in 2020 when their refugee status was to be terminated. This initiative not only garnered significant attention among the Malaysian public, but more importantly humanised the Chin refugees and deconstructed the narrative of them being only a victim. Two of the transcribed interviews follow (*The Chin Up Project,* no date):

> In 2020, I wish to get resettled to a third country, such as the US or maybe Australia and continue my studies to become a person who is able to contribute back to the world. Whatever society I'm living in, I would like to be a leader who can contribute to the society for good. I will always be Chin and Christian. And for that I feel I never get

> the rights that I should and it hurts in my heart like a wound. I feel like I've always been discriminated and mistreated. That's why I came to Malaysia. –(Salai Kauktu Hong Maung, 30 years old)
>
> My dream is to become a teacher. I want to teach English in my own village, in my own country and help them… The UN will not protect us anymore in 2020. [I feel] Sad, unhappy because our country is still unstable and unsecure. In our country, there is no work for us. We don't have money, food or shelter. We can't keep studying, I won't be able to become a teacher. (We want UNHCR to extend our refugee status) for longer, so that we can keep studying. (Lalminghlui, 14 years old)

Conclusion

The cessation of Chin refugee status went against the principle of voluntariness in the international refugee protection framework. This decision also deviated from the past cessation procedures as elaborated in a comparative study by McDonough (2019). The inconsistency between UNHCR's field assessment and reports on the ground on whether fundamental changes had taken place should have been addressed before coming to a decision on this matter. Moreover, the absence of tripartite commissions composed of UNHCR, the country of origin, and the country of asylum is not common practice when it comes to formulating cessation policy. Repatriation without any assurance from the country of origin to receive returnees indicates a lack of commitment in addressing the needs of former refugees.

Furthermore, putting in place a well-defined condition for cessation does not guarantee a grounded application of such criteria in a transparent and objective manner. While UNHCR did end up revoking the decision in March 2019, the cessation policy caused a number of irreversible consequences to the Chin refugee community, including mental and psychosocial distress.

Any cessation of refugee status must follow a comprehensive approach which ensures the principle of non-refoulement is upheld. In light of this, UNHCR, which plays a leading role in promoting and coordinating voluntary repatriation, should uphold its own mandate for voluntary repatriation in any decisions made. This could be achieved by first establishing a consensus through a tripartite agreement between Myanmar, Malaysia, and UNHCR to ensure the security and wellbeing of potential returnees. Scholars and human rights groups have similarly called for a regional response to Myanmar's refugee crisis, which has escalated to a regional issue (Kneebone 2016; Shivakoti, 2017; Dewansyah and Handayani, 2018; Wongcha-um and Thepgumpanat, 2019). This is particularly crucial in Southeast Asia, where borders are porous. Furthermore, regional level approaches are not a foreign concept to the region where the 1989 Comprehensive Plan of Action was created to address the issues of the Vietnamese 'boat people' in the late 80s. While the regional plan had received both criticism and applause (Bronee 1993; Hathaway 1993; Robinson 2004; Towle 2006), it has set a precedent for intergovernmental solutions to

protracted refugee situations. It has also been hailed as an example of a burden sharing mechanism – one that is separate to UN solutions, which have been deemed Eurocentric (Chimni 1998; Davies 2006).

UNHCR has long acknowledged that refugee participation is key to success in any project (Anderson Howarth and Overholt, 1992; Anderson 1994). Top-down policy does not work and the voices of affected communities must be considered in line with a people-oriented planning framework. It is crucial to recognise that refugees are not the passive victims they are portrayed to be in many narratives. Rather, they are capable of exercising agency. The cessation policy of 2018 led to the mobilisation of different Chin refugee organisations, making this an unprecedented collective movement led by refugees in Malaysia, and eventually resulted in success by allowing the Chin to stay in the country. This was made possible through collaboration with local civil society and journalists who played an integral part as 'amplifiers' for the refugees, enabling their voices to be heard by a wider audience to create awareness and promote productive dialogues among different stakeholders.

This case study on Chin refugees clearly demonstrates that refugees are more than just victims or numbers in official statistics. Making their voices heard is not only of paramount importance, but can also be achieved by empowering and supporting refugee communities as well as working together for a viable solution. The Chin community endeavour to counter the formal cessation declaration by the UNHCR through organised and well-planned strategies set a precedent for how refugees can enact change, such as by contributing to the reversal of cessation orders on their refugee status.

In the current times of COVID-19, the mobilisation and empowerment of any and all refugee groups, including the Chin, is of utmost importance. This is particularly true since the pandemic has forced borders between countries to be more firmly drawn, with each country focusing on the welfare of its own citizens. In Malaysia, for example, refugees are able to access both free testing and free treatment for the virus, if they are infected – a progressive mandate by the country's Ministry of Health – but many may still fear seeking help due to the fact that they are technically illegally residing in the country (Fishbein 2020). This is dangerous on many fronts – both to the refugee community itself, as the virus could spread uncontrollably within their ranks, and to the broader Malaysian community who interact with the refugee community through a variety of channels. Given that COVID-19 is easily transferable, the question of whether or not refugees would even seek treatment, or do so too late, is of great concern.

Many countries, including Malaysia, have witnessed the rise of xenophobia and nationalism, including through an outpouring of anti-immigrant hate speech on social media and the creation of multiple online petitions calling for the deportation of Rohingya refugees (Sukumaran 2020). From a protection perspective, this sentiment could force even more refugees into hiding, and dissuade them from turning to health authorities at a time where they should be more visible in order to aid public health interventions, such as contact tracing. Malaysia has so far witnessed three major immigration raids during the first two weeks of May, marking a reversal of the earlier promise to not arrest undocumented migrants (Dzulkifly 2020;

The Straits Times 2020). The pandemic has also been used to legitimise the government policy of pushing back refugee boats (Amnesty International 2020). Given the rise of anti-immigrant sentiment at the community level, and the compounded challenges posed by the pandemic, the community and its leaders must be empowered to take charge, coax their community members out of hiding, and seek medical help if needed. Refugees must be empowered to make choices for themselves. In these times, refugee leaders must be given all information possible in order for them to help their communities make good decisions that will positively affect their communities at large. In order to mobilize a public health response within the community to the virus, there must, at first, be an acknowledgement of the personhood of refugees and their ability to take charge of their own destiny – not as a group that are merely victims to their situation, but valuable agents of change.

The authors

Hui Yin Chuah is a Senior Research Associate at the Asia School of Business. She holds graduate degrees from London School of Economics and Universiti Malaya. Prior to joining ASB, she was a research assistant at Lee Kuan Yew School of Public Policy, National University of Singapore and had worked on research projects related to international trade, small and medium enterprises, and economic competitiveness in ASEAN region.

Melati Nungsari is an Assistant Professor of Economics at the Asia School of Business and a Research Affiliate at MIT Sloan School of Management. She is an applied microeconomist specializing in industrial organization, public and labor economics, market design, and economic education. Her research focuses on two-sided matching platforms with search, public policy issues such as the labor market integration of refugees in Malaysia, policy design for retirement markets in Chile and Malaysia, entrepreneurship amongst low-income populations, labor market discrimination, and pedagogy in economic education.

Bibliography

AMNESTY INTERNATIONAL (2020) COVID-19 No excuse to Sacrifice Rohingya Lives at Sea. Available from: <https://www.amnesty.org/en/latest/news/2020/04/covid-no-excuse-sacrifice-lives-more-rohingya-seek-safety-boat/> (Created 17 April 2020, accessed 13 May 2020).

ANDERSON, M.B. (1994) 'People-oriented Planning at Work: Using POP to Improve UNHCR Programming', Geneva, UNHCR.

ANDERSON, M.B., HOWARTH, A. M. AND OVERHOLT, C. (1992) 'A Framework for People-Oriented Planning in Refugee Situations Taking Account of Women, Men and Children', Geneva, UNHCR.

BEDI, R.S., CHOW, S. and YEAP, J. (2018) Chin refugees protest at UNHCR offices over UN decision on refugee status, The Star Online. Available from: <https://www.thestar.com.my/news/nation/2018/06/29/chin-refugees-protest-at-unhcr-offices-over-un-decision-on-refugee-status/#5BuVJvOtqeI2jVMX.99> (Created 29 June 2020, accessed 4 May 2020).

BRONEE, S.A. (1993) 'The History of the Comprehensive Plan of Action Focus on the Comprehensive Plan of Action', International Journal of Refugee Law 4: 534–543.

CHIMNI, B.S. (1998) 'The Geopolitics of Refugee Studies: A View from the South', Journal of Refugee Studies, 11(4): 350–374.

CHIN COMMUNITY LEADER (2019) Interview by Hui Yin Chuah, 2019.

CHOW, S. (2019) Myanmar welcomes return of ethnic Chin refugees, says UNHCR, The Star Online. Available from: <https://www.thestar.com.my/news/nation/2019/02/28/myanmar-welcomes-return-of-ethnic-chin-refugees/> (Created 28 February 2020, accessed 5 May 2020).

CHOW, S. and YEE, E. (2019) 'Govt not "officially notified" of UNHCR Chin refugee policy', The Star Online. Available from: <https://www.thestar.com.my/news/nation/2019/02/23/govt-not-officially-notified-of-unhcr-chin-refugee-policy/> (Created 23 February 2020, accessed 5 May 2020).

DAVIES, S.E. (2006) 'The Asian Rejection?: International Refugee Law in Asia', Australian Journal of Politics and History 52(4): 562–575.

DEWANSYAH, B. and HANDAYNI, I. (2018) 'Reconciling Refugee Protection and Sovereignty in ASEAN Member States: Law and Policy Related to Refugee in Indonesia, Malaysia and Thailand', Central European Journal of International and Security Studies 12(4): 473–485.

DON, Z.M. and LEE, C. (2014) 'Representing immigrants as illegals, threats and victims in Malaysia: Elite voices in the media', Discourse & Society 25(6):687–705.

DZULKIFLY, D. (2020) 'Women, children among those carted off in lorries as Immigration Dept raids migrants in Selayang Baru', Malay Mail. Available from: < https://www.malaymail.com/news/malaysia/2020/05/14/women-children-among-those-carted-off-in-lorries-as-immigration-dept-raids/1866148> (Accessed 14 May 2020).

FISHBEIN, E. (2020) 'Fear keeps refugees in Malaysia at home amid coronavirus lockdown', Aljazeera. Available from: <https://www.aljazeera.com/news/2020/04/fear-refugees-malaysia-home-coronavirus-lockdown-200406014514452.html> (Accessed 12 May 2020).

HATHAWAY, J.C. (1993) 'Labelling the "Boat People": The Failure of the Human Rights Mandate of the Comprehensive Plan of Action for Indochinese Refugees', Human Rights

Quarterly 15(4): 686–702.

HUMAN RIGHTS WATCH (2019) 'World Report 2019: Events of 2018', HRW.

INSTITUTE FOR SECURITY & DEVELOPMENT POLICY (2015) Myanmar's Nationwide Ceasefire Agreement, Institute for Security & Development Policy: 9.

KAUR, K. (2007) 'Media reporting on refugees in Malaysia', UNEAC Asia Papers (13): 8–12.

KHOSRAVINIK, M. (2010) 'The representation of refugees, asylum seekers and immigrants in British newspapers: A critical discourse analysis', Journal of Language & Politics 9(1): 1–28.

KNEEBONE, S. (2016) 'ASEAN and the Conceptualization of Refugee Protection in Southeasten Asian States', in Abass, A. and Ippolito, F. (eds) Regional Approaches to the Protection of Asylum Seekers: An International Legal Perspective, New York, Routledge.

LEE, C. (2016) Refugee Representation in Malaysia: A Study of Media Representations and Personal Narratives. Universiti Malaya.

LEGO, J. (2018) 'Making Refugees (Dis)Appear: Identifying Refugees and Asylum Seekers in Thailand and Malaysia', Austrian Journal of South-East Asian Studies 11(2):183–198.

LIAN, P.S. (2018) 'Chin Diaspora and Their Social Networks in Thailand: Implications for Development in Myanmar', 250-263 in Graduate Studies in the Disruptive Society: Innovation in Development Studies, Human Rights, and Resource Politics. The International Conference for 70th Anniversary of Faculty of Political Science, Chulalongkorn University, Thailand.

LYNN, N.H. (2017) 'Panglong, then and now, and the promise of peace', Frontier Myanmar. Available from:< https://frontiermyanmar.net/en/panglong-then-and-now-and-the-promise-of-peace> (Accessed 4 May 2020).

MALKKI, L.H. (1996) 'Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization', Cultural Anthropology 11(3): 377–404.

MCCONNACHIE, K. (2018) 'Securitization and community-based protection among Chin refugees in Kuala Lumpur', Social & Legal Studies 28(2):158–178.

MCDONOUGH, M. (2019) 'Fundamental and Durable? An Understanding of Best Practices for Cessation in the Case of Chin Refugees from Myanmar', Oxford Monitor of Forced Migration 8(1): 24–31.

R.AGE (no date) Refugees No More, R.age (online). Available from: <https://www.rage.com.my/refugeesnomore/> (Accessed 13 March 2020).

RAJARAM, P.K. (2002) 'Humanitarianism and Representations of the Refugee', Journal of Refugee Studies 15(3): 247–264.

ROBINSON, W.C. (2004) 'The Comprehensive Plan of Action for Indochinese Refugees, 1989–1997: Sharing the Burden and Passing the Buck', Journal of Refugee Studies 17(3): 319–333.

SHIVAKOTI, R. (2017) 'ASEAN's Role in the Rohingya Refugee Crisis', Forced Migration Review 56: 75–77.

SUKUMARAN, T. (2020) 'As Malaysia battles the coronavirus, its Rohingya refugees face a torrent of hate', South China Morning Post. Available from: <https://www.scmp.com/week-asia/politics/article/3081958/malaysia-battles-coronavirus-its-rohingya-refugees-face-torrent> (Created 28 April 2020, accessed 13 May 2020).

THAR, C. (2018) 'NCA signers seek united stand on federal union', Myanmar Times. Available from: <https://www.mmtimes.com/news/nca-signers-seek-united-stand-federal-union.html> (Accessed 18 March 2020).

THE CHIN UP PROJECT (no date). Available from: <https://chinup.my/> (Accessed 13 March 2020).

THE STRAITS TIMES (2020) 'Malaysia detains hundreds of foreign workers in major raid on KL Wholesale Market' Available from: <https://www.straitstimes.com/asia/se-asia/malaysia-detains-hundreds-of-foreign-workers-in-major-raid-on-kl-wholesale-market> (Created 11 May 2020, accessed 13 May 2020).

TIAM, C.K.H. (2010) 'The Chin Diaspora: A Great People Resource', Torch Trinity Journal, 13(2): 207–217.

TOWLE, R. (2006) 'Processes and Critiques of the Indo-Chinese Comprehensive Plan of Action: An Instrument of International Burden-Sharing?', International Journal of Refugee Law 18(3–4): 537–570.

UN GENERAL ASSEMBLY (2010) Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana. A/HRC/13/48. Geneva. Available from: <https://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.48_en.pdf>.

UN GENERAL ASSEMBLY (2018) Report of the Special Rapporteur on the situation of human rights in Myanmar. A/HRC/37/70. UN Human Rights Council. Available from: <https://undocs.org/A/HRC/37/70> (Accessed 13 March 2020).

UNHCR (1996) Voluntary Repatriation: International Protection Handbook. UNHCR.

UNHCR (2018) Figures at a Glance in Malaysia. Available from: <https://web.archive.org/web/20180724032840/http://www.unhcr.org/en-my/figures-at-a-glance-in-malaysia.html> (Accessed 16 March 2020).

WONGCHA-UM, P. and THEPGUMPANAT, P. (2019) 'ASEAN must not turn a blind eye to plight of Rohingya, groups say', Reuters. Available from: <https://www.reuters.com/article/us-asean-summit-rohingya/asean-must-not-turn-a-blind-eye-to-plight-of-rohingya-groups-say-idUSKCN1TK0NT> (Created 19 June 2019, accessed 12 May 2020).

Constructing a Protracted Sanctuary Status for Refugees

Carrie Perkins

Over the last five years, Myanmar has undergone drastic governmental changes including a democratic election and a landmark national ceasefire agreement. As a result, there has been increased pressure to begin the repatriation of approximately 100,000 refugees who have been living along the Thai-Myanmar border for the past three decades. However, ethnographic fieldwork conducted as part of this study in 2017 reveals that many refugees have voiced resistance to return and a desire to remain within Thailand. In light of Thailand's growing support for regularizing labor migrants, this article argues that it is an opportune time to introduce a new solution for refugees who have lived in Thailand for extended periods of time. Building upon programs that promote self-reliance pending return, this article argues for the implementation of a new category of status termed "Protracted Sanctuary Status" (PSS) to provide protection, freedom of movement and the right to work for refugees along the border in Thailand.

Introduction

While much of the world was focused on the widespread refugee crisis unfolding in the Mediterranean in the summer of 2015, another refugee situation along the Southeastern border of Myanmar and Thailand was surpassing its third decade in existence (UNHCR 2019). Since 1984, ethnic minorities in Myanmar, such as the Karen, Karenni, Shan and Chin, have fled into Thailand as a result of intense persecution and civil war (TBC 2004). This has resulted in one of the most protracted refugee situations in history and the construction of nine refugee camps inside Thailand just along the Thai-Myanmar border.

However, for the past several years, change has been brewing in Myanmar as reforms such as the revamping of the Foreign Investment Law in 2012 and the 2015 November general election have signalled a new era for the country. In the context of this sweeping optimism, support grew within Thailand and Myanmar for attempting to finally resolve the protracted refugee situation along their shared border that had plagued both governments for more than three decades.

The confluence of a potential political solution with a state of decreased humanitarian funding for refugees created both the will and the necessity to launch a formal repatriation plan (Naing 2017). In 2015, UNHCR released a report titled Strategic Roadmap for Voluntary Repatriation of Refugees from Myanmar in Thailand. By June 2016, an informal agreement between UNHCR, Thailand and Myanmar had been reached to facilitate returns twice a year via the creation of 'Voluntary Repatriation Centers' in each of the nine camps along the border (UNHCR 2019).

Shortly after this time, I began my doctoral research in the summer and fall of 2017, while living inside Mae La refugee camp, one of the nine refugee camps along the Thai-Myanmar border. In this article, I will address how broad

changes within Myanmar and the introduction of a voluntary repatriation program inside the camps resulted in both refugees' resistance to return and the need for a new legal status for refugees in Thailand.

Changing tides: The push for voluntary repatriation of refugees in Thailand

In the late summer of 2016, the construction of the Voluntary Repatriation Center (VRC) created somewhat of a watershed moment for many refugees living in Mae La refugee camp. Prior to the erection of this physical embodiment of the promise for a safe and orderly return to Myanmar, the idea of repatriation had existed mostly as a rumour and was treated with scepticism by refugees. However, the steady decreases in humanitarian funding, ad-hoc head counts, and the official statements released by UNHCR, the Royal Thai Government and the Government of Myanmar (UNHCR 2015) all signalled that this time something was different. The presence of the building in Mae La camp provided irrefutable physical proof of this fact.

Further exacerbating the uncertainty surrounding repatriation were recent cuts in humanitarian funding and declining international support for maintaining the camps along the Thai-Myanmar border (TBC 2017). As such, during my fieldwork, refugees reported feeling pressured to return due to reductions in food rations and declining living standards in the camps. They often interpreted this as an unofficial agency strategy designed to push people out. As one refugee in Mae La explained:

They want us to leave. They don't want to let us live here anymore. So they have taken away the rations to force us to go. They have figured out that this is the way they can do it and not have to say they don't care about us refugees. I don't know what we will do (Perkins, Interview, 14 August 2017).

There are currently three modes of return that are used to describe the status of voluntary repatriation on the Thai-Myanmar border (UNHCR 2015; Moretti 2015). These are: (1) spontaneous returns, which are organized by individual refugees themselves without UNHCR's direct engagement or support before or during the movement (2) facilitated returns, which involve UNHCR's active engagement including protection counselling, informational sessions prior to departure, travel arrangements and financial assistance for initial reintegration and (3) promoted returns, which occur within a formalized framework between the country of origin, country of asylum and UNHCR when the overall conditions throughout Southeast Myanmar are conducive to return for the vast majority of refugees.

From 2012 until today, approximately 18,000 refugees are believed to have spontaneously returned to their homes in Southeastern Myanmar without government assistance (TBC 2018). The exact figures are difficult to ascertain, as many people do not report their departures for fear that they will lose their status as a registered refugee in camp (thus also losing access to food rations and housing) (TBC 2018). The research conducted for this study shows that many refugees have returned on what have been termed "go-and-see" visits to assess the situation for themselves. While these trips are encouraged and sometimes even funded by UNHCR, many are done informally between community networks.

photo by Carrie Perkins

The occurrence of informal spontaneous return is noteworthy in that it speaks to the much broader issue of decision-making and autonomy on the part of the refugee. By returning through their own informal networks, they disrupt the existing hegemonic power structures that have governed their 'refugeehood'. In this way, refugees reclaim control over their lives while shedding an identity that was interrelated with dependency on foreign aid. Spontaneous return may therefore be the most natural form of return with the best rates of success.

Unfortunately, these types of returns are difficult to track, can often be circular in nature, and ultimately have not been significant enough to impact the overall population numbers in the Thai camps. Furthermore, in nearly every interview conducted with refugees inside Mae La

camp, independent return was never mentioned as a practical solution. Rather, if faced with an imminent camp closure, the most common option cited was the desire to stay in Thailand. Most stated that they would only consider repatriation if there were no other options, as many were still concerned with ongoing violence and ethnic persecution in Southeastern Myanmar.

Among the international refugee regime, voluntary repatriation has still generally been seen as the most cost-effective, logistically efficient and logical conclusion to a mass displacement of people. However, one of the most salient outcomes from this research along the Thai-Myanmar border was the voice of refugees who challenged us to rethink repatriation as an optimal solution. Rather, refugees often spoke of regaining independence and self-sufficiency rather than occupying a specific physical territory. In this way, many refugees voiced their preference to stay in Thailand in order to find jobs, build a new life, and enjoy freedom of movement.

Towards a protracted sanctuary status for refugees in Thailand

The way in which Thailand will ultimately resolve the protracted refugee situation along its Western border with Myanmar may have long lasting implications for global refugee policy. Thailand has a unique opportunity to demonstrate to the world the power of transforming a perceived burden into an economic benefit while also maintaining a commitment to humanitarian principles.

Over the past 15 years, Thailand has organized seven regularization campaigns for labour migrants from Laos, Cambodia, or Myanmar. This has resulted in the registration of 2.4 million migrant workers and incentivized employers to continue the effort (Moretti 2015; CSEAS 2018). Thailand's growing support for regularizing labour migrants indicates it may be an ideal time to introduce a new solution for refugees who have lived in Thailand for extended periods of time.

Within this vein and as a way to build upon programs that promote self-reliance pending return, the implementation of a new category of status termed "Protracted Sanctuary Status" (PSS) for those living as refugees along the border makes for an optimal solution for protracted refugeees in Thailand. This status would provide refugees in Thailand the right to work and the right to stay in the country without fear of deportation; two rights not currently accessible to them outside of refugee camps.

The framework for Protracted Sanctuary Status (PSS) would be similar to that of a "Temporary Protected Status" (TPS) in the United States, which provides freedom of movement and the right to work for foreign nationals already in the United States from countries experiencing armed conflict, natural disaster, or other extraordinary circumstances that prevent their safe return. As Wilson (2018) noted in her recent analysis of TPS:

> TPS is … the statutory embodiment of safe haven for foreign nationals within the United States who may not meet the legal definition of refugee or asylee but are nonetheless fleeing—or reluctant to return to—potentially dangerous situations. (Wilson 2018: 2)

Nevertheless, there are a few key differences that should exist between

the TPS model and the proposed PSS model that lie primarily in the guarantee of a protected status for refugees from Myanmar for a period of no less than 5 years , which may be renewable. Other relevant categories to address include: eligibility, allowed length of stay, required documentation, employment authorization, travel restrictions, eligibility for public assistance, and whether PSS would offer a path to citizenship. The qualifications for each category are described in detail below:

- Eligibility: For forced migrants residing in Thailand for five years or longer originating from a country (1) experiencing ongoing armed conflict that poses a serious threat to personal security and safety; (2) cannot handle the return of nationals due to an environmental disaster; or (3) extraordinary conditions in a foreign state that prevent migrants from safely returning.
- Allowed Length of Stay: The Ministry of Foreign Affairs of the Kingdom of Thailand will grant a period of stay for 5 years, after which the resident will need to reapply for PSS, request a transfer of status to regularized migrant worker (RMW), or apply for Permanent Resident Status (PRS).
- Required Documentation: PSS applications must include either (1) identity documents from the country of origin; (2) UNHCR identity card; Or (3) identification issued by the Thai Provincial Admission Board. Additionally, the applicant must provide evidence of their continuous physical presence in Thailand (e.g. ration receipts from refugee camp administration, household registration documents).
- Employment Authorization: PSS holders will receive employment authorization for the duration of their granted period of stay.
- Travel Restrictions: PSS holders may be required to obtain permission from the governor of the province they currently reside in to travel abroad. Restrictions may be implemented on the amount of time allowed outside of Thailand.
- Public Assistance: Regularized Migrant Workers (RMW) and Protracted Sanctuary Status (PSS) holders are required to pay 2,200 Thai baht (THB) each year to obtain health insurance. Disability assistance will be available. PSS holders may also apply for free Thai Language Classes or Job Readiness Training if available in their province of residence.
- Path to Citizenship: An individual granted PSS status may apply for Permanent Resident Status after five years, and may apply for citizenship after three years as a Permanent Resident.

Finally, the creation of a Protracted Sanctuary Status recognizes that implementing regularized labour migration as a component of a durable solution is crucial and that adequate protection must be maintained while acknowledging resistance to return.

Conclusion

This article has discussed how the broad governmental changes within Myanmar over the past years have led to a push for the voluntary repatriation of refugees in Thailand. However, field data shows that there is resistance to return. Although Myanmar has made drastic changes over the last several years--including a democratic election and a landmark national ceasefire agreement--much more remains to be done to overcome

the barriers that have prevented return for the past three decades. As such, the existence of a new legal status for refugees in Thailand termed "Protracted Sanctuary Status" would provide both protection and the right to work for refugees in Thailand within a recognizable framework. Through the implementation of this status, Thailand may effectively offer an alternative pathway through which individuals in protracted refugee situations can move from camps to communities.

The author

Carrie Perkins is a cultural anthropologist specializing in refugee studies and international development. Her research has focused on experiences of exile in protracted refugee situations as well as rethinking policies concerning repatriation. Carrie has conducted research in Mae La refugee camp on the Thai-Myanmar border, Domiz refugee camp in Iraqi Kurdistan, and with resettled refugees in the United States from Myanmar, Bhutan, South Sudan and the Democratic Republic of the Congo. She recently completed her Ph.D. at Southern Methodist University with her doctoral work: Rethinking Repatriation: Karen Refugees on the Thai-Myanmar Border (2019).

Bibliography

CENTER FOR SOUTHEAST ASIAN STUDIES (CSEAS) (2018) 'Protection of Human Rights and Labour Migration for Employment Purpose Across ASEAN', January 18.

CHING, N. (2016) With Sanctions Eased, US Sees Economic Potential in Myanmar (online) VOA News. Available from: <https://www.voanews.com/usa/sanctions-eased-us-sees-economic-potential-myanmar> (accessed 12 January 2019).

MORETTI, S. (2015) 'The Challenge of Durable Solutions for Refugees at the Thai–Myanmar Border', Refugee Survey Quarterly 34: 70–94.

NAING, S. Y. (2017) Donors Cut Financial Support to Refugee Camp Workers (online) The Irawaddy. Available from: <https://www.irrawaddy.com/news/burma/donors-cut-financial-

support-refugee-camp-workers.html> (accessed 10 April 2020).

THE BORDER CONSORTIUM (TBC) (2004) 'Between Worlds: Twenty Years on the Border' (online). Available from: <https://www.refworld.org/docid/4cb2c3ee2.html>.

THE BORDER CONSORTIUM (TBC) (2017) 'TBC Strategy for 2017-2019' (online). Available from: <https://www.theborderconsortium.org/media/84542/Strategic-Plan-2017-2019-En.pdf> (accessed 10 April 2020).

THE BORDER CONSORTIUM (TBC) (2018) 'TBC Annual Report 2018' (online). Available from: <https://www.theborderconsortium.org/media/123447/TBC-Annual-Report-2018-ENG.pdf> (Accessed 10 April 2020).

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR) (2015) 'Strategic Roadmap for Voluntary Repatriation of Refugees from Myanmar in Thailand (2015-2017)' (online) Available from: <https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs21/UNHCR-2015-03-Strategic_Road_Map_on_Voluntary_Repatriation-en-tpo.pdf> (accessed on 15 March 2020).

UN HIGH COMMISSIONER FOR REFUGEES (UNHCR) (2019) 'After decades in Thailand, Myanmar refugees head home' (online). Available from: <https://www.unhcr.org/en-us/news/stories/2019/7/5d3822dc4/decades-thailand-myanmar-refugees-head-home.html> (accessed 10 January 2020).

WILSON, J. (2018) 'Temporary Protected Status: Overview and Current Issues' Congressional Research Service. (p.2) 7-5700: RS20844 (online) Available from: <https://fas.org/sgp/crs/homesec/RS20844.pdf> (accessed Jan 10 2020).

Factors Influencing the Decision of Returning to Rakhine State: The Case of the Rohingya in Malaysia

Hui Yin Chuah, Sam Flanders, and Melati Nungsari

Introduction

Voluntary repatriation is one of three durable solutions proposed for providing long-term solutions to refugee integration. The pull to return home can oftentimes be so strong that it sometimes supersedes the appeal of being resettled to a developed country. When asked to choose between resettlement which would entitle her to citizenship and civil rights, and repatriation, a respondent answered without hesitation that she would return, because "Why not? It is my country." This desire is mainly fuelled by the romanticized notion of "homecoming" which is presumed to be applicable to all refugees (Al-Rasheed, 1994)(Al-Rasheed 1994). Yet a one-size-fits-all approach that does not recognise the diverse nature of displacement is bound to fail. By studying the case of Rohingya refugees in Malaysia, we argue that repatriation is a complicated process, influenced by a diverse range of factors divided into three main categories: security, livelihood and social integration.

The Rohingya are an ethnoreligious minority from Rakhine, Myanmar that have been rendered stateless. Their presence in the region can be traced as far back as 9th or 10th centuries A.D. (Luce, 1986; Smith and Allsebrook, 1994) as cited in Ibrahim (2016, p. 5). Their displacement was fuelled by differences in religion and ethnicity, as many Burmese Buddhists considered the Rohingya to be Bengali. In 1982, the Myanmar Citizenship Law rendered the Rohingya stateless *en masse* and led to sporadic waves of forced migration thereafter.

Malaysia hosts the greatest number of Rohingya refugees in Southeast Asia[1]. Being a non-signatory to the 1951 Refugee Convention and 1967 Protocol, refugees in Malaysia are not legally recognized and cannot access any public resources. Despite this, they are not aggressively targeted by Malaysian law enforcement. The formal stance of the government is that Malaysia serves as an intermediate destination for refugees before they get resettled or repatriated. However, peace restoration remains a distant goal and resettlement worldwide has slowed in the recent years. Only 2% of the refugee population in Malaysia was resettled in 2018 (UNHCR, 2020b). The issue of how to deal with this protracted refugee situation is thus, of increasing importance. Policies related to refugees are often imposed top-down and neglect the voices of individuals.

Data Collection and Methodology

This paper draws from utilised micro-level survey data collected from a sample of 310 Rohingya refugee workers in the construction industry in 2018. More than 50% of the survey respondents had never received formal education

1 As of February 2020, there are 101,010 (56%) Rohingya out of total 178,990 refugees and asylum seekers registered in Malaysia (UNHCR 2020a).

and 74% of the respondents could not read Rohingya. Thus, this compelled the authors to conduct the survey in the form of a semi-structured interview.[2] However, the survey respondents often spoke several languages besides Rohingya – 98% spoke at least a small amount of Bahasa Malaysia.[3] Survey respondents were asked to rate how they felt about several statements using a visual Likert scale. In the following sections, these responses are classified into the three factors influencing return and explore the correlations of these variables to the responses on the statement "Someday in the future, I want to return to Myanmar".[4] The correlation matrix is presented in the appendix (Table 1).

This study exclusively focuses on adult male Rohingya who worked on construction sites[5] and hence does not represent the entire refugee population in Malaysia or the female refugee experience. Furthermore, the sample might be slightly over-representative of more recent arrivals (i.e. mid 2010s and later) since subjects selected for interviews were generally refugees waiting at the UNHCR office in Malaysia for either status determination or renewal of refugee status. Although refugees living around Kuala Lumpur shared anecdotally that there is a significant number of refugees who have yet to secure an appointment with UNHCR, we have no reason to believe that this fact significantly biases the results in this paper. In fact, given the hidden nature of the refugee population, we argue that our sampling methodology is sufficient to identify overarching themes common to the working Rohingya population, who are almost overwhelmingly male construction workers.

Analysis and Findings

Security

Approximately 66% of the respondents intended to return to Myanmar someday, of which most of them qualified their answer with the phrase "only if it's safe for me to go home". This finding is consistent with the existing literature that shows that security is one of the most important factors determining the repatriation decision of refugees (De Andrade and Delaney, 2001; Muggeridge and Dona, 2006). Respondents were also asked how many times they had been interrogated by the police and if they considered their family and friends to be safe in Malaysia. Interestingly, police interrogation positively correlated with the intention to return and had a negative correlation between feeling safe and intention to return, implying that despite having to live in fear in Malaysia, most refugees do not intend to return to Myanmar. A similar conclusion is established by Crisp (1984), who found that refugees are less likely to return despite facing constant harassment in the host country. This indicates that the conditions in both country of origin and host country are important in the repatriation decision. It is also worth mentioning that almost half of the respondents acknowledged they had paid a bribe to public officials at least once, demonstrating the frequency of bribery and corruption.

2 The survey questionnaire was read out in Bahasa Malaysia or Rohingya, depending on the respondents. A Rohingya interpreter was utilised in cases when the respondents could not understand Bahasa Malaysia.
3 Malaysia's national language.
4 This was measured in 5-point visual Likert Scale with the following options: strongly disagree, disagree, neutral, agree and strongly agree.
5 Males constitute 75% of the total Rohingya population in Malaysia and 47% of employed adult Rohingya work in construction industry, according to unpublished UNHCR data.

Economic Opportunities

Besides security, the availability of livelihood opportunities was also identified as a crucial factor influencing the decision to return (Basok, 1990; De Andrade and Delaney, 2001; International Refugee Rights Initiative, 2008). Refugees who earned higher incomes[6] and self-reported as having 'enough money' to get by in Malaysia tended to not want to return to Myanmar. Many had paid smugglers large amounts of money to be smuggled out of Myanmar or Bangladesh, and had to work off their debts in an intermediate country (usually Thailand) before being smuggled via land or boat into Malaysia (Szep and Grudgings, 2014; Wake and Cheung, 2016). [7]

According to the responses to the statement "If I work hard and do a good job at work, I can get a higher salary", workers who believed in income mobility had lower intention to return.[8] One of the respondents remarked that, "Now, I'm doing everything – plaster, ceiling, tiles. If I do my job well, I can get paid more." This sentiment, however, may only be applicable to construction workers who are skilled labourers with skills that are transferable worldwide, and not to low-skilled refugee workers, such as those who work washing dishes at restaurants. Finally, workers who reported favourable working conditions, such as having been paid on time by employers, expressed less intention to return. This indicates that treatment received at work in the host country matters as much as access to economic opportunities.

Social Ties and Relationships

The repatriation decision also depends on the extent of local integration in the country of asylum and social ties to home country. A study by Rogge and Akol (1989) found that refugees who have acculturated to their host country are less likely to repatriate. Strong ties to home communities, on the other hand, encourage repatriation (Barakat, 1973). Consistent with these findings, interviews showed a negative relationship between the Likert scale response to the statement "I feel at home in Malaysia" and intention to return. There is also a positive association between optimism about life in Malaysia and the intention to return. This is perhaps a function of general optimism which applies as much to life in Malaysia as it does to the possibility of life in Myanmar. Refugees who interact regularly with Malaysians[9] are also significantly less likely to want to return to Myanmar. Finally, a question was included to understand remittances as a proxy for social ties to family members outside of Malaysia (Philpott, 1968; Grieco, 2004; Cohen, 2011). On average, respondents reported sending back about a third of their monthly pay. Further, the study shows the stronger ties to those back home, as reflected by higher remittances, leads to a higher intention to return.

6 On average, respondents earned RM1,415 monthly, which is slightly higher than the national minimum wage of RM1,050.

7 This was based on the response to the statement "I have enough money to get by in Malaysia" with a 5-point visual Likert Scale that ranged from strongly disagree to strongly agree.

8 This statement and the answer to it was intended to measure a sense of income progression and the respondent's perceived relationship between working hard and a higher income – in a few instances, the interviewer had to explain the sentiment behind the statement in order for respondents to confidently provide an answer.

9 This was measured in 4-point Likert Scale with options: never, rarely, often, every day.

Conclusion

The study has shown that the decision to return by Rohingya refugees involves an interplay of three key factors: security, economic opportunities and social ties. Despite the fact that many Rohingya refugees want to return home, they are not able to due to greater security concerns in their country of origin. Many of them are willing to bear the risk of being arrested and prefer to stay in Malaysia, where the substantial informal economy has offered better economic opportunities for them. This might be the strongest pull factor leading to a lower intention to return home. Many Rohingya refugees have also assimilated well into Malaysian society within a relatively short period of time – they are economically self-sufficient, share the same religion as the majority of Malaysians, and most are able to converse in the local language. At the same time, many of them still maintain close ties with their family outside of Malaysia, contributing to a yearning for home.

The authors

Hui Yin Chuah is a Senior Research Associate at the Asia School of Business. She holds graduate degrees from London School of Economics and Universiti Malaya. Prior to joining ASB, she was a research assistant at Lee Kuan Yew School of Public Policy, National University of Singapore and had worked on research projects related to international trade, small and medium enterprises, and economic competitiveness in ASEAN region.

Sam Flanders is an Assistant Professor of Economics at the Asia School of Business and an International Faculty Fellow at MIT. His research interests include applied microeconomic theory, industrial organization, and empirical microeconomics. His research focuses on matching theory--the study of how firms and workers, schools and students, and romantic partners, among others, match to one another. Dr. Flanders received his Ph.D. in Economics from the University of North Carolina, Chapel Hill, where he is a member of the Royster Society of Fellows. Previously, he was an Assistant Professor at the Mihaylo College of Business and Economics, CSUF.

Melati Nungsari is an Assistant Professor of Economics at the Asia School of Business and a Research Affiliate at MIT Sloan School of Management. She is an applied microeconomist specializing in industrial organization, public and labor economics, market design, and economic education. Her research focuses on two-sided matching platforms with search, public policy issues such as the labor market integration of refugees in Malaysia, policy design for retirement markets in Chile and Malaysia, entrepreneurship amongst low-income populations, labor market discrimination, and pedagogy in economic education.

Bibliography

AFP (2020) 'UN Security Council to discuss violence, coronavirus in Myanmar', *AFP*, 12 May. Available at: https://www.afp.com/en/news/15/un-security-council-discuss-violence-coronavirus-myanmar-doc-1rd7um2 (Accessed: 12 May 2020).

AL-RASHEED, M. (1994) 'The Myth of Return: Iraqi Arab and Assyrian Refugees in London', *Journal of Refugee Studies*, 7(2/3), pp. 199–219.
ALTINDAG, O., BAKIS, O. and ROZO, S. (2019) 'Blessing or Burden? The Impact of Refugees on Businesses and the Informal Economy', *Social Science Research Network*.

AMNESTY INTERNATIONAL (2017) *"Caged without a Roof": Apartheid in Myanmar's Rakhine State*. London: Amnesty International. Available at: https://www.amnesty.org/download/Documents/ASA1674842017ENGLISH.PDF.

BARAKAT, H. I. (1973) 'The Palestinian Refugees: An Uprooted Community Seeking Repatriation', *International Migration Review*, (2), pp. 147–162.

BASOK, T. (1990) 'Repatriation of Nicaraguan Refugees from Honduras and Costa Rica', *Journal of Refugee Studies*, (4), pp. 281–297.

CAMPBELL, E. H. (2006) 'Urban Refugees in Nairobi: Problems of Protection, Mechanisms of Survival, and Possibilities for Integration', *Journal of Refugee Studies*, 19(3), pp. 396–414.

COHEN, J. H. (2011) 'Migration, Remittances, and Household Strategies', *Annual Review of Anthropology*. Annual Reviews, 40(1), pp. 103–114. doi: 10.1146/annurev-anthro-081309-145851.

COLIC-PEISKER, V. (2005) '"At Least You're the Right Colour": Identity and Social Inclusion of Bosnian Refugees in Australia', *Journal of Ethnic and Migration Studies*. Routledge, 31(4), pp. 615–638. doi: 10.1080/13691830500109720.

CRISP, J. (1984) 'The politics of repatriation: Ethiopian refugees in Djibouti, 1977–83', *Review of African Political Economy*. Routledge, 11(30), pp. 73–82. doi: 10.1080/03056248408703585.

DE ANDRADE, J. H. F. and DELANEY, N. B. (2001) 'Minority Return to South-Eastern Bosnia and Herzegovina: A Review of the 2000 Return Season', *Journal of Refugee Studies*, 14(3), pp. 315–330. doi: 10.1093/jrs/14.3.315.

GERVER, M. and MILLAR, K. (2013) 'The Gendered Refugee Experience', *St Antony's International Review*. St. Antony's International Review, 9(1), pp. 2–10.

GRIECO, E. (2004) 'Will Migrant Remittances Continue Through Time? A New Answer to an Old Question', *International Journal on Multicultural Societies*, 6(2), pp. 243–252.

HAAR, R. J. *et al.* (2019) 'Documentation of human rights abuses among Rohingya refugees from Myanmar', *Conflict and Health*, 13(1), p. 42. doi: 10.1186/s13031-019-0226-9.

HARB, M., KASSEM, A. and NAJDI, W. (2018) 'Entrepreneurial Refugees and the City: Brief Encounters in Beirut', *Journal of Refugee Studies*, 32(1), pp. 23–41.

IBRAHIM, A. (2016) *The Rohingyas: Inside Myanmar's Hidden Genocide*. London: Hurst.

INTERNATIONAL REFUGEE RIGHTS INITIATIVE (2008) 'Going Home or Staying Home? Ending Displacement for Burundian Refugees in Tanzania', *Citizenship and Forced Migration in the Great Lakes Region Working Paper*, 1.

LUCE, G. H. (1986) *Phases of Pre-Pagan Burma: Languages and History*. New York: Oxford University Press.

MAHMOOD, S. S. *et al.* (2017) 'The Rohingya people of Myanmar: health, human rights, and identity', *The Lancet*, 389(10081), pp. 1841–1850. doi: 10.1016/S0140-6736(16)00646-2.

MUGGERIDGE, H. and DONA, G. (2006) 'Back Home? Refugees' Experiences of Their First Visit Back to the Country or Origin', *Journalof Refugee Studies*, 19(4), pp. 415–432.

PHILPOTT, S. B. (1968) 'Remittance Obligations, Social Networks and Choice Among Montserratian Migrants in Britain', *Man*. [Wiley, Royal Anthropological Institute of Great Britain and Ireland], 3(3), pp. 465–476. doi: 10.2307/2798881.

PITTAWAY, E. and BARTOLOMEI, L. (2001) 'Refugees, Race, and Gender: The Multiple Discrimination against Refugee Women', *Refuge: Canada's Journal on Refugees*, 19(6), pp. 21–32.

RICO, M., FIELDEN, L. V. and SANCHEZ, H. (2019) 'Promoting social inclusion for migrant populations through media, technologies and languages.', *JALT CALL Journal*, 15(3), pp. 3–22.

ROGGE, J. R. and AKOL, J. O. (1989) 'Repatriation: Its Role in Resolving Africa's Refugee Dilemma', *The International Migration Review*. [Center for Migration Studies of New York, Inc., Wiley], 23(2), pp. 184–200. doi: 10.2307/2546257.

SEPEHRDOUST, H. (2013) 'The impact of migrant labor force on housing construction of Iran', *Journal of Housing and the Built Environment*, 28(1), pp. 67–78.

SMITH, M. and ALLSEBROOK, A. (1994) *Ethnic Groups in Burma: Development, Democracy and Human Rights*. London: Anti-Slavery International.

SZEP, J. and GRUDGINGS, S. (2014) *Authorities implicated in Rohingya smuggling networks*. Thailand: Reuters. Available at: https://www.pulitzer.org/files/2014/international-reporting/reuters/01reuters2014.pdf (Accessed: 13 May 2020).

UNHCR (2020a) 'Figure at a Glance'. Available at: https://www.unhcr.org/figures-at-a-glance.html (Accessed: 5 January 2020).

UNHCR (2020b) *Global Focus: UNHCR Operations Worldwide-Malaysia*. Available at: http://web.archive.org/web/20200310013136/http://reporting.unhcr.org/node/2532?y=2019%23year (Accessed: 11 March 2020).

WAKE, C. and CHEUNG, T. (2016) *Livelihood strategies of Rohingya refugees in Malaysia: 'We want to live in dignity'*. London: Humanitarian Policy Group.

WANG, Z. (2020) 'The incompatibility of local economic prosperity and migrants' social integration: evidence from the Netherlands', *The Annals of Regional Science*, 64(1), pp. 57–78. doi: 10.1007/s00168-019-00953-8.

Appendix

Table 1: Spearman's rank correlation coefficients for variables mentioned in the Data and Methodology Section

Return	Feel safe	Police interrogation	Bribe	Monthly income	Enough money	Healthcare	Income mobility	Paid on time	Feel at home	Feel at home friends and family	Optimism	Interaction with locals
1.000												
0.026	1.000											
-0.124	-0.083	1.000										
-0.084	0.017	0.529	1.000									
-0.024	0.023	0.082	0.075	1.000								
-0.007	0.232	0.008	0.034	0.251	1.000							
-0.038	0.200	0.068	0.035	-0.015	0.167	1.000						
-0.146	0.169	-0.034	-0.042	0.111	0.117	0.026	1.000					
-0.034	-0.017	-0.064	0.002	0.055	0.125	0.047	0.211	1.000				
-0.067	0.343	-0.032	0.013	0.119	0.226	0.171	0.114	0.085	1.000			
-0.089	0.393	-0.019	0.003	0.097	0.317	0.199	0.010	0.083	0.650	1.000		
0.046	0.384	-0.102	-0.020	0.038	0.239	0.170	0.112	0.077	0.497	0.423	1.000	
-0.179	-0.051	0.164	0.053	0.084	0.084	0.159	0.043	0.048	0.037	0.140	0.031	1.000
0.109	0.108	-0.114	0.011	0.216	0.128	0.021	0.111	0.127	0.110	0.086	0.037	-0.082

= -0.082

Implications of India's New Citizenship Law on its Refugees

Roshni Shanker and Yuvraj Rathore

Abstract

Since December 2019, India has witnessed nation-wide protests and public outrage over its controversial Citizenship Amendment Act (CAA) which extends citizenship to migrants from Pakistan, Afghanistan and Bangladesh belonging to every major religion (Hinduism, Christianity, Buddhism, Jainism and Zoroastrianism) except Islam. Critics of the CAA have argued that its linking citizenship to religion is unconstitutional and goes against the ethos of a secular democracy. However, the Government has argued that the CAA is humanitarian in that it seeks to protect persecuted minority groups from these countries. Given that India has historically desisted from adopting a refugee law policy or acceding to the 1951 Refugee Convention, the CAA is in effect India's first refugee legislation. This paper seeks to analyse this law in light of India's historical refugee policies and argue that the law does little to expand the protection space for refugees in India.

Refugee Protection in India

India has historically demonstrated a humane approach towards refugees and asylum seekers. The country has offered asylum to various persecuted communities such as Jews and Parsis, and was internationally lauded for its management of the Bangladeshi, Tibetan and Sri Lankan refugee crises (Sarker 2017). More recently, India has extended asylum to persecuted groups from Afghanistan, Somalia, Myanmar and other conflict-affected countries (UNHCR 2017). However, India has steadfastly remained a non-signatory to the 1951 Refugee Convention (Refugee Convention), arguing that it is Euro-centric, and does not address mass influxes and protracted refugee situations (Chimni 1998). Over the years, government officials have also cited other reasons for not signing the Convention, including the porous nature of borders in South Asia, extreme poverty, and inadequate resources (Manuvie 2019). However, given that India continues to host around 210,000 refugees (UNHCR 2020), it is not clear why the country has not developed a domestic framework for asylum management. India's asylum policies have been largely *ad hoc* as they are influenced by the political interests of the government of the day (Acharya 2016). This has resulted in different refugee groups being accorded differential rights to the extent that they do not have access to the same asylum processes or documentation. For example, refugees coming from neighbouring countries (except Myanmar) are directly assisted by the Indian government and are issued government documentation, such as residence permits, refugee cards and stay visas, whereas those coming from non-neighbouring countries and Myanmar are assisted by the office of the UN High Commissioner for Refugees (UNHCR) in New Delhi. The latter group has very limited rights in India as UNHCR's documentation is not widely recognised (UNHCR 2012).

Legal Framework for Protection of Refugees

International Commitments

While India does not legally recognise refugees, it continues to have a legal obligation to protect refugees as it is party to several international conventions[1] that incorporate the principle of *non-refoulement*. Further, and paradoxically, despite not signing the Convention, India has been a member of UNHCR's Executive Committee since 1995 and has repeatedly reaffirmed its commitment to upholding the principle of *non-refoulement*, highlighting the need for burden sharing among States to tackle the refugee crisis (GCR Consultations 2018). More recently, its signing of the New York Declaration for Refugees and Migrants (2016), the Bali Declaration (2016), the SAARC Optional Protocol on Terrorism (2004) and the 1967 Declaration on Territorial Asylum are a testament to its commitment to addressing the global refugee crisis.

Domestic Framework

In the absence of an asylum law, refugees in India lack legal status and consequently fall within the general category of 'foreigners' under Indian law, which makes them vulnerable to detention and deportation for illegal entry/stay as per the 1946 Foreigners Act and the 1920 Passports Act. However, Indian Courts have largely treated refugees as a distinct group in need of humanitarian assistance (Bhattacharjee 2008). For example, Indian courts have routinely directed the government to strictly adhere to due process when detaining or deporting refugees and have referred refugees to UNHCR for assistance. More significantly, the Supreme Court in 1992[2] extended Constitutional protection under Articles 14 (right to equality) and 21 (right to life) to refugees. However, there are no concrete institutional or legal safeguards against arbitrary detention, deportation or disenfranchisement of refugees in India. Instead, practitioners typically use a combination of specific executive orders (e.g. the 2014 Tibetan Rehabilitation Policy/Sri Lankan Rehabilitation Policy), judicial precedents, the aforementioned international conventions and a set of complementary laws and practices[3] to protect refugees.

Citizenship Laws and Refugees in India

Under the Constitution of India, anyone who was residing in India at the commencement of the Constitution (26 January 1950), as well as those born in India, are deemed to be citizens. While the Constitution specifies categories of citizens under Article 5 to Article 8, the 1955 Citizenship Act governs matters relating to acquisition, determination and termination of citizenship (1955 Act). The 1955 Act allows the acquisition of citizenship through birth, descent, registration, and naturalisation. An amendment to the Act in 2003 prohibited illegal immigrants from becoming Indian

1 See Universal Declaration of Human Rights, International Convention on Civil and Political Rights, International Convention on Economic, Social and Cultural Rights, International Convention on the Elimination of all Forms of Racial Discrimination; Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention for the Elimination of all Forms of Discrimination against Women.

2 NHRC v. State of Arunachal Pradesh, 1996 SCC (1) 742.

3 For instance, the Right to Education Act 2009, which gives refugees and asylum seekers access to government schools at par with Indian citizens. Similarly, refugees and asylum seekers have access to government health services, child protection systems, national justice systems and certain government issued documentation like birth certificates.

citizens. It also introduced the definition of an 'illegal migrant' as a foreigner who enters India either without valid documents or who initially had a valid document, but overstayed beyond the permitted time. Given that refugees do not have legal status in India, they are not eligible to apply for Indian citizenship under the 1955 Act.

Long Term Visa (LTV) Policies

However, the Government has issued temporary executive policies to regularise the stay of certain categories of refugees on humanitarian grounds. The most notable among these are the Ministry of Home Affairs' (MHA) LTV policies which allow the following groups of migrants/refugees to apply for this visa (MHA 2014a; MHA 2014b; MHA 2017a; MHA 2017b):

(a) Pakistani and Bangladeshi nationals belonging to the following minority groups, *viz*. Hindu, Sikh, Christians and Buddhists;
(b) Hindu and Sikh Afghan refugees; and
(c) Refugees holding a UNHCR Refugee Card.

This was effectively the first government-issued documentation that refugees could use as proof of ID and legal status. This regularized their stay in India and allowed them to gain employment in the private sector and access to education and health services, as well as banks. Most importantly, the LTV made some refugee groups eligible for Indian citizenship (TOI 2020; Verma 2020).

In theory, refugees in possession of a valid LTV could apply for citizenship under the following procedures:

(a) Registration: Section 5 of the 1955 Act allows refugees who have resided in India for a period of 7 years to apply for citizenship provided they hold a valid LTV throughout this period and can establish that their parents were citizens of India; and
(b) Naturalisation: Section 6 of the 1955 Act allows refugees who have resided in India for 11 years to apply for citizenship provided they held a valid LTV throughout this period.

While several refugees in India fulfil the residence requirement, only refugees belonging to Hindu, Sikh, Christian and Buddhist faiths from certain countries have been able to apply for citizenship under the aforementioned provisions (JPC 2019). This is because the government issues LTVs on a discretionary basis and most refugees of other nationalities and faiths have frequently been denied the visa or have not been able to renew it throughout the period of their stay (Verma 2020; Field et al. 2017).

CAA - A Humanitarian Law or a Political Statement?

The CAA, introduced in 2019, amends the definition of 'illegal immigrants' under the 1955 Act to exclude Hindu, Sikh, Parsi, Buddhist and Christian immigrants from Pakistan, Afghanistan and Bangladesh who have entered India before 2015. Further, it allows these groups to apply for citizenship after 6 years of residence (instead of 11 years) under the Naturalisation process, providing an expedited citizenship process.

The CAA has come under scathing attack for being unconstitutional on the grounds

that it is fundamentally discriminatory and unsecular, and has been challenged before the Supreme Court (Rajeev Dhavan 2019; De and Ranganathan 2019). The surge of riots and protests over the implementation of the CAA are also fuelled by concerns over its possible interaction with the National Register for Citizens (NRC) policy that seeks to identify and detain illegal migrants, which could potentially leave millions stateless (APRRN 2019; Saxena et al. 2020). However, the Government has defended the policy by stating that the main objective of the CAA is to extend humanitarian protection to persecuted religious minorities from the specified Muslim-majority countries. However, this argument from the Government does not take into account the following:

1. By making religion and nationality the sole criterion for eligibility, the CAA dilutes the very definition of a 'refugee'. In effect, while there is a presumption of persecution for the specified minority groups, other refugees groups, such as Sri Lankan Tamils or Rohingyas, who face a well-documented risk of persecution, are excluded from the CAA. Besides this, the Act also leaves out Muslim minority groups in Pakistan, Bangladesh and Afghanistan, such as the Ahmadiyas, Sufis or Shias.

2. From a protection standpoint, when refugees flee their home countries, they need immediate access to legal channels of transit and asylum. Therefore, if India wants to protect its refugees, it is imperative for it to first develop a refugee reception and management system (UNHCR 2017). Citizenship can be considered a durable solution which refugees should ideally be eligible for

PHOTO BY ROSHNI SHANKER AND YUVRAJ RATHORE

after they receive asylum (Costello 2017). However, a discriminatory citizenship law cannot be used as a substitute for a coherent asylum policy.

3. Supporters of the CAA have argued that the amendment merely expedites the citizenship process for the specified groups of refugees but it does not bar others from applying for citizenship under the available routes. As discussed above, the eligibility for citizenship is largely dependent on the possession of a valid LTV as proof of legal residence. However, in practice, the Government has accorded favourable treatment to non-Muslim refugees when granting these visas (Field et al. 2017, Ghosh 2018). It is almost impossible for Muslim refugees to have a valid LTV (if they are issued one at all) throughout their stay in India (Samaddar and Chaudhury 2018). Thus, the argument that refugees who are not covered under the CAA can still become citizens is practically false.

4. Lastly, there is no explanation as to why the CAA only applies to refugees who have come to India before 2015. Given that India continues to receive asylum seekers from several conflict-affected countries, it is not clear why the Government has included a cut-off date for eligibility.

In light of the above, it is evident that the CAA does little to expand the protection space for refugees in India.

Conclusion

By linking religion and nationality to the grant of citizenship, the CAA fails to reflect India's long-standing asylum practice of protecting persecuted minorities regardless of their backgrounds. Therefore, it is imperative that the government be called upon to sign the Refugee Convention, adopt a cohesive refugee law, and develop a citizenship policy which meaningfully protects persecuted minorities of all backgrounds and expands the protection space for refugees in the country.

The authors

Roshni Shanker is the Founder and Executive Director of Migration & Asylum Project (MAP) - India's first and only refugee law centre. Roshni completed her law degree from National Law Institute University, Bhopal, and initially worked with one of India's leading law firms, Amarchand Mangaldas, as a corporate lawyer for 3 years. Realising that her real interest lay in humanitarian and relief work, she left her job and decided to pursue a Masters degree from Columbia Law School, New York, where she focused mainly on international humanitarian law and civil liberties. She joined UNHCR in 2010 and worked in different UN field offices, including, India, Egypt and UAE, before leaving to set up MAP. She can be reached at roshni@aratrust.in.

Yuvraj Rathore is currently a Legal Consultant at MAP. Yuvraj completed his law degree from Gujarat National Law University, Gandhinagar and previously worked as a research associate with the prison reforms team of the Commonwealth Human Rights Initiative, securing justice for asylum seekers and foreign national prisoners in West Bengal. He has also interned with UNHCR in India and Malaysia. He can be reached at yuvraj@aratrust.in.

Bibliography

ACHARYA, B. (2016) 'The Future of Asylum in India: Four Principles to Appraise Recent Legislative Proposals', NUJS Law Review 9: 173.

ASIA PACIFIC REFUGEE RIGHTS NETWORK (APRRN) (2019) 'India's Amendments to Citizenship Law are Discriminatory and Violate Fundamental Rights to Equality', Dec 19.

BHATTACHARJEE, S. (2008) 'India Needs a Refugee Law', Economic and Political Weekly 43(9): 71-75.

CHIMNI, B.S. (1998) 'The Geopolitics of Refugee Studies: A View from the South', Journal of Refugee Studies 11(4): 350-368.

COSTELLO, C. (2017) On Refugeehood and Citizenship, The Oxford Handbook of Citizenship, Oxford University Press.

DE, R. and RANGANATHAN, S. (2019), 'We Are Witnessing a Rediscovery of India's Republic', The New York Times 27 Dec.

FIELD, J., TIWARI, A.D. and MOOKHERJEE, Y. (2017) 'Urban refugees in Delhi Identity, entitlements and well-being', International Institute for Environment and Development - Working Paper, Oct 2017.

GHOSH, A. (2018) Identity and Marginality in India: Settlement Experience of Afghan Migrants, Routledge Publications

GLOBAL COMPACT ON REFUGEES (GCR) CONSULTATIONS (2018) Statement by India at the first round of UNHCR formal consultations on the Global Compact on Refugees – Agenda item 1, delivered by Dr. Sadre Alam, First Secretary, 13 February 2018. Available from: <https://www.pmindiaun.gov.in/pages/MTYwMA,,> (Accessed 5 March 2020).

INDIA (1950) Constitution of India, 1950, Delhi.

INDIA (2003) Citizenship (Amendment) Act, 2003, Delhi.

INDIA (2003) Citizenship Act, 1955, Delhi.

INDIA (2019) Citizenship (Amendment) Act, 2019, Delhi.

JOINT PARLIAMENTARY COMMITTEE (JPC) (2019), 'Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016', Lok Sabha Secretariat (Parliament of India), Jan 2019.

MANUVIE, R. (2019) 'Why India is home to millions of refugees but doesn't have a policy for them', The Print 27 Dec.

MINISTRY OF HOME AFFAIRS (2014a) Grant of Long Term Visa (LTV) to the Pakistani Nationals. Available from: <https://mha.gov.in/PDF_Other/LTVisaPak_070415.pdf> (accessed 1 March 2020).

_____

(2014b) Powers delegated to State Governments/ UT Administrations/ FRROs/ FROs for various visa related services. Available from: <https://mha.gov.in/PDF_Other/ForeigD-PwrdlgtFRROs.pdf> (accessed 1 March 2020).

_____(2017a) Stay/Residence Permit/ Long Term Visa (LTV) Policy for Afghan nationals in India. Available from: <https://mha.gov.in/PDF_Other/LTV)Afghan_19022018.pdf> (accessed 1 March 2020).

_____(2017b) Long Term Visa Policy & 2011 Standard Operating Procedure. Available from: <https://mha.gov.in/PDF_Other/AnnexVI_01022018.pdf> (Last updated 1 February 2018, accessed 1 March 2020).

RAJEEV DHAVAN (2019), 'India Needs a Proper Refugee Law, Not a CAA Suffused With Discriminatory Intent', The Wire 20 Dec.

SAMADDAR, R. and CHAUDHARY, S.B.R. (2018) The Rohingya in South Asia: People Without a State, Routledge.

SARKER, S.P. (2017) Refugee Law in India The Road from Ambiguity to Protection, Springer.

SAXENA, C., BASHAR, I., BASIT A., SIYECH. M.S. and GUNASINGHAM, A. (2020) 'South Asia: Afghanistan, Bangladesh, India, Pakistan, Sri Lanka', Counter Terrorist Trends and Analyses, 12(1): 40-69.

SIXTH MINISTERIAL CONFERENCE OF THE BALI PROCESS ON PEOPLE SMUGGLING, TRAFFICKING IN PERSONS AND RELATED TRANSNATIONAL CRIME (Bali Process) (2016) Bali Declaration on People Smuggling, Trafficking in Persons, and Related Transnational Crime, 2016, Bali.

SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION (SAARC) (2004) Additional Protocol to the SAARC Regional Convention on Suppression of Terrorism 2004, Islamabad.

TIMES OF INDIA (TOI) (2020) 'Before CAA, string of government orders made it impossible for Muslim migrants to get Indian citizenship', Jan 22.

UNHCR (2012) The Implementation of UNHCR's Policy on Refugee Protection and Solutions in Urban Areas. Available from: <https://www.unhcr.org/516d658c9.pdf> (Accessed 1 March 2020).

_____(2017) Submission by UNHCR for OHCHR's Compilation Report, Universal Periodic Review: 3rd Cycle, 27th Session. Available from: <https://www.upr-info.org/sites/default/files/document/india/session_27_-_may_2017/unhcr_upr27_ind_e.pdf> (Accessed 9 May 2020).

_____(2020) UNHCR India Fact Sheet, January 202. Available from: <http://reporting.unhcr.org/sites/default/files/UNHCR%20India%20factsheet%20-%20January%202020.pdf> (Accessed 19 May 2020).

UNITED NATIONS (1967) Declaration on Territorial Asylum, 1967, New York.

VERMA, M. (2020) 'India has long granted citizenship to refugees; CAA is just a step towards a Hindu Rashtra', The Caravan 19 Feb.

Doing or Not Doing the Mitzvah of Hachnasat Orchim? Managing Tensions Between International Obligations and the State's National Interests: the Case of Eritrean Asylum-Seekers in Israel

Tatiana Morais and Jennifer Gibbs

"We are human beings, you are from Portugal and I from Eritrea. We are the same."
- Asylum Seeker 10 (April 2019)

Abstract

In 1954 Israel became the tenth country in the world to ratify the 1951 Refugee Convention Relating to the Status of Refugees (1951 Refugee Convention). More than five decades later, over 65,000 African asylum seekers – the majority of them from Eritrea and Sudan – have entered Israel, crossing the Israeli border with Egypt. Given that Israel is a Jewish State, Mitzvot[1], such as the Mitzvah of Hachnasat Orchim[2], along with Israel's international obligations under the 1951 Refugee Convention, religiously and by convention show Israel to be accommodating towards refugees and asylum seekers. In reality, however, Israel has found its international legal obligations and Judaic values, such as the mitzvah of hospitality, increasingly confronted by the challenge of how best to receive an unprecedented number of African asylum seekers within the country, which has resulted in Israel implementing domestic laws that are in direct contravention with some articles of the 1951 Refugee Convention. This tension between Israel's international obligations under the 1951 Refugee Convention and religious obligations under the Mitzvah of Hachnasat Orchim, and Israel's own national interests, is significant, as it has served to jeopardize African asylum seekers' human rights. Furthermore, this tension has created associated tensions including: 'ordered disorder' (Paz 2011), permanent temporariness (Mitchell 2010; Bayraktar 2016; Tize 2020), and rejection acceptance (Putnam 2001; Stark and Bainbridge 1985). This paper will explore the tension between Israel's obligations at the international level, its Judaic values such as the Mitzvah of Hachnasat Orchim, and its national interests, and its associated tensions, before discussing the role that civil society organizations and grassroots movements have played in aiming to overcome them. This article draws from 23 semi-structured interviews conducted with Eritrean asylum seekers and key informants based in South Tel Aviv and Haifa from November 2018 to July 2019[3].

1 A mitzvah (mitzvot plural) is a commandment in Judaism. There are 620 mitzvot: 613 mitzvot d'oraita (commandments of the Torah) and 7 mitzvot d'rabbanan (rabbinic mitzvot, instituted later).

2 Mitzvah of Hachnasat Orchim (Mitzvah of hospitality), is a commandment of the Torah to welcome strangers. This mitzvah is first mentioned in the Torah when Abraham invites foreigners from Mamre into his open-sided tent, offering them water and food (Gen. 18:1-5) (Kadden and Kadden 2003).

3 This research was funded by F.C.T. (Portuguese Foundation for Science and Technology) (PD/BD/128312/2017). Fieldwork was developed with

Introduction

In 1977, Israeli Prime Minister Begin expressed to President Carter that Israel would take in Vietnamese refugees for the following reason:

> 'We never have forgotten the boat with 900 Jews [the *St. Louis*], having left Germany in the last weeks before the Second World War…traveling from harbor to harbor, from country to country, crying out for refuge. They were refused…Therefore it was natural…to give those people a haven in the land of Israel (Goldman 2012).'

Historical reasons related to the Holocaust and the flight of millions of European Jews, Roma, homosexuals, and other persecuted groups shaped Israel's decision to participate in the drafting of the 1951 Refugee Convention in the aftermath of World War II (Ben-Nun 2017; Giladi 2015). Israel was one of the main drafters of the 1951 Refugee Convention and became the tenth country to ratify the Convention in 1954 (Giladi 2015). Over the following decades, Israel has shown some international solidarity in line with the values and principles of the Refugee Convention by welcoming a small number of non-Jewish refugees from Vietnam (around 369 refugees between 1977-1979); Bosnia (around 85 Muslim refugees in 1993); Kosovo (around 112 refugees in 1999); and Lebanon (around 6,500 refugees in 2000) (Espiritu 2018; Markowitz 1996; Nisan 2000, Schwartz 2002; Raijman 2020) in addition to receiving Jewish refugees through Aliyah missions[4]. However, between 2005-2012, Israel failed to 'welcome' over 65,000 African asylum seekers entering the country—mostly from Eritrea and Sudan. Moreover, the Israeli government resisted developing an asylum procedure until 2001 (Giladi 2015), revealing a gap between the country's commitment to the values enshrined in the 1951 Convention, its Jewish values of *mitzvah of Hachnasat Orchim*, and its actual implementation of those values in domestic policies.

As a 'Jewish and democratic state' (Article 1 of the Basic Law 'Human Dignity and Liberty' (5752-1992) and Article 1 of the Basic Law 'Freedom of Occupation' (5754-1994)) Israel theoretically emphasizes Jewish values in its policies. While larger debates regarding ideological interpretations of Jewish identity and its relationship to the political state of Israel are ongoing (Ben-Nun 2017; Giladi 2015), there are nevertheless observable ways in which Israel accommodates Jewish values and practices. The 'observance of Shabbat and Jewish holidays'[5] for instance, are seen both religiously as well as politically throughout Israel, as evidenced by the fact that no public transport runs and that shopping centers and stores managed

the support of Dr.Kritzman-Amir, Ms. Tesfamariam, Ms. Egoz, College of Law and Business and Eritrean Women's Community Center. Research at University of California, Santa Barbara was possible thanks to the Fulbright Program. This paper results from the authors collaboration in identifying and critically analyzing tensions in data from September 2009 to January 2020. The authors would like to thank Dr. Kritzman-Amir for comments on an earlier version.

4 The concept of Aliyah, the ingathering of the exiles, is a fundamental tenet of the State of Israel. Aliyah is a legal mechanism which ensures that Jews and their descendants are welcome to Israel and enjoy specific rights unlike non-Jewish refugees. Aliyah missions are based on the idea of the Law of Return (1950), which grants every Jew the right to come to Israel and claim citizenship. Israel has received Jewish refugees through Aliyah missions including those conducted to rescue Ethiopian Jewish in Sudanese refugee camps through Operation Moses, Operation Joshua, and Operation Solomon (Spector 2005).

5 See 'The State of Israel as a Jewish State' Knesset. Available from: <https://knesset.gov.il/constitution/ConstMJewishState.htm> (accessed 26th June 2020).

by Jewish owners are closed during shabbat[6]. Other Judaic values evident in Israel's policies include the welcoming of a small number of non-Jewish refugees, which fulfills the *mitzvah* of hospitality.

Indeed, out of the 620 Jewish commandments (*mitzvot, or* specific rules and patterns of behaviour that set moral standards and values) the *mitzvah of Hachnasat Orchim* (*mitzvah* of hospitality) is particularly relevant for asylum seekers and refugees. According to this Jewish commandment, the *mitzvah* of hospitality determines that Jews should welcome strangers into their home (like Abraham did in his open-sided tent) or, in this case, into their home country: Israel. This is in line with the commitments made by Israel under the 1951 Refugee Convention regarding refugee recognition that establish a set of duties for contracting states to welcome refugees into their country. However, while Israel has welcomed a small number of non-Jewish refugees from countries such as Vietnam, Bosnia, Kosovo, and Lebanon, African asylum seekers who entered Israel from 2005 to 2012 were not as welcomed as their predecessors were under this *mitzvah*.

Indeed, Israel's domestic policies with regard to African asylum seekers are designed to exclude and limit these asylum seekers' human rights. A proper asylum procedure for African asylum seekers did not exist until 2013; the implicit goal of this being to encourage the departure of African asylum seekers who entered the country between 2005-2012 (Raijman 2020). Currently, despite the fact that there are around 34,000 asylum seekers in the country, the majority of whom are from Eritrea (around 71 percent) and Sudan (around 20 percent), less than 1 percent have been recognized as refugees (UNHCR 2020) (Raijman 2020). The selective approach applied to African asylum seekers thus provides proof for the claim made by some scholars that Israeli policies privilege 'Jewish ethnocentric supremacy [while] defying international norms and UN resolutions' (Ben-Nun 2017: 3). Indeed, Israeli policies reveal a contradiction between it's national policies and its international obligations, and Judaic values, which has rendered the situation of African asylum seekers in the country increasingly unsustainable.

Methodology

The paper focuses on the Eritrean community within Israel, which constitutes around 71 percent of the total number of African asylum seekers in the country (Raijman 2020). The paper draws from 23 semi-structured interviews conducted with Eritrean women asylum seekers, aged 20 to 40 years old and based in South Tel Aviv[7] and key informants based in Tel Aviv and in Haifa who work directly with African asylum seekers or who work on topics related to displaced populations (academics, humanitarian workers, activists and workers in shelters). Participants were selected to meet a set of criteria (Patton 2002). The interviewers had no inside knowledge on the topic and did not share the same social and identity markers as the interviewees (Bourke 2014; Chereni 2014). Interviews took place in South Tel Aviv and Haifa between November 2018 and July 2019, with the support of the Eritrean Women's Community

6 Family law also includes religious values, whether jewish or non jewish values, in fact since the Marital Status Law of 1953 matters regarding marriage and divorce have been delegated to religious courts: rabbinical courts, shari'a courts among other institutions of other religious background (Lavee and Katz, 2003).

7 These asylum seekers live mainly in South Tel Aviv.

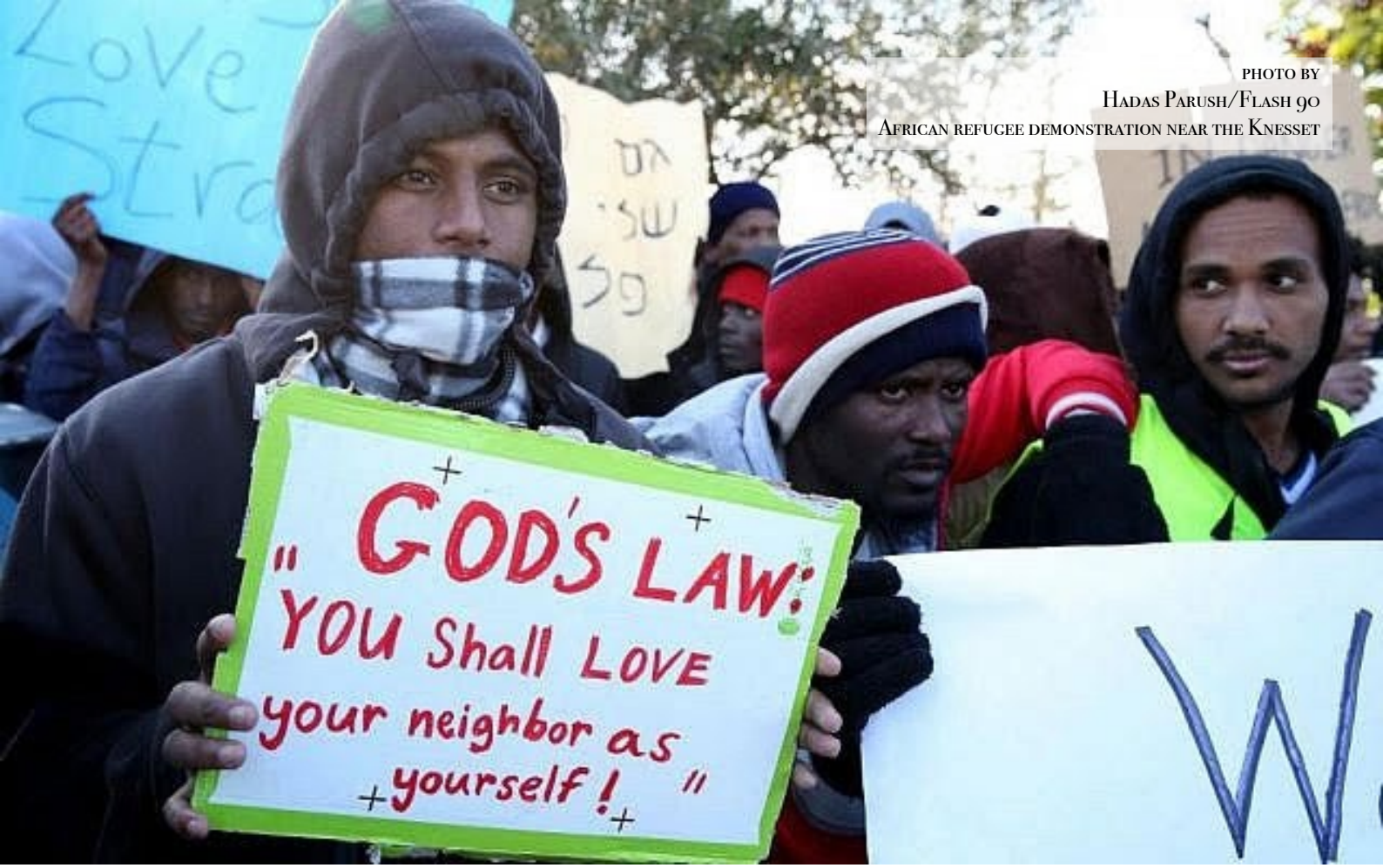

PHOTO BY
HADAS PARUSH/FLASH 90
AFRICAN REFUGEE DEMONSTRATION NEAR THE KNESSET

Center, which provided access to Eritrean women asylum seekers and cultural mediators and interpreters. Prior to conducting fieldwork, the interview protocol was approved and granted ethical clearance. Before each interview, the author obtained the participants' consent after providing all the details, goals, and information about the study. A thematic analysis of the data revealed three key tensions facing African asylum seekers in Israel, which will be discussed in the next section.

'Ordered disorder'

When Eritrean and Sudanese asylum seekers arrived in Israel between 2005 and 2012, they found themselves stuck in a 'legal limbo' (Kritzman-Amir 2009) due to the absence of asylum procedures. Indeed, Israel banned the submission of asylum claims by Eritreans and Sudanese individuals until 2013 (Sabar and Tsurkov 2015). While Israel began admitting them in 2013, it also began increasing bureaucratic procedures, which increased the chance of asylum claims being dismissed (Amendment 3 to the Prevention of Infiltration Law) (Ziegler 2015).

The absence of asylum procedures in Israel results from a tension within Israeli domestic law identified by the scholar Paz (2011) as a legal pattern of 'ordered disorder' which uses a 'trial-and-error' approach to the asylum procedure in Israel. As Paz notes: 'the tension between Israel's democratic structures, backed by its international commitments… is expressed in a response to asylum seekers that can be understood as 'ordered disorder'…a consistent logic intended to make asylum claims unsustainable' (Paz 2011: 5).

This 'ordered disorder' has resulted in a low percentage (0.25%) of asylum seekers being recognized as refugees (Sabar and Tsurkov 2015; Ziegler 2015; Raijman 2020), due to the high level

of bureaucratic barriers to refugees' recognition. This was stressed by Key Informant 12, who stated: 'people are in limbo; they don't have a decision on their situation…it takes too long to have a decision … Eritrean and other *de facto* refugees are not being acknowledged, recognised as refugees' (July 2019). This 'legal limbo' (Kritzman-Amir 2009) in turn creates a 'calculated chaos' (Paz 2011) which makes it difficult for an asylum claim to be granted, thereby implicitly encouraging asylum seekers to leave Israel. Indeed, according to Paz, 'chaotic bureaucratic ambiguity' in the Israeli system makes it difficult for asylum claims to be successful, which sends out 'a no-entry signal' (Paz 2011: 5) that encourages voluntary return.

Permanent temporariness

The second tension produced by a lack of asylum procedures in Israel is termed 'permanent temporariness', which has been highlighted by several scholars to describe the experience of waiting in refugee camps. This tension highlights the fact that '*de jure* 'temporary' is '*de facto* 'permanent' (Mitchell 2010: 19 see also Bayraktar 2016), due to the 'temporal stagnation' caused by 'legal insecurity' (Tize 2020: 2). In our analysis, this tension is further caused by the impact of Israeli policies which deny African asylum seekers work permits or social security, which inhibit African asylum seekers from accessing basic rights including the right to work and to make a living. Consequently, African asylum seekers find themselves in a state of permanent 'temporariness'. The Conditional Release Visa (CRV)[8], which is a temporary permit that does not grant asylum seekers a residence visa or a work permit (entry to Israel Law 5712-1952 2(a)(5)), contributes greatly to this permanent temporariness. Moreover, the CRV is in contravention with articles 23-24 and 17-19 of the 1951 Refugee Convention[9].

On 13 July 2010, in response to the fact that asylum seekers were denied access to work permits, a District Court ruled that 'CRV holders should be allowed to work' (Ziegler 2015: 183). On May 2017, however, the Deposit Law (Article 4 of the Prevention of Infiltration Law) was enacted, determining that 20% of an asylum seekers' income should be deducted and deposited in the Deposit Fund and returned to them only upon their departure from Israel. The Deposit Law also stipulated that 16% of their gross (pre-tax) salaries should be deducted (Hotline 2019: 4).

The Deposit Law aggravated asylum seekers' poor living conditions and deprived them of access to an economic means and livelihood, pushing them further into the geographical margins of underprivileged areas of South Tel Aviv. Additionally, the Deposit Law trapped them in cycles of poverty by ensuring that they could only access precarious jobs and by limiting their choices for housing, healthcare, and transportation. These precarious jobs restrict the financial ability of African asylum seekers to pay for and access basic services. Ultimately, these factors push

8 Since 2008 African asylum seekers have been granted a new type of permit called the Conditional Release Visa. According to Rozen (2018) this 'visa means that a deportation order is pending against its holder. However, since it is impossible to deport the holder to his home country, he is conditionally released and free to live in Israel, until it will be possible to deport him'. Available from: https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/10/criminalizing (accessed 8th July 2020).

9 1951 Refugee Convention articles 17-19 regulate refugees' access to the labour market, while articles 23-24 regulate access to public relief, social security, and specific matters of labour legislation.

them away from being able to access the full spectrum of human rights and thus further encourage asylum-seekers' 'voluntary' departure from Israel. As Key Informant 5 mentioned, 'the government doesn't want to provide asylum seekers with services, so they don't settle in…it is a way of telling people they are not welcome' (January 2019). The result to 'make life very difficult for people and to force their departure' (Key Informant 3, November 2018). Asylum Seeker 5 also stressed that 'we are given 3 months Visa': this Asylum Seeker 5 had been living in Israel for 8 years, highlighting the permanent temporariness of African asylum seekers as a result of Israel's policies (February 2019). Therefore, and as Key Informant 7 highlighted: 'people live here for 10 years or more and they only have a temporary protection' (February 2019). In light of this, Tel Aviv University's Refugee Clinic, The Kav LaOved, ASSAF, and partner organizations filed a petition to the Israeli High Court of Justice to fight for African asylum seekers labour rights that resulted in partial waivers—a deduction of 6% of their salaries instead of 20%—for the most vulnerable groups: women, men over 60, and human trafficking survivors (Hotline 2019).

Nonetheless, asylum seekers in Israel continue to face hardship: 'how can we pay the bills? They take 20% of the salary, now it is only 6%...' (Asylum Seeker 2, January 2019). This hardship is greater for female asylum seekers who receive a lower income due to a notable gender pay gap, and who experience multiple and intersectional forms of discrimination, not only on the basis of their gender, but also on the basis of other social factors including age, ethnicity, sexual orientation, and religion (Crenshaw 1989; Yuval-Davis 2006). As a consequence, female asylum seekers experience labour exploitation and economic discrimination which leave them more exposed to gender-based violence, including sexual harassment, transactional sex and forced prostitution: 'women…are forced into prostitution for the money…the government is forcing us to leave Israel' (Asylum Seeker 3, January 2019).

Rejection acceptance

While Israeli asylum policies highlight the temporary situation of asylum seekers, these policies can drag out asylum seekers' state of temporality for decades (Sabar and Tsurkov 2015). This protracted temporality reflects another tension within Israel laws--'rejection acceptance' towards African asylum seekers. The rejection acceptance tension has been identified in other studies regarding oppositional discourses (Putnam 2001) and regarding religious movements (Stark and Bainbridge 1985). In our analysis, the rejection acceptance tension refers to the fact that African asylum seekers face rejection at the State and community levels while being simultaneously accepted by civil society and grassroots movements' that advocate for their human rights.

At the policymaking level, as illustrated by the implementation of repressive policies (such as the prevention of Infiltration Law and the now nullified Deposit Law) the rejection of asylum seekers is accepted and institutionalized in the law. At the community level, policies that extend asylum-seekers' state of precariousness serve to enhance the perception of asylum seekers as 'the other' (Kritzman-Amir 2009). Indeed, despite the fact that Israelis who live in the same underprivileged areas of Tel

Aviv rent houses to, employ, and profit from living alongside asylum seekers, they nevertheless continue to 'other' them. This process of othering African asylum seekers at the community level is highlighted by one of the participants who described his experience of recurrent discrimination: 'because we are black they (Israeli landlords) charge more money for the rent and they only have few houses to rent to us' (Asylum Seeker 3, January 2019).

Managing tensions: *mitzvah of hachnasat orchim* at the civil society level

Almost two years after the enactment of the Deposit Law, the Israeli High Court nullified it in April 2020, writing a new page in Israel's record on human rights. This was achieved by Israeli civil society activists, who supported and worked with asylum seekers' grassroots movements to demand change (Ben-Nun 2017). Israeli civil society has been active in overcoming the tensions between Israel's theoretical ideals and values implicit in the 1951 Refugee Convention while fulfilling the *Mitzvah* of Hospitality and challenging the government's actual implementation of these values. Movements such as Tel Aviv University's Refugee Clinic, The Kav LaOved, ASSAF, Hotline for Refugees and Migrants, and the Coalition on Asylum Seeking Women and Children (Kritzman-Amir and Rothman-Zecher 2019), have joined forces with grassroots movements such as the Eritrean Women's Community Center to react against the 'ordered disorder' tension (Paz 2011) and to choose acceptance over rejection.

Other movements were also borne as a counter-reaction to Israel's intent, in 2018, to deport African asylum seekers (Dahir 2018). One notable example is the Anne Frank Home Sanctuary Movement (*L'Mivakshei Miklat Israel* in Hebrew). The head of the movement, Rabbi Susan Silverman, was inspired by the story of Anne Frank and planned 'to hide refugees in people's homes' in case their deportation became a reality in Israel (Bolton-Fasman, 2018). The goal was to have 'righteous citizens' protecting African asylum seekers from deportation, specially to countries that could present the risk of trafficking and death (Bolton-Fasman, 2018). Hence, *L'Mivakshei Miklat Israel* gathered hundreds of Israeli rabbis willing to shelter and protect thousands of asylum seekers in their homes 'under the banner of one of Judaism's biggest heroes: Anne Frank' (Ballesteros 2018). As rabbi Silverman put it:

> We believe that the purpose of a Jewish state is not to be a ghetto fortress to keep Jew safe, but a space for Jewish values to come to life. And high among those values is treating the stranger as a citizen among us. The Torah says that 36 times (Bolton-Fasman, 2018).

Conclusion

The legal situation of African asylum seekers in Israel illuminates the tensions between Israel's international obligations under the 1951 Refugee Convention, its adherence to Jewish values, such as the *Mitzvah of Hachnasat Orchim*, and its national interest in ensuring a Jewish state. While Israel's international obligations under the 1951 Refugee Convention and its Jewish values *should* make Israel accommodating towards

asylum seekers, the governments' implementation of such values has fallen short of realizing these goals. Tensions between Israel's cultural values, its international obligations and its national interests have resulted in policy-related tensions such as a state of 'ordered disorder,' permanent temporariness, and rejection acceptance, that have made the situation of African asylum seekers increasingly unsustainable. Importantly, these tensions also reflect a larger ongoing debate within Israel concerning varying ideological interpretations of Jewish identity[10] and the relationship to the political state of Israel (Ben-Nun 2017; Giladi 2015). As a reaction against these tensions, however, Israeli civil society and asylum seekers' grassroots organizations, such as the Eritrean Women's Community Center, Tel Aviv University's Refugee Clinic, The Kav LaOved, ASSAF, Hotline for Refugees and Migrants, the Coalition on Asylum Seeking Women and Children, and the Anne Frank Home Sanctuary Movement, have been key in helping to manage and overcome some of these discrepancies, such as by working to nullify the Deposit Law. Going forward, it is critical that Israel—at all levels of society—follow in the example of civil society organizations and grassroots movements to implement domestic policies in line with its international obligations and core values, and to allow African asylum seekers and others seeking refuge to access their human rights.

10 An example of this ongoing dynamic ideological debate is the recent rally bringing together Israelis and Palestinians which defied Nethanyahu's plan to annex one third of the West Bank. See: Palestinian Lives Matter: Huge Jewish-Arab Rally in Tel Aviv Decries Netanyahu's Plan to Annex 1/3 of West Bank in CommonDreams, Available in <https://www.commondreams.org/views/2020/06/07/palestinian-lives-matter-huge-jewish-arab-rally-tel-aviv-decries-netanyahus-plan?utm_campaign=shareaholic&utm_medium=referral&utm_source=facebook&fbclid=IwAR1Y5IkKO-eabcp_t0ICfWKg080a1zLN-WocpAFwdFE5ZUYt5Yz-OEoBh4uU> (accessed 10 June 2020).

The authors

Tatiana Morais is a PhD candidate at NOVA School of Law, she earned MA from University of Minho (2015) and LLB from University of Lisboa (2001-2006). Her research focuses on Sexual and Gender-Based Violence in the third country of asylum. Her research included fieldwork in Europe, Africa and Middle East, using qualitative methods. To conduct her research Portuguese Foundation for Science and Technology granted her a studentship (2016) and a scholarship (2017-2019). During 2019 Fall Quarter she was Fulbrighter at UCSB. Previously Tatiana has worked as a lawyer (2006-2012) and as a volunteer, legal adviser in NGOs (2011-2015).

Jennifer Gibbs is a Professor in the Department of Communication at the University of California, Santa Barbara. She earned her PhD from the Annenberg School of Communication at the University of Southern California in 2002. Her research focuses on collaboration in global teams and other distributed work arrangements, as well as the affordances of new technologies such as social media for strategic communication practices. Her current projects include studies of: social media and organizational knowledge sharing; global virtual team collaboration; social support and normative control in online communities, and distraction and the role of new technologies.

Bibliography

Asylum seeker 2, interview with author in January 2019.

Asylum seeker 3, interview with author in January 2019.

Asylum seeker 5, interview with author in February 2019.

Asylum seekers 10, interview with author in April 2019.

BALLESTEROS, C. (2018) 'Anne Frank Movement: hundreds of rabbis promise to hide African Refugees facing deportation in Israel' *in NewsWeek*. Available from: <https://www.newsweek.com/israel-immigration-refugees-rabbis-anne-frank-deportation-783969> (accessed: 26th June 2020).

BAYRAKTAR, N. (2016) *Mobility and Migration in Film and Moving-Image Art: cinema beyond Europe*. New York: Routledge.

BEN-NUN, G. (2017) *Seeking Asylum in Israel refugees and the History of migration law.* London and New York: I.B. Tauris.

BOLTON-FASMAN, J. (2018) 'Israeli Rabbi Launches Anne Frank Institute to help African Asylum Seekers' *in Tablet*. Available from: <http://www.tabletmag.com/sections/news/articles/israeli-rabbi-launches-anne-frank-institute-to-help-african-asylum-seekers> (accessed: 26th June 2020).

BOURKE, B. (2014) 'Positionality: Reflecting on the research process' *The Qualitative Report* 19(33):1-9.

CHERENI, A. (2014) 'Positionality and Collaboration during Fieldwork: Insights from Research with co-nationals living abroad' *Forum: Qualitative Social Research* 15(3): art. 11.

COLE, J. (2020) 'Palestinian Lives Matter: Huge Jewish-Arab Rally in Tel Aviv Decries Netanyahu's Plan to Annex 1/3 of West Bank' *CommonDreams.* Available from: <https://www.commondreams.org/views/2020/06/07/palestinian-lives-matter-huge-jewish-arab-rally-tel-aviv-decries-netanyahus-plan?utm_campaign=shareaholic&utm_medium=referral&utm_source=facebook&fbclid=IwAR1Y5IkKO-eabcp_t0ICfWKg080a1zLNWocpAFwdFE5ZUYt5Yz-OEoBh4uU> (accessed: 10 June 2020).

CRENSHAW, K. (1989) 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' *University of Chicago Legal Forum* Vol. 1989: Iss. 1, Article 8. Available from: http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8 (accessed: 10 June 2020).

DAHIR, A. H. (2018) *African Migrants in Israel: neither safe nor sound* TRT World Research Centre.

ESPIRITU, E. L. (2018) 'Vexed Solidarities: Vietnamese Israelis and the Question of Palestine', *Literature Interpretation Theory* 29(1): 8-28.

GILADI, R. (2015) 'A 'historical commitment'? Identity and Ideology in Israel's Attitude to the Refugee Convention 1951-4', *The International History Review* 37(4): 745-767.

GOLDMAN, L. (2012) 'I remember when Israel rescued non-Jewish refugees' in *972 Magazine*. Available from:

<https://www.972mag.com/i-remember-when-israel-rescued-non-jewish-refugees/> (accessed: March 2020).

HOTLINE FOR REFUGEES AND MIGRANTS (2019) 'In Broad Daylight: The Deposit Law Implementation and Impact'' (online). Available from: <https://hotline.org.il/en/in-broad-daylight-the-deposit-law-implementation-and-impact/> (accessed: March 2020).

KADDEN, B. B. and KADDEN, B. (2003) *Teaching Mitzvot – concepts, values and activities*. Denver: A.R.E. Publishing.

Key informant 3, interview with author in November 2018.

Key informant 5, interview with author in January 2019.

Key informant 7, interview with author in February 2019.

Key informant 12, interview with author in July 2019.

KRITZMAN-AMIR, T. (2009) 'Otherness' as the Underlying Principle in Israel's Asylum Regime'. *Israel Law Review*, 42(3): 603-627.

KRITZMAN-AMIR, T. and ROTHMAN-ZECHER, K. (2019) 'Mainstreaming Refugee Women's Rights Advocacy'. *Harvard Journal of Law and Gender,* 42 (2).

LAVEE, Y. and KATZ, R. (2003) 'The Family in Israel: Between Tradition and Modernity'. *Marriage & Family Review,* vol. 35(1/2): 193-217.

MARKOWITZ, F. (1996) 'Living in Limbo: Bosnian Muslim Refugees in Israel' *Human Organization* 55(2): 127-132.

MITCHELL, W. J. T. (2010) *Images and others - Migration, Law, and the Image: Beyond the Veil of Ignorance*. Availability from: <https://scholarworks.iu.edu/dspace/handle/2022/6940?show=full> (accessed: 26th June 2020)

NISAN, M. (2000) 'Did Israel Betray its Lebanese Allies?' *Middle East Quarterly* 7(4): 31-39.

PATTON, M. (2002) *Qualitative research and evaluation methods* 3rd edition, Thousand Oaks, CA: Sage.

PAZ, Y. (2011) 'Ordered Disorder: African Asylum Seeker in Israel and discursive challenges to an emerging refugee regime', *The UN Refugee Agency Policy Development and Evaluation Service*. Research Paper 205.

PUTNAM, L. (2001) 'Shifting Voices, Oppositional Discourses, and New Visions for communication studies', *International Communication Association* (online). Available from: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.25.2217&rep=rep1&type=pdf> (accessed: 26th June 2020).

RAIJMAN, R. (2020) 'A Warm Welcome For Some: Israel Embraces Immigration of Jewish Diaspora, Sharply Restricts Labor Migrants and Asylum Seekers', *Migration Information Source* (online). Available from: <http://migrationpolicy.org/article/israel-law-of-return-asylum-labor-migration> (accessed: 08th July 2020).

ROZEN, S. (2018) 'A Criminalising Visa Regime', *Migration Information Source*

(online). *Border Criminologies* (online). Available from: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/10/criminalizing> (accessed: 08th July 2020).

SABAR G. and TSURKOV E. (2015) 'Israel's Policies towards asylum seekers: 2002-2014', *Instituto Affari Internazionali*, Working paper 15.

SCHWARTZ, S. (2002) 'The Arab Betrayal of Balkan Islam' *Middle East Quarterly* 9(2): 43-52.

SPECTOR, S. (2005) *Operation Solomon: the daring rescue of the Ethiopian Jews*. Oxford: University Press.

STARK, R. and BAINBRIDGE, W. (1985) *The Future of Religious: Secularization, renewal, and Cult Formation*. Berkeley: University of California Press.

STATE OF ISRAEL (2014) 'The State of Israel as a Jewish State' *Knesset*. Available from: <https://knesset.gov.il/constitution/ConstMJewishState.htm> (accessed 26th June 2020).

TIZE, C. (2020) 'Living in Permanent Temporariness: The Multigenerational Ordeal of Living under Germany's Toleration Status' *Journal of Refugee Studies* (online). Available from: <https://doi.org/10.1093/jrs/fez119> (accessed: 26th June 2020).

UNHCR (2020) 'UNHCR Global Focus, Operation: Israel' (online). Available from <http://reporting.unhcr.org/sites/default/files/pdfsummaries/GA2020-Israel-eng.pdf> (accessed March 2020).

YUVAL-DAVIS, N. (2006) 'Intersectionality and Feminist Politics' *European Journal of Women's Studies* London, Thousands Oaks, New Delhi: Sage Publications, 13(3): 193-209.

ZIEGLER, R. (2015) 'No Asylum for 'Infiltrators': The Legal Predicament of Eritrean and Sudanese Nationals in Israel', *Immigration, Asylum and Nationality Law* 29(2): 172-191.

Venezuelan Unaccompanied Children in Brazil: Legal Landscape, Barriers to Protection, and the Enhanced Role of the Cartagena Declaration on Refugees

Diego Castillo Goncalves

Abstract

Refugee protection in Latin America has evolved throughout the last thirty years as a result of significant incorporation of the principles found in the 1984 Cartagena Declaration on Refugees into national legislation and policies. The Cartagena Declaration is a non-binding regional document which expanded the traditional definition of who constitutes a refugee. The Declaration provides that, in addition to the protection granted by the 1951 Convention Relating to the Status of Refugees, a "refugee" can also include persons against whom there exists a 'threat to life, security, or liberty; and that the threat results from one of five factors: generalized violence; foreign aggression; international conflicts; massive violations of human rights; or circumstances seriously disturbing public order' (Art. III 3). This article considers the application of the wider refugee definition informed by the Cartagena Declaration by analysing barriers and opportunities within the legal landscape for Venezuelan unaccompanied children in Brazil in view of the recent prima facie recognition of a large group of Venezuelan asylum seekers in the country. In doing so, it highlights how unaccompanied children have been excluded from this recognition so far, and offers recommendations for how they can be incorporated into this protection framework going forward.

Introduction

The deepening crisis in Venezuela has displaced millions, leading to Latin America's largest exodus in modern history. Since 2015, over five million Venezuelans have fled, primarily to bordering countries and other Latin American states. An estimated 1.8 million Venezuelans settled in Colombia; 861,000 in Peru; 456,000 in Chile; 366,000 in Ecuador; and 253,000 in Brazil (HRW 2019). The root cause of this mass displacement is ascribed to an economic collapse, which was caused by and further exacerbated by political, human rights and humanitarian crises. This has further led to the widespread prevalence of generalised violence[1] and hunger (Specia 2019).

In Latin America, Brazil's response to high numbers of displaced Venezuelans has been praised for a number of reasons, including the government's use of non-restrictive reception policies and its adoption of a rights-based migration legislation in 2017 (Ramsey and Sánchez-Garzoli 2018). This legislation, referred to as the Migration Law (13.445/2017), establishes the rights and duties of migrants and visitors by building upon international human rights instruments to which Brazil is a signatory, including the UN Convention on the Rights of the Child (CRC).

1 Generalised violence means violence that is large-scale, widespread, and indiscriminate (UNHCR 2011).

Additionally, Brazil recently applied the expanded refugee definition, informed by the Cartagena Declaration, to displaced persons from Venezuela (UNHCR 2019). Prior to the beginning of December 2019, Brazil had only recognised around 10,000 refugees of all nationalities. After December 2019 and January 2020, however, Brazil's National Committee on Refugees (CONARE) used the Cartagena definition to grant refugee status on a *prima facie* basis to over 37,000 Venezuelan asylum seekers.[2] The *prima facie* approach taken by the Brazilian authorities recognized that due to the serious and generalized human rights violations occurring in Venezuela, asylum seekers from the country fell within the refugee definition provided by the Cartagena Declaration and therefore did not need to conduct refugee status determination interviews to ascertain their eligibility. Additionally, *prima facie* recognition granted this group full refugee status rights, including the right to access work, education, health services, and citizenship pathways.

In the last five years, the Brazilian government has also granted other types of migration status to Venezuelan forced migrants through alternative pathways such as humanitarian visas and temporary residency permits, offering alternatives to those who do not qualify for refugee status on a *prima facie* basis. Nonetheless, Brazil's approach towards status recognition of Venezuelans has been mixed, and diverging approaches between how and when the Government decides to grant legal status to displaced Venezuelans have revealed significant protection gaps. As a result, challenges regarding the legal protection of Venezuelans in Brazil remain (Jarochinsky and Jubilut 2018). Political pushbacks to these liberal approaches to migration have also emerged, as evidenced by Brazil's far-right President Jair Bolsonaro's critique of the Migration Law passed in 2017 and Brazil's decision to opt out of the United Nations Global Compact on Migration (Paris 2019).

This piece looks at how the opportunities afforded by Brazil's liberal application of the Cartagena refugee definition, and the protection gaps that nevertheless persist, manifest themselves in the context of Venezuelan unaccompanied children in Brazil. The plight of unaccompanied children in Brazil remains underexplored, despite the challenges that arise for this group due to their age, the migration routes taken by them, and their precarious legal status. Indeed, Brazil does not apply any specialized protection approaches to unaccompanied children (Cantinho 2018) and does not currently include them within the recent *prima facie* recognition which is applied to adult Venezuelans.

This piece argues that a wider application of the Cartagena Declaration definition should play an important role in recognising these children as refugees in their own right. Additionally, it argues that efficient application relies on this group being able to access adequate identification and registration procedures, which would enhance their visibility and therefore eligibility for *prima facie* recognition. The piece, therefore, focuses on the legal aspects of achieving refugee status for unaccompanied children in Brazil, recognising the

2 Prima facie recognition refers to a 'person recognised as a refugee, by a state or UNHCR, on the basis of objective criteria related to the circumstances in their country of origin, which justify a presumption that they meet the criteria of the applicable refugee definition' (UNHCR 2015).

importance of strengthening the existing normative framework through formal mechanisms of protection. Part I provides an overview of the situation for Venezuelan unaccompanied children in Brazil. Part II outlines the legal protection landscape, describing Brazil's *prima facie* recognition through use of the Cartagena Declaration definition, and highlighting limitations on the criteria used by CONARE. Part III argues that a wider adoption of the Declaration principles could enhance this protection landscape.

Venezuelan unaccompanied children in Brazil

Unaccompanied children are defined by UNHCR as children under the age of eighteen who are 'separated from both parents and [are] not being cared for by an adult who by law or custom has responsibility to do so' (UNHCR 1997). In Brazil, numbers of unaccompanied asylum-seeking children have been low. In 2016, around 2,000 children's claims were made in the country overall; the majority of these were from Syria and Colombia (Lazarin 2019). This trend, however, changed in line with broader trends in Latin America, when the number of unaccompanied children fleeing Venezuela began to exponentially increase in 2015. Since then, it is estimated that over 25,000 unaccompanied children have left Venezuela, mainly headed for Brazil and Columbia (Guerrero 2020). 1,896 of these children crossed into Brazil from Venezuela between August 2018 and June 2019, with an additional 529 children arriving between May and November of 2019 (HRW 2019).[3] The majority of these children are between 15 and 17 years old. Many walked over 1,000 kilometres to reach the border crossing with Roraima, the Brazilian state with the highest number of Venezuelans (Costa 2020). Whether arriving to seek protection from violence, to provide for their relatives in Venezuela, to reunify with relatives already in Brazil, or due to a combination of these factors, many unaccompanied Venezuelan children arrive without documentation and are subjected to abuse and exploitation upon their arrival (Costa 2020).

According to Human Rights Watch (HRW 2019), after these children are interviewed by the Brazilian Federal Public Defender's Office at the border, there is an acute lack of monitoring systems to evaluate their access to public services--including access to education and health care. There are also significant delays in appointing legal guardians to support these children in claiming refugee status, and to help them overcome barriers to access services (Pontes and Frias 2018). While the Brazilian government denies HRW findings, evidence from HRW's report demonstrates, for instance, that conditions in the two main state shelters for unaccompanied children aged 12-17 in Roraima were poor and overcrowded (with the girls' shelter being 50 percent over capacity, and the boy's at double capacity) to the point where a state judge ordered for these shelters to stop accepting children in September 2019. Instead, judicial authorisation was sought for unaccompanied children to be placed in United Nations' shelters for adults and children within families, where there is only one social worker for every 300 children (HRW 2019). Accounts in the report from a range of children further reveal that these children only stay temporarily in these shelters and that many lack access to

3 Numbers are likely to be underestimated.

schools. Additionally, that hundreds of unaccompanied children leave these shelters and end up living on the streets, where they are more likely to engage in precarious labour and become recruited by criminal factions. This precarious situation raises questions regarding Brazil's ability to adequately respect these children's rights, including how children are cared for in guardianship systems and how they are facilitated into asylum procedures (Cantinho 2018; Costa 2020).

Normative instruments

The normative framework that exists for Venezuelan unaccompanied children can be found within Brazil's Constitution (Art. 227) and its Child and Adolescent Statute (8.069/1990), which both implement the State's obligations as laid out in the CRC. The Constitution places duty on the government to ensure that the rights of children are respected. The Child and Adolescent Statute notes that no child will suffer negligence, discrimination and oppression (Art.5) and highlights that states should respect the right of children to participation and to seek asylum (Art.16). More generally, Brazil also has responsibilities to guarantee that these children are treated as right holders in their own right in light of rights set forth by the CRC and other international human rights instruments to which Brazil is a signatory (CRC Art.22.1). Brazil's normative commitment to protecting unaccompanied children can also be found in its Refugee Statute (9.474/97) and within its Migration Law (13.445/2017).

According to its Refugee Statute (9.474/97), Brazil defines a refugee as someone escaping 'generalised human rights violations'; thereby adopting the nature of the wider definition of the Cartagena Declaration (Art. III 3). By adding this element to its statute, Brazil grants binding legal force to the Declaration, which is described as 'a flexible, pragmatic, innovative approach to providing answers to situations of asylum and other humanitarian crisis' (UNHCR 2014). In addition, the Declaration reaffirms important international elements of refugee protection in its conclusion, such as 'peaceful, non-political, and exclusively humanitarian nature of grant of asylum or recognition of refugee status'. Moreover, the Declaration, like the 1951 Convention, does not make a distinction between children and adults in its definition, meaning that it can be interpreted and applied to children. Centred on human rights principles, the Migration Law (13.445/2017) also establishes principles directly addressing children, including by providing for the principle of the best interest of the child (Art 2. XVII). In effect, this means that all actions impacting children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, must give the best interest of the child primary consideration.[4] Nonetheless, under this same law, unaccompanied children or children without written authorisation from a legal representative are unable to obtain a visa (art. 7(I)), which limits pathways for legal status for this group.

Protection challenges

Despite Brazil's adoption of a refugee definition informed by the Cartagena

4 According to the Convention on the Rights of the Child Committee (2013), assessing the best interests of children means evaluating and balancing 'all the elements necessary to make a decision in a specific situation for a specific individual child or group of children'.

Declaration in its domestic law, the eligibility process for refugee status still prioritized the 1951 Convention definition up until the very recent *prima facie* recognition of Venezuelan asylum seekers. Indeed, so far, Venezuelans have been the only population to benefit from this *prima facie* approach, which is based on a more flexible definitional lens.

This selective approach to *prima facie* recognition raises several concerns. For instance, despite being lauded by UNHCR (2019) as a 'milestone of protection', the eligibility criteria used by CONARE for this *prima facie* recognition, according to a Ministry of Justice and Public technical note (2019), excluded unaccompanied children from obtaining refugee status, revealing a clear protection gap. The text of the note (section 3.1.) states that eligibility for this recognition, without the need for an interview, is dependent on applicants having: possession of documentation proving Venezuelan nationality, such as a passport, no criminal record, age of majority (18 years), and no other type of residency, such as a permit through the Migration Law (13.445/2017). Consequently, despite strong normative protection, the exclusion of unaccompanied children from this *prima facie* recognition adds to pre-existent barriers which prevent children from accessing services in Brazil. Moreover, *prima facie* recognition through this process only applies to those over 18 (or those under 18 whose parents

PHOTO BY GLÁUCIO DETTMAR FOR AGÊNCIA CNJ

have already been recognised), and to those who are able to present national documentation from Venezuela.

Closing protection gaps: enhancing the role of the Cartagena Declaration

Brazil's decision to accept a large group of Venezuelan asylum-seekers by adopting the more flexible approach outlined in the Cartagena Declaration, is not only significant, but also incredibly novel. In order to be truly representative of Brazil's commitment towards enhancing protection to refugees, however, it must be applied towards all Venezuelans--regardless of age and documentation. This includes unaccompanied children, who face increased vulnerability, may have no documentation to prove their nationality, may lack access to a legal guardian, and who currently fail to qualify for this recognition (based on the criteria set for it) in their own right. This reveals that significant protection gaps remain due to the adult-centred criteria used in the application of normative instruments, which neglects children's specific needs and rights.

The continued application of an adult-centred lens to refugee protection for children is concerning given the previous barriers faced by this group within the model of the 1951 Convention. Indeed, for many years, the 1951 Convention itself was interpreted through adult-centred lenses (UNHCR 2009), which resulted in many refugee claims made by children being assessed incorrectly or overlooked altogether, due to a failure to consider children as refugees in their own right (e.g.: children in large family units) (UNHCR 2009).

Given the gaps in the previous application of the Refugee Convention and the barriers faced by this group, the positive *prima facie* approach to recognition applied through the lens of the Cartagena Declaration, which ensures that unaccompanied children are made visible, should be enforced. Brazil should widen this eligibility criteria to include unaccompanied children to ensure that normative obligations towards unaccompanied children are respected. To make this a reality, identification, registration, guardianship systems, and access to asylum processes must improve, and focused CONARE protection measurement systems must be implemented.

Implementing focused protection systems would also enable the creation of concrete pathways for unaccompanied children to access and qualify for *prima facie* recognition of refugee status in line with the spirit of the Cartagena Declaration definition. These pathways should be created through CONARE—a body responsible for developing actions on protection and assistance to refugees, including unaccompanied children—as well as through an integrated, multi-agency approach to implement these focused protection measurements. This approach should be developed in collaboration between government authorities, local municipalities, NGOs and humanitarian agencies to identify and monitor these children's access to public services and asylum procedures.

While the Cartagena declaration has been lauded as an 'advanced model of protection' (UNHCR 2019), Brazil should also use its novel application to reinforce the Declaration's reiteration of the *non-refoulement* principle and its spirit of cooperation, including by ensuring 'that the national regulations adopted reflect…principles of the Convention

and the Protocol' (Art. III 1). Additionally, the State should use this as opportunity to enhance legal protection for other forced migrants in Brazil who may qualify for group recognition under the Declaration's wider definition. Further, this *prima facie* approach should also be used more widely in Latin America, as it is currently unique to Brazil in the region.

Conclusion

This article analysed opportunities and barriers within the legal landscape for Venezuelan unaccompanied children in Brazil in view of the recent *prima facie* recognition granted to Venezuelan adult asylum seekers in the country. By analysing the Cartagena Declaration refugee definition and Brazil's normative refugee framework as applied to unaccompanied children, this article argued that this group would also benefit from refugee status granted on the basis of this *prima facie* recognition in their own right.

After receiving Refugee Status as a result of being included within this *prima facie* recognition, children would also have clearer pathways towards accessing public services available to refugees and Brazilian citizens. This could also be an opportunity to ensure that unaccompanied children are made visible and prioritised in how their refugee status is recognised in Brazil, and that an integrated system is developed to respond to their needs, wishes, and best interests in the context of displacement.

Finally, Brazil should consider expanding this *prima facie* recognition to unaccompanied children in view of its stated aim of adopting a humane stance towards Venezuelans. It should also consider the potential of its novel use of the Declaration definition moving forward, particularly in a world where responses towards migrants and asylum seekers are increasingly characterised less by a genuine commitment to the international refugee regime, and more by national concerns. By strengthening this humane approach to refugees and displaced populations, such as by adequately widening the scope of entitlement for refugee status, Brazil may therefore also set precedent for both developing and developed nations to implement international refugee law in a more flexible, practical, and inclusive manner through committed international and multilateral cooperation.

The author

Diego Castillo Goncalves is a doctoral researcher in the School of Law, Trinity College Dublin (TCD). His research interests include asylum, migration, ethics, and children's rights. He can be contacted on castildi@tcd.ie.

Bibliography

BRASIL (2017). Law 13.445, 24 May 2017. Brasília.

BRASIL (1997). Law 9.474, 22 July 1997. Brasília.

CANTINHO, I. (2018). 'Crianças-Migrantes no Brasil: Vozes silenciadas e sujeitos desprotegidos'. *O Social em Questão*, 21(41): 166-173.

CARTAGENA DECLARATION ON REFUGEES (1984). Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984. Available from: <https://www.refworld.org/docid/3ae6b36ec.html> (accessed 19 March 2020).

COMMITTEE ON THE RIGHTS OF THE CHILD (2013). General Comment no.14 para. 47

CONVENTION RELATING TO THE STATUS OF REFUGEES (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

COSTA, E. (2020). '*They Wanted A Better Life': The Young Venezuelans Escaping Into Brazil Alone*'. The Guardian. Available from: <https://www.theguardian.com/global-development/2020/feb/24/venezuela-children-minors-brazil-migration> (Accessed 18 March 2020).

GUERRERO, I. (2020) '*Se Van Los Niños Venezolanos, Y Se Van Solos*'. Armando.Info. Available from: <https://armando.info/Reportajes/Details/2623> (Accessed 13 March 2020).

HUMAN RIGHTS WATCH (2019) '*Brazil: Venezuelan Children Fleeing Alone* '(online). Available from: <https://www.hrw.org/news/2019/12/05/brazil-venezuelan-children-fleeing-alone> (Accessed 7 March 2020).

JAROCHINSKY, J. and JUBILUT, L. (2018). *Venezuelans In Brazil: Challenges Of Protection*. (online) E-International Relations. Available from: <https://www.e-ir.info/2018/07/12/venezuelans-in-brazil-challenges-of-protection/> (Accessed 5 March 2020).

LAZARIN, M.R. (2019) 'Quando a infância pede refúgio: os processos de crianas no Comite Nacional para os Refugiados'. M.A. thesis, School of Sociology, São Carlos University

MINISTRY OF JUSTICE AND PUBLIC SECURITY (2019.) *Nota Técnica N.O 12/2019/CONARE_Administrativo/CONARE/DEMIG/SENAJUS/MG (8757617)*: 1-2.

PARIS, F. (2019) 'Brazilian president Bolsonaro withdraws from U.N. Compact on Migration'. Npr. Available from: < https://www.npr.org/2019/01/09/683634412/brazilian-president-bolsonaro-withdraws-from-u-n-compact-on-migration> (Accessed 20 May 2020).

PONTES, F. and FRIAS, J.C. (2018). 'A guarda das crianças solicitates de refugio desacompanhadas ou separadas no Brasil'. Revista de Direito da UniSangrario. 8(2): 1-30

RAMSEY, G. and SANCHEZ-GARZOLI, G. (2018). 'Responding to an Exodus: Venezuela's Migration and Refugee Crisis as Seen From the Colombian and Brazilian Border'. Available from:

< https://reliefweb.int/sites/reliefweb.int/files/resources/Final-VZ-Migration-Report-Final_1.pdf> (Accessed 10 July 2020).

SPECIA, M. (2019) 'What is happening in Venezuela and why it matters. (online) New York Times Available from: < https://www.nytimes.com/2019/04/30/world/americas/venezuela-crisis.html > (Accessed 20 May 2020).

UNHCR (1997) 'Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum'.

UNHCR (2006) 'The Refugee Situation in Latin America: Protection and Solutions Based on the Pragmatic Approach of the Cartagena Declaration on Refugees of 1984' IJRL 18(1): 7-20.

UNHCR (2009) Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees HCR/GIP/09/08.

UNHCR (2011) 'Protection Gaps in Europe? Persons fleeing the Indiscriminate effects of Generalized Violence' , V. Turk, Director of International Protection, 18 January 2011

UNHCR (2014) '*Boletim Informativo No. 1*. Cartagena+30: 1-4'. Available from: < https://www.acnur.org/fileadmin/Documentos/Proteccion/Cartagena30/Cartagena30_Boletim_Fev_2014.pdf?view=1> (Accessed 24 March 2020).

UNHCR (2015) Guidelines on International Protection No. 11: Prima Recognition of Refugee Status HCR/GIP/15/11.

UNHCR (2019) *UNHCR Welcomes Brazil's Decision To Recognize Thousands Of Venezuelans As Refugees*.

UN GENERAL ASSEMBLY, *Convention on the Rights of the Child*, 20 November 1989.

'Better than Nothing' Approaches to Protection and the Violence of the Law in Turkey and Mexico

Rhonda Ferguson and Linn Biorklund Belliveau

Abstract

States are increasingly resorting to temporary protection measures to address large movements of forcibly displaced people, including people falling outside the scope of the limited legal category of 'refugee'. In recent years, the use of temporary protection measures in 'transit countries' has been encouraged through bilateral arrangements with 'destination countries'. This paper discusses the enlistment of 'transit countries' by 'destination countries' to expand programmes of temporary protection in the former. It outlines the provision of temporary protection to people fleeing both non-persecutory and persecutory threats, using Turkey and Mexico as illustrative 'transit country' examples. It asserts that these arrangements take place as part of border externalisation and migration control projects, largely initiated by the United States and European Union, and they signal a continuation of the rules and practices of exclusion and containment of people from the Global South.

Introduction

In the absence of adequate international rules granting safe passage or guaranteed access to asylum procedures, the movements of forcibly displaced people are often relegated to the realm of extralegality. *De facto* or by design, the law governing movement across international borders and asylum exclude large numbers of people, particularly from the Global South, from safe options for accessing protection (Behrman 2018: 56; Hathaway 1990:162). Temporary protection, commonly referred to as 'humanitarian' protection, facilitates access to services for people fleeing non-persecutory threats. As such, it might be argued that formalising temporary protection regimes carves out space within the law for forcibly displaced people who might otherwise fall through the gaps in international protection (Jubilut 2017; Bastaki 2018; Fitzpatrick 2000). However, the increased frequency with which temporary protection measures are being exercised, particularly in 'transit countries' for people fleeing non-persecutory *and* persecutory threats, calls for further exploration.[1]

The enlistment of transit countries by destination countries to expand programmes of temporary protection, as part of border externalisation projects, signals a continuation of the rules and practices of exclusion and containment of people from the Global South. This paper outlines how positioning temporary protection as 'better-than-nothing' is problematic, first by situating it within the context of international protection and then by looking at the examples of Turkey

1 Transit countries are places where forcibly displaced people find themselves in-between their place of departure and aimed destination, and without permanent legal status (Missbach & Philips 2020: 3, 7).

and Mexico. While such arrangements, *prima facie*, address the humanitarian needs of forcibly displaced people, they also embed precarity and temporality into protection norms, normalise the exclusion of individuals from avenues to permanent protection in a country that they feel safe, and regularly fail to ensure *non-refoulement* in practice.

Temporary protection as a component of an inadequate system

In transit country settings, temporary protection is conventionally said to offer practical solutions to large movements of people, as it allows countries to grant status *en masse*, without undergoing individual case reviews (UNHCR 2012; Bidinger 2015: 230). It may also perform an ostensibly humanitarian function by encompassing those who are excluded from international protection (Jubilut 2017). This includes people fleeing unprecedented environmental, medical, and economic emergencies. While temporary protection has been used for decades, more countries appear to be implementing such measures (Bastaki 2018), for longer durations, and within particular geopolitical contexts. The latter point is most salient; assumed destinations, such as the EU, heavily influence the use of temporary protection measures in transit countries (Ineli-Ciger 2019: 122). Before turning to Turkey and Mexico to illustrate these claims, it is necessary to illuminate how temporary protection mechanisms are operationalised to retain the functions of exclusion and containment found in international refugee law.

International refugee law and other rules regulating forced migration reflect the state-centric desires in the Global North to prevent, control, and contain the movement of people from the Global South (Behrman 2018; Hathaway 1990). The increasing use of temporary protection in transit countries demonstrates a continuation of this project of containment and sovereign protectionism. The 1951 Refugee Convention constructs the refugee narrowly as a politically persecuted individual. This systematically excludes those forced to leave their countries for diverse and often intertwined reasons from the protection afforded through this label. The omission of civil war, environmental deterioration, economic collapse, and chronic hunger as the conditions of life so intolerable that they could warrant protection in another country, precludes a large number of forcibly displaced people. Behrman (2018: 56) argues that the updated terms of the 1967 protocol - instead of expanding the scope of Convention - further restrict it by 'complet[ing] the gesture towards universality implicit in the 1951 Convention'. More recently, the Global Compact on Refugees re-iterates the framing constructed by previous instruments (Chimni 2018); although it expands the discussion of responsibilities and root causes, it remains focused on those who fit the refugee definition (UNHCR Global Compact 2018).

Despite their celebrated universality, international instruments related to migration and refugees rest on the voluntary consent of states to be bound - as such these instruments fail to impose obligations on countries to accept refugees or guarantee protection for those outside the refugee category. Decision-making about who is and is not a 'legitimate', or 'deserving' refugee rests with states (Cacho 2012). The limited existing obligations are formulated so

as to ensure their amenability to the security interests of the state, rather than the needs of forcibly displaced people. For example, Article 1(f) of the Refugee Convention leaves significant interpretive space for states and courts (see *Febles versus Canada* and surrounding debate).

States tend to use law to contain and criminalise forcibly displaced people, rather than expand protection through, *inter alia*, ensuring safe migration routes. As Okafor finds:

> Most rich states resist binding international laws that allocate responsibilities to them to take in more refugees and/or contribute more finances. These same states are enthusiastic about binding legal texts outlawing human smuggling and trafficking. Their resistance to protection obligations is also presented in a way that fully or partly eludes, eclipses or denies their partial responsibility for root causes of refugee flows (2019: 6).

Instruments that expand responsibilities and address root causes tend to be non-binding in character, for example, Cartagena Declaration (1984); UNHCR Global Compact (2018). Exceptions include the African Refugee Convention, which expands the refugee definition, and the Inter-American Court of Human Rights' advisory opinion, which stresses the evolving nature of the right to asylum (OAU 1969; AICHR 2018: 137). Conversely, the criminalisation of forcibly displaced people's movements is illustrated by the proliferation of migration offences. For example, the US's Zero-Tolerance policy (2018) enables the criminal prosecution of anyone entering the southern border without authorisation (US Department of Justice 2018; Massey 2020). The US-Mexico Joint Declaration, implemented one year later, encourages Mexico to take 'unprecedented steps' against the movement of forcibly displaced people (US Department of State 2019; Sanchez 2020). To enforce these policies, the Mexican government focuses on the criminalized aspects of aiding the movement of people across borders while ignoring the lack of options for safe migration (Sanchez 2020).

By understanding the refugee regime in this way, we can see temporary protection as a politically convenient avenue through which states continue to avoid responsibilities to forcibly displaced people. Temporary protection is not a departure from international refugee norms. It is neither an exception (or derogation as Edwards (2012) explores) nor 'expansion' of the humanitarian space for forcibly displaced people (Jubilut 2017); rather, it normalises the exclusion of certain peoples from permanent protection and thereby erodes existing norms. Next, we consider the harmful effects emerging as a result of temporary protection and how they constitute a form of 'legal violence' – a term that refers to the 'less dramatic, often less visible… injuries' that stem from the law and its omissions (Menjívar and Abrego 2012: 1383).

Transit country measures, bilateral deals, and the façade of humanitarian intentions

Temporary protection measures in place in countries such as Turkey and Mexico have been repurposed in the wake of bilateral deals with the EU and US respectively (Turkey 2013; Turkey 2014;

Mexico 2011). These deals are aimed at the externalisation of borders and migration control, such as the widely criticised EU-Turkey deal (European Council 2016) and the Remain in Mexico policy (US Department of State 2019).[2] The prioritization of state interests over the wellbeing of forcibly displaced people is evident despite the language of humanitarianism invoked by both. Temporary protection measures in Turkey and Mexico offer an inadequate bundle of rights, operate with indeterminate and *ad hoc* procedural rules, and complicate recipients' applications for durable solutions (Biorklund Belliveau and Ferguson 2021).

In Turkey, recipients face limits in terms of where they can work (Turkey 2016: Article 7; Turkey 2014: Article 24); are at risk of *refoulement* (Human Rights Watch 2019); and are precluded from applying for permanent protection (Ineli-Ciger 2018: 176). Although temporary protection is an interim solution, its duration is unknown, leaving people in a legal limbo indefinitely (Ineli-Ciger 2018: 176). Recipients, particularly women, are exposed to dangerous working conditions and abuse–injuries 'amplified by legal inaction' and facilitated by temporary protection laws (Kivilkcim 2016). Additionally, the limited scope of *non-refoulement*, which excludes people moving *en masse* (Ramji-Nogales 2017: 633), is reinforced through the bilateral agreements between transit and destination countries. The EU-Turkey deal contains explicit provisions organising the return of people to Turkey, the safety of which has been questioned (EU Council 2016; HRW 2019; Amnesty International 2019; 2017).

2 Since the time of writing, Turkey ceased patrolling its border with the EU to allow forcibly displaced people to enter the EU – an action that President Erdogan has periodically threatened (Boffey 2020).

PHOTO BY RHONDA FERGUSON AND LINN BIORKLUND BELLIVEAU
MURAL CREATED BY EVA BRACAMONTES

In Mexico, the provision, renewal, and removal of temporary protection procedures that are outlined in the Mexican Law of Migration (2011: Article 52(V)) lack clear criteria (Vonk 2019). Having previously held temporary protection status in Mexico might also be used as a non-conforming justification by the United States, rendering individuals in need of protection *in*eligible for asylum (Joseph et al. 2019). Hodzic (2017) emphasises that such structural temporalities generate uncertainties and paralysis that limit forcibly displaced people's agency and wellbeing. In addition to violence and abuse that forcibly displaced people face in Mexico, access to protection and social services, including healthcare, is often only available for a limited time. Of particular importance is the high number of unattended emotional and psychological traumas among people without permanent legal status (Bojorquz et al. 2019; MSF 2020).

Yet it is precisely under the guise of objective humanitarianism that the political forces behind temporary protection, and the harms that result, are obfuscated. As Chimni asserts, 'humanitarian' is 'not captive to any specialized legal vocabulary…. its extendibility facilitates ambiguous and manipulative uses and allows the practices thus classified to escape critique through shifting the ground of justification from legal rules to the logic of situations' (Chimni 2000: 244). Through the implementation of temporary measures for ostensibly humanitarian purposes, states' policies maintain the veneer of objectivity while they reproduce their histories of border control and the containment illuminated by Hathaway (2007; 1990), Woldemariam et al. (2019), and Okafor (2019).

Conclusion

The current international protection patchwork is inadequate for large numbers of people seeking protection. However, the extent to which temporary protection offers a promising interim solution is questionable. Temporary protection measures in transit countries serve to exacerbate precarity and temporality of forcibly displaced people, particularly when their duration is unknown, they can be renewed indefinitely, and the criteria for renewal is indeterminate.

In the context of large movements of people fleeing crises, it must be asked: is the better-than-nothing approach of temporary protection satisfactory? And, better for *whom*? Regional cooperation and responsibility-sharing could bring improvements to protection, yet the current 'deals' have failed to come up with people-centred solutions. Until then, temporary protection mechanisms are bound to create social and legal temporalities, which expose recipients to various harms. Forcibly displaced people are welcome to wait out the humanitarian emergency that they fled, but are unable to formally integrate in the host society.

The authors

Dr. Rhonda Ferguson is a fellow at the Dahdaleh Institute for Global Health Research (DIGHR). Her research interests include forced migration, food security, arms trade, and socio-economic rights. She has been a Mitacs Acclerate postdoctoral fellow with Lakehead University and Food Secure Canada (2018-19); a visiting postdoctoral fellow at the Nathanson Centre on Transnational Human Rights, Crime and Security; an adjunct professor at Osgoode Hall Law School (2017-18), and; a doctoral fellow at the Irish Centre for Human Rights. She has published on the relationship between international trade law and the right to food, the right to health, and food security.

Ms. Linn Biorklund Belliveau is a researcher at Dahdaleh Institute for Global Health Research and a PhD Candidate in Critical Human Geography at York University. Her areas of knowledge include forced migration, criminalisation and geopolitics of humanitarian response, with a range of related publications. Linn has extensive experience with non-governmental organisations in the fields of humanitarianism and human rights. She has worked and carried out research in East Africa, the Middle East, Latin America and Europe. She is a regular guest speaker on forced migration and the politics of aid.

Bibliography

AMNESTY INTERNATIONAL (2019) Turkey: Syrians illegally deported into war ahead of anticipated 'safe zone'. Available at: <https://www.amnesty.org/en/latest/news/2019/10/turkey-syrians-illegally-deported-into-war-ahead-of-anticipated-safe-zone/> (accessed 13 January 2020).

—— (2017) A Blueprint for Despair. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/EUR2556642017ENGLISH.PDF> (accessed 13 February 2020).

BASTAKI, J. (2018) 'Temporary Protection regimes and Refugees: What Works? Comparing the Kuwaiti, Bosnian, and Syrian Refugee Protection Regimes', Refuge, Vol 34 (2), 73-84.

BEHRMAN, S. (2018) 'Refugee Law as a Means of Control', Journal of Refugee Studies 32(1): 42-62.

BIDINGER, S. (2015) 'Syrian refugees and the right to work: Developing Temporary
Protection in Turkey', Boston University International Law Journal 33(1): 223-250.

BIORKLUND BELLIVEAU, L. and FERGUSON, R. (forthcoming, 2021) 'Temporary Arrangements for Forcibly Displaced People in Transit Countries - Protective? Provisional? Political?' (Delayed submission due to COVID-19 travel restrictions).

BOFFEY, D. (2020) 'EU and Turkey hold 'frank' talks over border opening for refugees', The Gaurdian March 9.

BOJORQUZ, I., CALDERON, A., CARRASCO, M., ROSALES, Y. and ORRANCA, P. (2019) 'Limitaciones en el accesso a servicios de salud de los migrantes centroamericanos en México,' Región Transfronteriza México-Guatemala. Available at: < http://www.rtmg.org/post/limitaciones-en-el-acceso-a-servicios-de-salud-de > (accessed 18 March 2020).

CACHO, L. (2012) Social Death: Racialized Rightlessness and the

Criminalization of the Unprotected, New York University Press.

CARTAGENA DECLARATION ON REFUGEES, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, adopted by the Colloquium, held at Cartagena, Colombia, 19-22 Nov 1984.

CHIMNI, B.S. (2000) 'Globalization, Humanitarianism and the Erosion of Refugee Protection', Journal of Refugee Studies, 13(3): 243-263.

—— (2018) 'Global Compact on Refugees: One Step Forward, Two Steps Back', International Journal of Refugee Law 30(4): 630-634.

CONVENTION RELATING TO THE STATUS OF REFUGEES (1951) 189 UNTS 137, opened for signature 1951, entered into force 1954.

EDWARDS, A. (2012) 'Temporary protection, derogation and the 1951 refugee convention', Melbourne Journal of International Law 13(2): 595-635.

EUROPEAN COUNCIL (2016) *EU-Turkey statement, 18 March 2016*. Available at <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> (accessed 13 February 2020).

FITZPATRICK, J. (2000) 'Temporary Protection of Refugees: Elements of a Formalized Regime', The American Journal of International Law 94(2): 279-306.

HATHAWAY, J. C. (2007) 'Forced Migration Studies: Could We Agree Just to 'Date'?' Journal of Refugee Studies, 20(3): 349-369.

—— (1990) 'Reconsideration of the Underlying Premise of Refugee Law', Harvard International Law Journal 31(1): 129-184.

HODZIC, S. (2017) in HAINES, D., HOWELL, J., and KELES, F. (Eds.) Maintaining Refuge: Anthropological Reflections in Uncertain Times. Committee on Refugees and Immigrants. Available at: <http://mason.gmu.edu/~dhaines1/CORI_2017_Final.pdf> (accessed 10 February 2020).

HUMAN RIGHTS WATCH (2019) Turkey: Syrians Being Deported to Danger. Available at <https://www.hrw.org/news/2019/10/24/turkey-syrians-being-deported-danger> (accessed 13 February 2020).

INELI-CIGER, M. (2019) 'How have the European Union and the EU Asylum Acquis Affected protection of Forced Migrants in Turkey? An Examination in View of the Turkish Law on Foreigners and International Protection and the EU-Turkey Statement of March 2016'. In Stoyanova, V. and Karageorgiou, E. (eds.) The New Asylum and Transit Countries in Europe During and in the Aftermath of the 2015/2016 Crisis. Leiden/Boston: Brill, pp. 115- 140.

—— (2018) Temporary Protection in Law and Practice (Leiden: Brill).

JOSEPH, A., JUAREZ APARICIO, J., and MARTIN, A. (2019) 'Mexican Tarajetas de Visitante por Razones Humanitarias and Firm Resettlement: A Practice Advisory for Advocates'. Instituto para las Mujeres de la Migracion A.P. Available at: < http://imumi.

org/attachments/2019/Mexican%20Tarjetas%20de%20Visitante%20por%20Razones%20Humanitarias%20and%20Firm%20Resettlement%20-%20A%20Practice%20Advisory%20for%20Advocates.pdf > (accessed 15 December 2019).

JUBILUT, L. (2017) 'Humanitarian Alternative Pathways for Protection for Forced Migrants in Latin America?', in McAuliffe, M. and M. Klein Solomon (Conveners) (2017) Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration. IOM: Geneva, pp. 117-122.

INTER-AMERICAN COURT OF HUMAN RIGHTS (IACHR). (2018) *The Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection*, Advisory Opinion OC-25/18.

KIVILCIM, Z. (2016) 'Legal Violence Against Syrian Female Refugees in Turkey', Feminist Legal Studies 24: 193-214.

MASSEY, D. (2020) 'Creating the exclusionist society: from the War on Poverty to the war on immigrants,' *Ethnic and Racial Studies*, 43(1): 18-37.

MÉDECINS SANS FRONTIÈRES (2020) No Way Out: The Humanitarian Crisis for Migrants and Asylum Seekers Trapped Between United States, Mexico and the Northern Triangle of Central America. Available at: <https://www.doctorswithoutborders.org/sites/default/files/documents/Doctors%20Without%20Borders_No%20Way%20Out%20Report.pd> (accessed 20 March 2020)

MENJÍVAR, C., ABREGO L. J. (2012) 'Legal Violence: Immigration Law and the Lives of Central American Immigrants', American Journal of Sociology 117(5): 1380-1421.

MEXICO (2011) *Ley sobre Refugiados, Protecion Complementaria y Asilo Politico* [The Mexican Act on Refugee, Complementary Protection, and Political Asylum]. Available at: <https://www.gob.mx/cms/uploads/attachment/file/211049/08_Ley_sobre_Refugiados__Protecci_n_Complementaria_y_Asilo_Pol_tico.pdf> (accessed 15 December 2019).

MISSBACH, A and PHILLIPS, M. (2020) 'Introduction: Reconceptualizing Transit States in an Era of Outsourcing, Offshoring, and Obfuscation,' in Migration and Society: Advances in Research 3: 1–15.
OAU CONVENTION GOVERNING THE SPECIFIC ASPECTS OF REFUGEE PROBLEMS IN AFRICA (adopted 10 Sept 1969, entered into force 20June 1974) 1001 UNTS 14691 (African Refugee Convention).

OKAFOR, O. (2019) 'Cascading toward "De-Solidarity"? The Unfolding of Global Refugee Protection'. Third World Approaches to International Law Review, Reflections 2.

RAMJI-NOGALESE, J. (2017) 'Migration Emergencies', Hastings Law Journal 68: 609-656.

SANCHEZ, G. (2020) 'Victimization, Offending and Resistance in Mexico: Toward Critical Discourse and Grounded Methodologies in Organized Crime Research,' Victims and Offenders. Available at: <https://www.tandfonline.com/doi/

India's Upcoming Anti-Trafficking Bill: Ambivalent to the Migration-Trafficking Nexus

Prashant Singh and Meghna Sharma

Abstract

While the Indian Parliament is set to reinvent its anti-trafficking regime, it is pertinent to analyse if the proposed law is up to the task. Several studies have established that individuals from migrant communities are highly vulnerable to become victims of trafficking. However, the current draft is ambivalent to the socio-economic reality of victims of trafficking. The draft law stresses over-criminalisation and has failed to draw upon lessons from anti-trafficking stakeholders from around the world who aim to address the root causes. It pays scant tokenistic attention to the issue of internal and external migration within the South Asian region. The paper argues that stronger protection of human rights of migrant communities is critical to combat trafficking. The first half of the article traces the evolution of the law on trafficking by exploring the factors driving the movement. The second part of the article highlights the need to ensure the continued protection of vulnerable communities from trafficking from the perspective of migrating populations.

Introduction

According to the United Nations Office on Organized Crime (UNODC), India has been a trafficking haven in South Asia for several years. Moreover, the US State Department's 2017 report notes that India is a 'source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking' (Department 2017). The recently released data from the National Crime Records Bureau has also revealed a rise in trafficking cases. Between 2010 and 2019, the number of human trafficking victims has risen to 38,503. (Bureau 2019). The Indian Parliament has proposed a new law, currently titled as the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2020 to curb the rising cases of human trafficking and reform the existing legal landscape surrounding it.

However, the current draft is criticised for viewing criminalisation as a solution to trafficking. The bill's approach ignores the factors that drive people towards risky situations and fails to integrate the lessons learned by anti-trafficking stakeholders since the adoption of the United Nations Trafficking Protocol, including reintegration. Rather than protecting the interests of vulnerable communities, this law is likely to undermine the human rights of trafficked persons. This paper argues that socio-economic reality of vulnerable groups needs to be taken into account while deliberating a new anti-trafficking regime. The paper also brings into foreground the failure of the draft law to address the fragmented anti-trafficking regime. The draft law includes an expanded definition of the term 'trafficking' and also further clarifies the definition of 'aggravated trafficking.' Nonetheless, the law still suffers from several definitional inconsistencies as it fails to link the application of the current draft with the provisions of existing anti-trafficking legislations.

Migration and trafficking: An oft-ignored nexus

Until 2000, the issue of trafficking was analysed with an exceptional focus on sex work. The adoption of the Palermo Protocol (United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons) gave way to an expansive understanding of trafficking as a phenomenon and located the issue within the migration framework (Kotiswaran 2018). Since the adoption of the Palermo Protocol, several studies have established the relationship between migration regime and human trafficking (Fiona David, 2019). The formulation of target 8.7 in the Sustainable Development Goals (SDGs), which calls for effective measures to eradicate human trafficking for sustainable growth, reinforced the notion that anti-trafficking laws need to focus on the vulnerabilities of migrant populations with respect to forced and bonded labour. Many hoped that the Indian government would be mindful of the shift in international discourse and move away from first-generation thinking on this issue which emphasised punitive measures such as greater criminalisation and stringent punishments. However, the recent draft law seems oblivious to the root causes of trafficking and continues to prefer criminalisation as an antidote to human trafficking (Sullivan 2018). Such an approach has been considered as outdated for years as it ignores the socio-economic realities of migrant communities who are at a higher risk of abuse and exploitation (Kaye 2003).

Legal landscape of anti-trafficking law in India

For years, India's fragmented legislative regime against trafficking consists of multiple laws which approach the issue in a different manner. The current framework aims to counter trafficking through both general criminal law, i.e. the Indian Penal Code, 1860 (IPC) and special statutes. For instance, the 1956 Immoral Traffic (Prevention) Act was enacted to punish those who were engaged in selling women into prostitution and the 1986 Child Labour (Prohibition and Regulation) Act was created to check the practice of trafficking for the purpose of child labour. Over-criminalisation has been a common feature in both strands of criminal law which contain anti-trafficking provisions.

Although India signed the 2011 UN protocol, which has sought to address the issue in the most comprehensive manner yet, and is also a signatory to the UN Convention against Transnational Organised Crime, it was only in 2013 that India changed its criminal law to include the prescribed legal definition of trafficking. The primary motivation for this change was the public outcry that came about in the aftermath of the *Nirbhaya* rape case in 2012.[1] Justice Verma Committee which was setup to review the criminal legal framework on this subject suggested several reforms with regards to the definition of the term "trafficking" and pointed out the lack of coherance in India's anti-trafficking regime (Khan, 2016). Since then, there have been calls for a new law which unites the existing provisions and aligns the Indian regime as per the evolving international discourse. The current bill was expected to address these issues. However, this draft has again focused on strategies of forced raids, rescue,

1 A 23-year old woman was gang-raped and killed in a private bus on 16th December 2012. The rape case triggered nationwide protests in India demanding a comprehensive overhaul of the criminal laws.

rehabilitation and criminalisation as a solution to the problem of human trafficking. Thus, the current version has been regarded as a "*rehash of the legal provisions that already exist*" (Tandon 2018). Another major flaw of the bill is that it does not contain procedural safeguards for those who are accused under the provisions of this law (Kotiswaran 2018).

The lack of specific protective mechanisms for targeted groups

It is well known that traffickers target people from impoverished communities who experience discrimination based on their economic class, caste, and social status. Individuals belonging to migrating communities are most vulnerable on this count because escape from poverty and discrimination is the key driver behind their movement. Traffickers take advantage of this vulnerability and lure them with false promises of lucrative employment and later sell them into sex slavery or bonded labour. Curiously, the bill fails to include any mention of 'prostitution' and 'sexual exploitation and abuse for a commercial purpose.' Many domestic workers are victims of human trafficking, receiving little to no salary and are heavily abused by their employers. Studies have linked the targeting of such communities to low levels of human security, which the UNDP defines as the 'protection from sudden and harmful disruption in the patterns of daily life and safety from chronic threats such as hunger, disease and repression' (Uddin 2014). The U.S. State Department has also underscored the vulnerability of disadvantaged groups-lowest caste Dalits, members of tribal communities, and religious minorities (Department 2017). Women belonging to such groups are also at high risk of being forced into sex-work and trafficking. The bill does not contain any special provision for the specifically targeted communities (Seshu 2018).

Ineffective rehabilitation provisions and its impact on targeted groups and migrants

The initial clause of the draft law reads as: 'a bill to prevent trafficking of persons, especially women and children and to provide care, protection and rehabilitation to the victims of trafficking, to prosecute offenders…' As exemplified in the initial clause, the government has claimed that rehabilitation of human trafficking victims is the principle focus of the draft law. While the bill does make special provisions for the rehabilitation of victims, its approach on rehabilitation mechanisms does not differ greatly from previous efforts. It obligates the government to set up protection home for taking care of interim needs of victims such as food, shelter, medical care and also undertake steps for long-term rehabilitation. In a way, the proposed model replicates the same-old institutionalised rescue and rehabilitation which is known to be ineffective as it fails to provide a safe environment to victims and is even known to facilitate sexual abuse (Govindan 2013).

While it was expected that the new law will constitute a departure from the previous approach of criminalising victims, it continued to retain this policy and has paid scant attention to improving the rehabilitative measures. This can be demonstrated by examining the victim immunity provisions in the current law which only protects individuals from 'minor offences' such as solicitation or working without authorised documents. Aside from these provisions, the victim

is required to establish that they committed the offence due to coercion or threat and had an apprehension of physical violence. Such high thresholds cannot be met by those who belong to poor socio-economic conditions. Therefore, this approach has been rightly criticised for being excessively punitive and ineffective.

This law was expected to adopt a rights-based legislative approach which facilitates migration through promotion of decent work opportunities. Such a framework is more likely to succeed, but unfortunately, has not been realised through this new law.

Conclusion

In view of the above, it is clear that the Indian government is yet to find its way out of several failed regulatory frameworks and align itself with the evolving frameworks which emphasize innovative methods to counter trafficking. Globally, countries are increasing their efforts towards realising SDG 8.7 which views trafficking through the lens of development. However, in India, the government has not pursued this path and has failed to appreciate the socio-economic status of targeted sections of society which renders them vulnerable to trafficking. Therefore, it is instructive for the government to mould its anti-trafficking model from a development perspective and prioritise welfare measures over rescue and rehabilitation. Given the current ineffective care and rehabilitation mechanism, models of community-based rehabilitation can be adopted. Ensuring decent work conditions as a top priority will enable the government to prevent labour exploitation. Further, fixing the liability of intermediaries and principal employers is critical to ensure migrant workers are protected from coercion and exploitation which is endemic in labour markets.

The authors

Prashant Singh works with Intersex Asia-a regional network of intersex organisations as a Coordinator. His academic work focuses on citizenship, transitional justice and SOGIESC issues. His essays have appeared in academic journals as well as various media platforms including the Hindu, the Pioneer and the Print. He earned his primary law degree from NLU, Punjab and is currently a candidate of Master's in Human Rights Law at University of Gothenburg as Erasmus Mundus Scholar. He can be reached at prashantsingh93@live.com.

Meghna Sharma is a Senior Research Associate at Centre for Civil Society- a leading public policy think tank based in Delhi. She has experience of working in disability rights and legal aid. She is a graduate of Rajiv Gandhi National University of Law, Punjab. Her work has spanned across a wide range of human rights and access to justice issues, including disability rights, women's and children's rights, access to education and quality legal representation, among others. Her email address is meghnasharma95@outlook.com.
Both authors are co-founders of India Rights Initiative (https://www.indiarightsinitiative.org/) which is a research collective focused on human rights issues including rights of people on the move.

Bibliography

Bureau, N. C. R., 2019. Crime in India: Statistics, s.l.: Ministry of Home Affairs.

Department, U. S., 2017. Trafficking in Persons Report, s.l.: s.n.

FIONA DAVID, K. B. a. J. J. L., 2019. Migrants and their vulnerability to human trafficking, modern slavery and forced labour, s.l.: International Organization for Migration.

GOVINDAN, P., 2013 'Rethinking Emancipation: The Rhetorics of Slavery and Politics of Freedom in Anti-Trafficking Work in India', Interventions: International Journal of Postcolonial Studies, 15(4): 513.

KAYE, M., 2003. The Migration-trafficking nexus, s.l.: Anti-Slavery International.

KHAN, S. A., 2016. Human Trafficking, Justice Verma Committee and Legal Reform: An unacccomplished agenda. Journal of Indian Law Institute.

KOTISWARAN, P., 2018. The Criminal Law as Sledgehammer: The Paternalist Politics of India's 2018 Trafficking Bill. Open Democracy.

KOTISWARAN, P., 2018, 'What Is Wrong With India's Trafficking Bill 2018: An Introduction.' Economic and Political Weekly, 53(8): 2.

Seshu, M., 2018. Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices, s.l.: Sampada Grameen Mahila Sanstha.

SULLIVAN, B. P. a. L., 2018 'India's "Anti-Trafficking" Bill Ignores Socio-Economic Realities of Trafficked Persons.' Economic and Political Weekly, 53(28): 3.

TANDON, T., 2018 'India's Trafficking Bill 2018 is Neither Clear Nor Comprehensive.' Economic and Political Weekly, 28(53): 4.

UDDIN, M., 2014 'Human Trafficking in South Asia: Issues of Corruption.' International Journal of Social Work and Human Services Practice.

Three Branches of Coping with Statelessness Risk in Colombia

ALEXANDRA CASTRO

Abstract

Colombia generally has not been considered a frequent destination country (IOM 2012). However, in recent years, the arrival of more than 1.6 million Venezuelans has put local norms regarding access to nationality to the test. Given the significant presence of children born in Colombia to Venezuelan parents, the government is now faced with the risk of these children becoming stateless if Colombian nationality cannot be granted to them. Current norms do not grant Colombian nationality to children born in the country and many newborns of Venezuelan origin cannot apply for Venezuelan nationality, given that the Venezuelan Consulate in Colombia remains closed. Recently, three branches of the Colombian government, each seen as independent authorities, have taken steps to intervene in order to provide a solution to the possible statelessness of thousands of children born in Colombia. This article discusses these different interventions from separate branches of government and the challenges regarding this situation that remain to be resolved.

Introduction

Colombia and Chile are the only countries in South America that do not grant nationality to all people born in its territory. For Colombia, this is due to a provision that was included in the Constitution of 1886 and was later transferred to the Constitution of 1991 without further reflection (Acosta 2018). According to this precept, in order to access Colombian citizenship at birth, it is required 'that, being the children of foreigners, one of their parents was domiciled in the Republic at the time of birth' (Constitution of 1991, Article 96).

This concept of 'domicile' was developed out of a norm which further interpreted that at least one of the parents who was a foreigner had a resident visa. This is acquired after having been on a temporary visa for a certain period of time and is dependent on the particular situation and profile of the visa applicant (marital or professional status or according to the country of origin as established in the Decree 1514 from 2012). For many years, this situation did not pose significant problems, partly due to the small number of foreigners living in the country (IOM 2012). By 2005, the total number of foreigners in Colombia was barely over 100,000 people. This number remained the same in 2010, with the number of foreigners corresponding to just 0.2% of the population (IOM 2012: 64).

Nevertheless, in 2015, the Constitutional Court intervened for the first time to correct an interpretation in existing norms related to this concept of domicile, which the Court viewed were too restrictive. In this case, the action was presented by a Chinese citizen whose son was born in Colombia, but who could not access Colombian nationality even though his father had a temporary work permit.[1]

1 An analysis about this decision can be found at: https://www.icbf.gov.co/cargues/avance/docs/f_st075_15.htm

In fact, the Civil Code defines Domicile as the "residence accompanied, real or presumptively, by the aim to stay there" (Civil Code, Article 76). The same norm permits and allows for several different ways of proving domicile and the will to remain in a certain place, which can include opening a store, accepting a job or other "analogue situations" (Civil Code, Article 80).

According to the Constitutional Court, the concept of domicile included in Article 96 of the Constitution should be interpreted accordingly to the referred norms. However, the registration authorities in some cases demanded that foreigners prove domicile not only by demonstrating they have a job or look to open a store, but by proving their entitlement to a special long term resident visa. By doing so, the authorities were submitting the foreigners to a different concept and proof of domicile than the one required for locals and from those included in the civil code.

As a result of the relevant ruling, the Court established that the civil norms should be applied equally for nationals and foreigners, and in that sense, foreigners with a temporal visa should be considered as having an aim to remain in the territory and access to the Colombian nationality should be granted to their children born in Colombia.

Consequently, the Court ordered that the existing provision be interpreted differently, recognizing that children born in Colombian territory from non-Colombian parents could access Colombian nationality when those parents were legally living in the territory, notwithstanding the kind of visa (permit, temporary or permanent) they held. The Court asked the authorities to stop using the existing norm due to its unconstitutional nature and, through doing this, to 'avoid them…produc[ing] discriminatory effects' (Colombian Constitutional Court, *T-075* ,2015).

The current situation of Venezuelans in Colombia

In recent years, the degradation of the economic, political and social situation has led to around five million Venezuelans leaving their country of origin, recent surveys have estimated that 19% of Venezuelan households report to have at least one of its members leaving abroad (UCAB 2020). It is estimated that every day, at least 5,000 Venezuelans leave their country by foot or by bus in order to flee from the starvation, lack of medicine, hyperinflation, violence and insecurity in Venezuela (UCAB 2019). In this same context, around 500,000 Colombians--who in the past migrated to Venezuela, attracted by its flourishing economy and high levels of welfare or escaping from violence and conflict in Colombia --are now returning.

Colombia is the main destination country for Venezuelan migrants (with more than 1.7 million Venezuelans in its territory) (Semana 2020). The high levels of Venezuelans in Colombia is due to the historical relations between the two neighboring countries, which involved considerable cross-border migration and trade. Indeed, Venezuela used to be the main destination country for Colombian migrants (IOM 2012). The two countries share a border of more than 2,000 kilometers which consists of rivers, mountains, and deserts that were previously crossed every day by Colombians fleeing the conflict in Colombia (CNMH 2014) and are now mostly used by Venezuelans

and Colombian returnees to return to Colombia.

One of the reasons Venezuelans are now leaving their country is the absence of medical and sanitary supplies, which forces women to cross the border to obtain prenatal care and give birth (Gandini Luciana et al. 2019). In Venezuela, 'it is calculated that for every 100,000 registered live births, between 100 and 299 maternal deaths occur' (Carrero Soto 2019: 1). Fearing death and seeking better conditions for themselves and their babies, many Venezuelans decide to flee to Colombia. According to official information, while more than 24,000 children of Venezuelans have been born in Colombia, these minors, as a result of the application of the existing legal provisions, could not access Colombian nationality. This was because their parents either were not in a regular administrative situation, or because their parents had a Special Permit designed for them, which expressly could not be used for the purpose of acquiring Colombian nationality (Castro 2019).

In addition, newborns in Venezuela were also prevented from accessing Venezuelan nationality as a result of the practical difficulties of fulfilling the requirements to access the nationality of their parents, and the fact that since the 23 January 2019 there is no Venezuelan consular representation in Colombia (Ministerio de Relaciones Exteriores 2019). For this reason, they remained in Colombia with the right to become Venezuelan but without the possibility of claiming Venezuelan nationality. As a result, they lived outside the protection of any authority and faced difficulty in accessing schools, healthcare or vaccinations. Sometimes they even went to other countries on the continent, bringing the risk of their statelessness with them, and continued their journey to countries such as Peru or Ecuador were they similarly could not access either the Venezuelan nationality nor apply for Peruvian or Ecuadorian nationality.

Colombian authorities initially ignored the problem, stating that Venezuelans could access Venezuelan nationality and there was no risk of statelessness. However, when the number of cases began to increase, the humanitarian risks of these newborns became undeniable not only because of the violation of their right to a nationality, but also because their access to public services, including healthcare and schooling was complicated and in some cases even impossible (El Espectador, 2019). As a result the Colombian perspective changed--leading to an intervention by all three branches of public power.

In 2019, the Registration Authority issued Resolution 8470, which determined that children of Venezuelans born in the national territory from 19 August 2015 to August 2021 could access Colombian nationality by birth. The resolution establishes an: 'administrative temporal and exceptional measure in order to include ex officio the note "valid for proving nationality" in the birth certificate of children born in Colombia, in risk of statelessness, born from Venezuelan parents who do not meet the domicile requirements'.

Indeed, for every child born in a hospital or other healthcare facility, a birth certificate is issued, which includes information about the parents and the time and place of birth. This document is valid to prove the nationality of the newborn if the following is clearly stated in the document: " valid for proving

PHOTO BY ALEXANDRA CASTRO

nationality." As a consequence of the resolution, registration authorities also had to modify past registrations that did not include this mention to allow children born from Venezuelan parents to access nationality. In addition, a procedure was established to register newborn children born to Venezuelan parents by asking them for proof of their Venezuelan nationality.

However, the Resolution did not provide solutions for children of Venezuelans who are not born in hospitals or healthcare centers, and thus do not have a birth certificate and cannot be registered as Colombian. In addition, the Resolution requires Venezuelan parents to provide proof of their nationality by showing their passports or an identity document, which they cannot always provide.[2] Finally, it does not consider the situation of children born in Colombia who afterwards leave the territory for other countries in the region where they cannot access their modified certificate to claim Colombian nationality.

In countries such as Peru, for example, (the second largest destination country for the Venezuelan population) there are no official figures on the number of children in this position, but several cases have been reported by media (elcomercio.pe 2019). As a result, these children will have to return to Colombia to ask for a birth certificate in order to confirm their Colombian nationality since none of the procedures can be carried out from abroad.

Following the special provision for Venezuelan newborns, that same year, by the Demand of the national Ombudsman, the Colombian national congress issued a Law aiming to resolve the problem of statelessness for Venezuelan children in Colombia (Law 1997 of 2019). The law 'establish[ed] a special and exceptional regime to access Colombian nationality by birth, for sons and daughters of Venezuelans in regular or irregular migratory status or for asylum seekers, born in Colombian territory from the 1st January 2015 and until 2 years after the promulgation of the law, in order to prevent statelessness' (Law 1997, Article 2 Paragraph 2).

Addressing the situation of children at risk of statelessness with a law, rather than a resolution passed by an administrative authority, had the potential to be a very effective solution to better prevent statelessness and improve access to basic rights for those children in Colombia. Nevertheless, the Law lacks precision and needs to be developed and harmonized with the Resolution mentioned in order to be applicable. Today both norms exist without horizontal or vertical coherence in their implementation. For example, registration authorities will choose to abide by the guidelines set out by the Resolution rather than the Law.

At present, the finalization of the Law is still pending, which limits the provisions currently available for the Venezuelans, particularly because a final draft of the Law could account for important aspects that are ignored by the Resolution, including the situation of those who left the country before the recognition of their Colombian nationality and the ability to use various means of proof, other than just passport documents, to establish Venezuelan origins.[3]

2 Having a passport in Venezuela can be very expensive or difficult, Solicitants must wait for months or even for a year before getting a appointment to ask for the document. It is a curent practice in the country to ask for additional payments in order to get the document done in a shorter period, which is not affordable for most of the population (El Espectador 2018).

3 This situation has been pointed out by some scholars and NGO's who adressed a petition to the President of Colombia in order to ask him to develop the law throught a Decree, (Colombian Commission

In January 2020, the Constitutional Court intervened in the situation, by ordering the registration of two children as Colombian. Even if the cases only addresses the situation of two specific children, it is significant for three reasons. Firstly, because in the case the Court interprets the human rights of migrants broadly using the concept of the *corpus juris internationalis*[4] including not only the bonding International Treaties but also other non-bonding instruments such as Declarations from treaty bodies and from the Inter-American Commission on human rights. Secondly, the Court also invites local authorities to stop using existing regulations to safeguard the rights of migrants (within an exception of unconstitutionality. Thirdly, the Court recognizes the *De facto statelessness* risk for children born in local territory to Venezuelan parents. The tribunal took into account statements and proofs presented by the participants and the *amicus curiae* during the process, that showed that even if the newborn could eventually have access to Venezuelan nationality--and thus were not *De jure stateless*--they could not ask for such recognition taking into account the present circumstances such as non existent consular representation for Venezuela in Colombia. Without much further consideration, the Court accepted the risk and the vulnerability of the petitioners.

As a result, the Court understood that even if the norms that were created to solve the problem did not exist when the events occurred, the registration authorities could still register children at risk of statelessness as nationals in order to protect their superior interest and safeguard their rights.

Ultimately, even though some practical problems persist, the intervention of the three branches of government has improved the situation of thousands of children born in Colombia. However, there are still some children whose situation presents a risk of statelessness or who might still need intervention from the local authorities.

Conclusion

The mobilization of all three branches of government-- the Congress of the Republic, the Constitutional Court and the Executive Authority, specifically the Registration authorities and the Ombudsman to solve the problem described is remarkable in a global context where migrant's rights are often ignored, especially during massive migratory movements like the one described above. However, the Constitutional Court's ruling sets an important standard of protection and rights that should be applied coherently across the three branches. Particularly in that the Court argues that local authorities should always take into account the best interest of the child. If this standard of best interest were to be applied across the different branches, there would be no need for more special norms and rulings to protect those who risk not only statelessness but also the violation of many other human rights that occur in the context of migration.

Finally, given that the measures adopted aim only to provide solutions to Venezuelan nationals, other migrants in the country may still face difficulties

of Jurist et al. 2020)

4 "The corpus juris of international human rights law comprises a set of international instruments of varied content and juridical effects (treaties, conventions, resolutions and declarations)". (Forrest M. Shnably .J et al .2006 p. 585)

in obtaining nationality for their children since the constitutional norm remains intact. For instance, since 2016 civil society has highlighted the risk of statelessness for children born in Colombia whose parents are asylum seekers, since they cannot access Colombian nationality by birth (asylum seekers are not provided with a visa until their refugee status is recognized) and may have problems contacting the consulate of their country of origin to ask for another nationality (Codhes et al. 2017). Indeed, Article 96 of Colombian Constitution remains non-compliant with international standards, specifically with Article 20 of the Inter American Convention of Human Rights, which states: 'Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality'. Nevertheless, we hope that in the future the best interest of the child will be held as a principle[5] and will continue to be taken into consideration for cases regarding other migrant groups and that no new norms will be needed to protect them from statelessness.

The author

Alexandra Castro Franco is a Colombian Lawyer, with a PhD in Public Law from the University Paris 2 Panthéon Assas. Expert in international migrations, with more than ten years of experience in research, teaching and consulting in the fields of migrant and refugee's rights, migration governance and migrant's advocacy. Author and coordinator of several researches and publications in the aforementioned fields. Founder and former Director of the Observatory on International Migrations from the University Externado de Colombia. Founder and researcher at the Thinktank Diásporas. Email: Alexandra.castrof@gmail.com

5 As it states in the Article 3 of the UN Convention on the Rights of the Child, which says that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

Bibliography

ACOSTA, D. (2018) The National Vs The Foreigner in South America, 200 Years of Migration and Citizenship Law, Cambridge, Cambridge University Press.

BANCO MUNDIAL (2011) Datos sobre migración y Remesas. Second Edition.

CARRERO SOTO, G. (2019) 'Cuando la crisis daña el cuerpo de las madres' (online). In: Salud con lupa. Available at : <https://saludconlupa.com/series/venezuela-un-pais-en-busca-de-alivio/cuando-la-crisis-dana-el-cuerpo-de-las-madres/> (Accessed 20th of March 2020)

CASTRO, A., (ed.) (2019) Venezuela Migra: Aspectos Sensibles Del Exodo Hacia Colombia, Bogotá, Universidad Externado de Colombia.

CNMH, (2014) Cruzando La Frontera: Memorias del Exodo Hacia Venezuela, En Caso Del Rio Arauca. CNMH.

CIVIL CODE, Colombia law 84 from 1873. Available from: < http://www.secretariasenado.gov.co/senado/basedoc/codigo_civil.html. (Last accessed 24 July 2020).

CODHES et al. (2017), 'Desplazamiento, Refugio y Apatrídia': Informe Colombia de Seguimiento al Plan de Acción de Brasil. Septiembre 2017.

COLOMBIAN COMMISSION OF JURIST et al. (2020), Petition about the development of the Law 1997 of 2019. July 2020.

CONSTITUTION (1991). Available from: https://pdba.georgetown.edu/Constitutions/Colombia/colombia91.pdf (Last accessed 4 October 2020).

EL ESPECTADOR (2018). '¿Por qué es tan difícil sacar el pasaporte en Venezuela?' Available from: https://www.elespectador.com/noticias/el-mundo/por-que-es-tan-dificil-sacar-el-pasaporte-en-venezuela-articulo-738727 (Last accessed 24 July 2020).

EL ESPECTADOR (2019) 'En Colombia hay cerca de 20.000 niños en condición de apatrídia'. Available from: https://www.elespectador.com/noticias/nacional/en-colombia-hay-cerca-de-20000-ninos-en-condicion-de-apatridia-juan-ignacio-mondelli/ (Last accessed, 24 july 2020).

FORREST M.F., SCHNABLY J.S. et al. (2006) 'Criminal and civil procedural rights' In: International human rigths and humanitarian law: threaties, cases and analysis.
Cambridge.

GANDINI LUCIANA et al. (Cord) (2019) Crisis y Migración de Población Venezolana, Entre la Desprotección y la Seguridad Jurídica en América Latina, México, Unam.

IOM (2012), Perfil Migratorio de Colombia. Bogotá.

SEMANA (2020), 'Por Segundo mes consecutivo descendió cifra de venezolanos en Colombia'. Available from: https://migravenezuela.com/web/articulo/por-segundo-mes-descendio-cifra-de-venezolanos-en-colombia/2003 (Last accessed, 24 july 2020).

EL COMERCIO.PE (2019) 'Drama

de niños venezolanos apátridas que viven en el Perú. 31-08'. Available from: <https://elcomercio.pe/mundo/actualidad/crisis-venezuela-drama-ninos-apatridas-viven-peru-noticia-ecpm-670953-noticia/?ref=ecr> (Last accessed 23 March 2020).

PRESIDENCIA DE LA REPUBLICA (2019), 'Estado Colombiano Concede Nacionalidad a Niños Nacidos en Colombia, Hijos de Migrantes Venezolanos, Para Proteger Sus Derechos' , available from: <https://id.presidencia.gov.co/Paginas/prensa/2019/190805-Estado-colombiano-nacionalidad-ninos-nacidos-Colombia-hijos-migrantes-venezolanos-proteger-sus-derechos.aspx>.(Last accessed 23 March 2020).

MINISTERIO DE RELACIONES EXTERIORES (2019) Concepto técnico sobre los casos de menores nacidos en territorio colombiano, hijos de padres venezolanos que no cumplen con el requisito de domicilio para el reconocimiento de la nacionalidad colombiana por nacimiento.

UCAB (2019) 'Migrantes y Refugiados de Venezuela'. Available from:< https://migrantesyrefugiadosven.org> (Last accessed 23 March 2020).

UCAB (2020) Encuesta Nacional de Condiciones de Vida ENCOVI 2019-2020. Available from:< https://www.proyectoencovi.com/informe-interactivo-2019(Last accessed 24 july 2020).

Law Cases

CORTE CONSTITUCIONAL (2020) T-006 from 2020

CORTE CONSITUCIONAL (2015) T-075 from 2015

The Incorporation of Local Governments in Soft International Migration Law and the Implementation of the Global Compact for Migration

Adriana Sletza Ortega R. and Alonso De Ita García

Abstract

The present article examines the Global Compact for a Safe, Orderly and Regular Migration (GCM) and its provisions regarding local governments. It examines the GCM as a soft law instrument and analyzes the legal effects of the GCM on the role of local authorities, particularly the Mayoral Mechanism, which was integrated for the follow-up and implementation of the GCM.

Introduction

The Global Compact for a Safe, Orderly and Regular Migration (GCM) is a non-legally-binding multilateral agreement, adopted in December 2018 in Marrakech. It provides a framework for international cooperation and national public policy mainly oriented around the protection of migrants and refugees, taking into account local authorities as key stakeholders due to their role as poles of attraction for immigration.

The language of the GCM, which refers to migration 'order' and 'regulation', can be misinterpreted by States as only pertaining to the control of migration at borders. However, as a soft international law instrument, this article argues that the GCM, through its inclusion of local governments, contributes to international migration law for local human rights. They become officially recognized as relevant actors in international migration governance to advance the implementation of the GCM in their own spheres of jurisdiction.

This article focuses on the soft law implications of the GCM at the local level and the follow-up carried out on its implementation. The article is divided into three sections: the first section examines the GCM as soft law considering its legal effects of compliance including local norms, the second section analyzes the local application of international human rights norms, and the third section examines the role of the Mayors Mechanism for the GCM.

From international soft law to hard law

As distinct from its *hard* counterpart, *soft* international law is neither legally binding, nor mandatory. Soft law refers to quasi-legal instruments, such as declarations, principles and resolutions. According to Michèle Olivier (2002), 'the value of 'soft law' lies on the moral and political level... [It] plays an important role in facilitating and mobilizing the consent of States required to establish binding international law'. From this perspective, soft law represents a first step towards *hard* international law, comprising treaties, conventions, and agreed upon mechanisms for monitoring State compliance. Two

paradigmatic cases of international soft law instruments, which were eventually adopted into hard law, are the Universal Declaration of Human Rights and the UN Declaration of Indigenous Peoples (Hannum 1996; Gómez Isa 2017).

In contrast to hard international migration law, the GCM adopts a whole-of-government approach and specifically establishes that '[T]o develop and implement effective migration policies and practices, a whole-of-government approach is needed to ensure horizontal and vertical policy coherence across all sectors and levels of government' (UNGA 2018). In other words, local, state, and national policies are necessary to fulfill this Compact.

The description of the GCM's objectives proposes the integration of the strategies and programs of the 2030 Agenda for Sustainable Development at a local, national, regional and global level, with the proviso that this be a State-led process (Paragraph 48). In addition, the GCM states that the following issues correspond particularly to local authorities: legal identity for both national and foreign migrants (including civil registry documents such as birth, marriage, and death certificates); legal aid; the incorporation of gender-responsive, child-sensitive and disability-sensitive approaches; the provision of local services and information; access to local labor markets; and the establishment of local community centers and programs to facilitate migrant participation and intercultural dialogue. Furthermore, the needs of the communities to which migrants return should be addressed by implementing provisions corresponding to local development strategies, infrastructure planning and the required budget allocations.

The inclusion of local governments in an international soft law instrument, such as the GCM, is legally significant since they become officially incorporated as actors in international migration governance. Although the GCM is not a legally binding document, the GCM confirms the existence of certain rules and principles, thus reaffirming and strengthening its normative value and contributing to the application, interpretation, and development of international migration law (Bufalini 2019). Because the GCM is founded on pre-existing binding international labor law and international human rights law, it has become one of the bases on which current international migration law functions for judicial interpretation and resolutions of legal cases by judges. Objective 6 of the GCM, for example, notes that States must, 'facilitate fair and ethical recruitment and safeguard conditions that ensure decent work', in compliance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW). This objective draws from specific actions in the CRMW in order to achieve the protection of migrant workers by requiring States to implement national laws that sanction human and labor rights violations.

Given the absence of a legally-binding international migration convention, the GCM can be used to build on *opinion juris*[1] and customary international law in the long term, as it fills a protection gap in this area. In the process of transitioning international soft law into hard law, the GCM also results in domestic legislation and bilateral or regional agreements, as well as creating legal obligations. Multi-organisational involvement and

1 It requires that custom should be regarded as State practice.

participation of local authorities in the implementation of the International Migration Review Forum as the main formal GCM follow-up mechanism, leads to the creation of norms at a national and local level.

Localizing international norms

Local authorities are adopting international norms and participating in international meetings. Barbara Oomen and Moritz Baumgärtel (2018) argue that the rise of local governments is an opportunity for international human rights law, as *praxis* is challenging traditional International Law scholarship. During the opening ceremony of the 2020 Mayoral Forum on Human Mobility, Migration and Development held in Quito, Ms. Pizarro Peña, Mayor of La Pintana, Chile, stated that 'We need to translate international policies and conventions into national law so that local authorities are able to act' (Press Release 2020). This 'translation' of international norms into national and local binding norms is relevant for local governments in their role not only as international actors, but also as objects and subjects of international law. Indeed, with the inclusion of local governments in the implementation of international instruments, they not are not only subjects of international law, but are also becoming subjects in their own right, with an emerging and distinct subjecthood.

Regarding the human rights obligations of local governments, there are several local governments that are already committed to protecting migrants--such as New York and Barcelona--which are involved in the movement of sanctuary, intercultural and solidarity cities with immigrants and refugees (Garcés and Eitel 2019). However, anti-immigrant local ordinances, policies, and declarations require strategic litigation. One illustrative example is the case of the mayor of Tijuana, Mexico, who, in the context of the migrant caravans coming from Central America during autumn 2018, declared that Central American migrants represented a problem for the city and that only migrants that 'behaved well' would be welcomed. He also declared that Tijuana was adopting a practice that if any migrant made an administrative offense, they would be detained and sent to the national migratory authority for deportation.

In response to these declarations, the non-profit organization 'Alma Migrante' filed a lawsuit against these declarations. A federal judge then resolved that the declarations made by the mayor of Tijuana violated the right to information for migrants and the principle of equality and non-discrimination. Regarding the sentence, he reaffirmed that according to Mexican Migration Law, the local authorities can not execute migratory control actions, which are within the exclusive jurisdiction of the federal migratory authorities. The federal judge also ordered, among other issues, that the local government of Tijuana stop the detention and delivery of migrants who had committed administrative offenses to the federal migratory authorities. He also ordered federal migratory authorities (Instituto Nacional de Migración) to stop receiving migrants delivered by any authority not established in federal migration law. The judge declared that since local governments have the responsibility to promote, protect and guarantee human rights, Tijuana had to conduct a public campaign for information for migrants about their human rights and the

refugee status determination process. In addition, the judge determined that the mayor of Tijuana had to offer a public apology for the use of discriminatory language against migrants (Juicio de Amparo 1597/2018-1).

This example illustrates the tension in migration policies between national and local governments. While national governments have sovereignty and exclusive faculties to manage migration, all government tiers are simultaneously obligated to protect human rights. This relationship is decentralized because while national governments are in charge of border controls and main migratory policies, local governments are in charge of local solutions to migrants in their cities as first responders. This tension also underlines the importance of the GCM´s whole-of-government approach and the inclusion of cities as important actors of migration governance at the national and international levels. Cities in their own spheres of jurisdiction can, and should, foster the implementation of the GCM through locally binding norms and policies.

The 'Mayoral Mechanism'

In 2020, for the first time, the Mayoral Forum on Human Mobility, Migration and Development was integrated into the Annual Summit of the Global Forum on Migration and Development (GFMD). This is the formal State-led multilateral dialogue process where the main debates around international migration takes place through the participation of governments, civil society organizations, the United Nations system, the private sector and other stakeholders. The inclusion of local governments in this process represented an achievement for local governments and cities, and revealed that the GCM had brought about a paradigm shift regarding local authorities and international migration governance, by affirming their importance and widening the scope of city diplomacy by granting access to a State-led process. Today, cities are able to interact with national counterparts and are officially recognized as crucial stakeholders, while the GFMD Mayors Mechanism is co-steered by the United Cities and Local Governments

PHOTO BY
Adriana Sletza Ortega R. and Alonso De Ita García

(UCLG) organisation, the Mayors Migration Council, and the International Organization for Migration.

At the 2020 Mayoral Forum, over 80 mayors and officials from 56 cities and regions discussed their efforts to implement the GCM and the Global Compact for Refugees (GCR). This formal integration of the Mayoral Forum into the GFMD is the result of continuous activism by cities and local authorities during the adoption of the New York Declaration for Refugees and Migrants in September 2016 and the following international negotiating State-led process for the adoption of GCM, which lasted until 2018. When the United States cited sovereignty concerns over its border control as justification for withdrawing from multilateral negotiations of the GCM in 2017, for example, leaders of 18 American cities joined a petition signed by 130 mayors from around the world to be included in the GCM (Elorza and Brandt 2017). American sanctuary cities such as Los Angeles, New York and Chicago also strengthened their migrant rights activism; New York City commissioner for international affairs, Penny Abeywardena, declared:

> 'While our national government may decline to engage the international community on this crisis, it is imperative that cities join the conversation...We are a city of immigrants, and by raising our voice in this process, we want to show that the New York City values of inclusion, fair treatment, and global cooperation represent the best of American values' (Allen-Ebrahimian, 2017).

During the 2020 Mayoral Forum at Quito, both representatives of New York State and New York City participated. This pathway reveals how the Mayoral Forum fits into the tension of GCM-State led *versus* GCM *praxis*-local led process.

While local migration diplomacy arose in the decentralization of powers and jurisdictions within States, national authorities remained mainly responsible for the formal negotiation and adoption of international agreements. Since 2007, the GFMD as a State-led mechanism has been gradually opening up for different stakeholder participation: civil society organizations have joined since 2010, while the private sector (business mechanism) have joined since 2016. The Mayoral Forum was incorporated just after the formal adoption of the GCM on 10-11 December 2018, particularly for implementation and follow-up, considering local governments are the authority to determine and execute local policies as critical sites for international compliance.

In the global context of the COVID-19 pandemic, States have mainly relied on traditional strategies for containing transnational movements, such as closing borders to foreigners and allocating national resources exclusively to citizens. Simultaneously, however, the timetable for the regional and national implementation of the GCM is established for the second half of 2020. The GCM finds itself at a decisive moment in transitioning from its focus on ensuring 'safe' and 'regular' migration for the wellbeing of migrant communities, to simply focusing on instilling 'order' at national borders. 'Safe, Orderly and Regular Migration' is a people-centered notion and is the first guiding principle adopted by the GCM.

Conclusion

The GCM is an example of how international soft law can incorporate local governments to play a vital role in the progress of international migration law. Firstly, as a soft law, the GCM is able to exert a normative influence on State and local government behavior which is sometimes translated into policies. It outlines a path for generating new binding instruments. Secondly, it provides an evidence-based cooperative framework which includes a whole-of-government approach that goes beyond the traditional State-level approach, considering local governments as actors not only for migration governance, but also for the follow-up and implementation of the GCM through the Mayoral Forum.

While the role of the implementation and review mechanisms will be critical for the success of this instrument, as we have discussed here, the road to implementation will be far from smooth. Nevertheless, the involvement of local governments is necessary, as they are both first responders and service providers who are able to fill protection gaps left by national migration policies. In particular, they are also key actors in the arena of international law, capable of adapting both hard and soft international human rights law into binding local law.

As Luis Alonso De Ita (2020) stated at the closing ceremony of the Mayoral Forum, '[T]he road to the Global compact was arduous and difficult, but now we are in the crucial moment of implementing them. If we fail, we risk losing a great opportunity for change but also lose the progress we have already reached'.

The authors

Adriana Sletza Ortega Ramírez is a research Fellow at the Academic Group "Transnational Processes and Migration" BUAP-CA-230 in Mexico, Faculty of Law and Social Science, Benemérita Universidad Autónoma de Puebla (BUAP). She holds a PhD in Political Science from the National Autonomous University of Mexico (UNAM). E-mail: adriana.ortega@correo.buap.mx

Luis Alonso De Ita García is a law student at the Benemérita Universidad Autónoma de Puebla (BUAP) in Mexico. Research assistant at the Academic Group "Transnational Processes and Migration" BUAP-CA-230. He has participated as delegate in the ECOSOC Youth Forum, the ILO Global Youth Employment Forum in Abuja, Nigeria, and the Youth Forum of the Global Forum on Migration and Development 2020 in Quito, Ecuador. E-mail: alonsolo20@hotmail.com

References

ALLEN-EBRAHIMIAN, B. (2017) U.S. Cities Want to Join U.N. Migration Talks That Trump Boycotted, Foreign Policy. Available from: <https://foreignpolicy.com/2017/12/05/u-s-cities-want-to-join-u-n-migration-talks-that-trump-boycotted/> (Created 05 December 2017, Accessed 10 May 2019)

BUFALINI, A. (2019) The Global Compact for Safe, Orderly and Regular Migration: What is its contribution to International Migration Law? (online). Questions of International Law. Available from: <http://www.qil-qdi.org/the-global-compact-for-safe-orderly-and-regular-migration-what-is-its-contribution-to-international-migration-law/> (Created 30 April 2019, accessed January 22 2020).

DE ITA, L. (2020) Speech at the closing ceremony of the Mayors Mechanism at the Global Forum on Migration and Development on Ecuador, 22 January 2020.

ELORZA, J. AND BRANDT, J. (2017) Why cities are the new face of American leadership on global migration (online). Available from: <https://www.brookings.edu/opinions/why-cities-are-the-new-face-of-american-leadership-on-global-migration/> (Created 18 December 2017, accesed April 8 2020)

GARCÉS, B. AND EITEL, K. (2019) Ciudades santuario: una perspectiva global (online). Available from: <https://www.cidob.org/es/content/download/73217/2351254/version/11/file/46-52_ART%C3%8DCULO_BLANCA%20GARC%C3%89S%20MASCARE%C3%91AS%20%26%20KRISTIN%20EITEL.pdf/> (Created June 2019, accesed April 3 2020)

GÓMEZ ISA, F. (2017) 'The Role of Soft Law in the Progressive Development of Indigenous Peoples' Rights' in Lagoutte, S., Gammeltoft-Hansen, T. and Cerone, J., (eds.) Tracing the Roles of Soft Law in Human Rights, Oxford, Oxford University Press.

HANNUM, H. (1996) 'The Status of the Universal Declaration of Human Rights in National and International Law', Georgia Journal of International & Comparative Law 25: 287-397.

JUICIO DE AMPARO 1597/2018-1. Sentencia. Poder Judicial de la Federacion, Mexico. Available from: <http://almamigrante.org/wp-content/uploads/2019/10/1597-2018-VERSION-PUBLICA-DE-SENTENCIA.pdf/> (Accessed January 28 2020).

OLIVIER, M. (2002) 'The relevance of 'soft law' as a source of international human rights', The Comparative and International Law Journal of Southern Africa 35(3): 289-307.

OOMEN, B. AND BAUMGÄRTEL, M. (2018) 'Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law', The European Journal of International Law 29(2): 607-630.

PRESS RELEASE, 6th Mayoral Forum on Human Mobility, Migration and Development. 6 February 2020, Quito, Ecuador.

UNGA (2018) "Global Compact for Safe, Orderly and Regular Migration", Resolution adopted by the General Assembly, A/RES/73/195

Urban Refugees

Julia Zahreddine and Daphne Kolios

URBAN REFUGEES (UR) is a French non-profit organization founded in 2012 whose mission is to support Refugee-led Organisations (RLOs) become key stakeholders of refugee response in urban areas.

Over 60% of refugees live in urban areas (UNHCR 2019: 57), of which over 80% live in low to middle income countries that struggle to provide for their own citizens (UNHCR 2019: 18). Urban refugees have received increased attention in recent years, particularly since 2009, when UNHCR recognised urban areas as a 'legitimate place' for refugees (UNHCR 2009: 3).

Humanitarian funding has increased basic support provided by UNHCR and NGOs, but falls far short of meeting even the most basic needs of the displaced scattered in urban areas, making them more reliant on their own community based networks. Local self-help groups set up by refugee communities exist all over the world: they know their communities best and often respond first to their communities' needs.

The needs of urban refugees will continue to grow with ongoing and future humanitarian crises. New modalities of working are required to increase programme effectiveness and cost efficiency, and foster localisation. Engaging and supporting RLOs is one way to achieve all three, yet RLOs are seldom part of the formal humanitarian response.

UR aims to address this shortcoming through three primary pillars of action. The first is our capacity-building Urban Refugees Incubation Program (URIP), piloted in Kuala Lumpur, Malaysia and currently ongoing in Kampala, Uganda. It is designed to support ambitious RLOs' growth, provide improved services to their communities, and enable RLO's recognition as strong stakeholders in the refugee response. We also engage in advocacy work, supporting refugee leaders to influence decision making processes through training and technical advice, and encouraging stakeholders involved in refugee responses to support, fund, and collaborate with RLOs. In addition, we share best practices with stakeholders to maximize impact.

Moral dilemmas encountered enacting refugee capacity-building programmes

UR's vision works to change the power dynamics in the humanitarian system, but we remain aware of our position as a non-refugee-led organisation. We are still working towards aligning the challenges we have encountered with our underlying organisational ethos.

Aid localisation is a core goal of the Grand Bargain[1] (IFRC n.d.)**.** Additionally, encouraging meaningful and direct participation of refugees in the response is a key objective which emerged in the Global Compact on Refugees, with an additional objective to 'enhance

1 The grand bargain is an agreement made between more than 50 of the world's biggest donors and aid providers, which aims to get more aid directly into the hands of people in need. It is 'essentially a "Grand Bargain on efficiency" between donors and humanitarian organizations to reduce the costs and improve the effectiveness of humanitarian action"' (IFRC n.d.).

refugee self-reliance' (United Nations 2018: 2). The Compact also emphasizes the role that 'civil society organizations, including those led by refugees' have to play in responses. (United Nations 2018: 8).

The UNHCR Innovation Service elucidates the important role that local organisations can play in creating an effective humanitarian response, urging the humanitarian sector to 'develop official operational guidelines on how to better engage and support CBOs [community-based organizations; note that this includes refugee-led]' (UNHCR Innovation Service n.d.).

However, these intentions are rarely translated into action. Responses to crises have been managed mainly by international organisations and funding remains scarce for local actors. Despite this, local RLOs have mobilized worldwide as frontline responders to COVID-19 crisis (as a recent example), ensuring service continuity in areas like information sharing, food delivery, health, education, protection, etc. (Alio et al 2020).

The objective of this article is to highlight two areas of tension that we have experienced at UR. The first tension

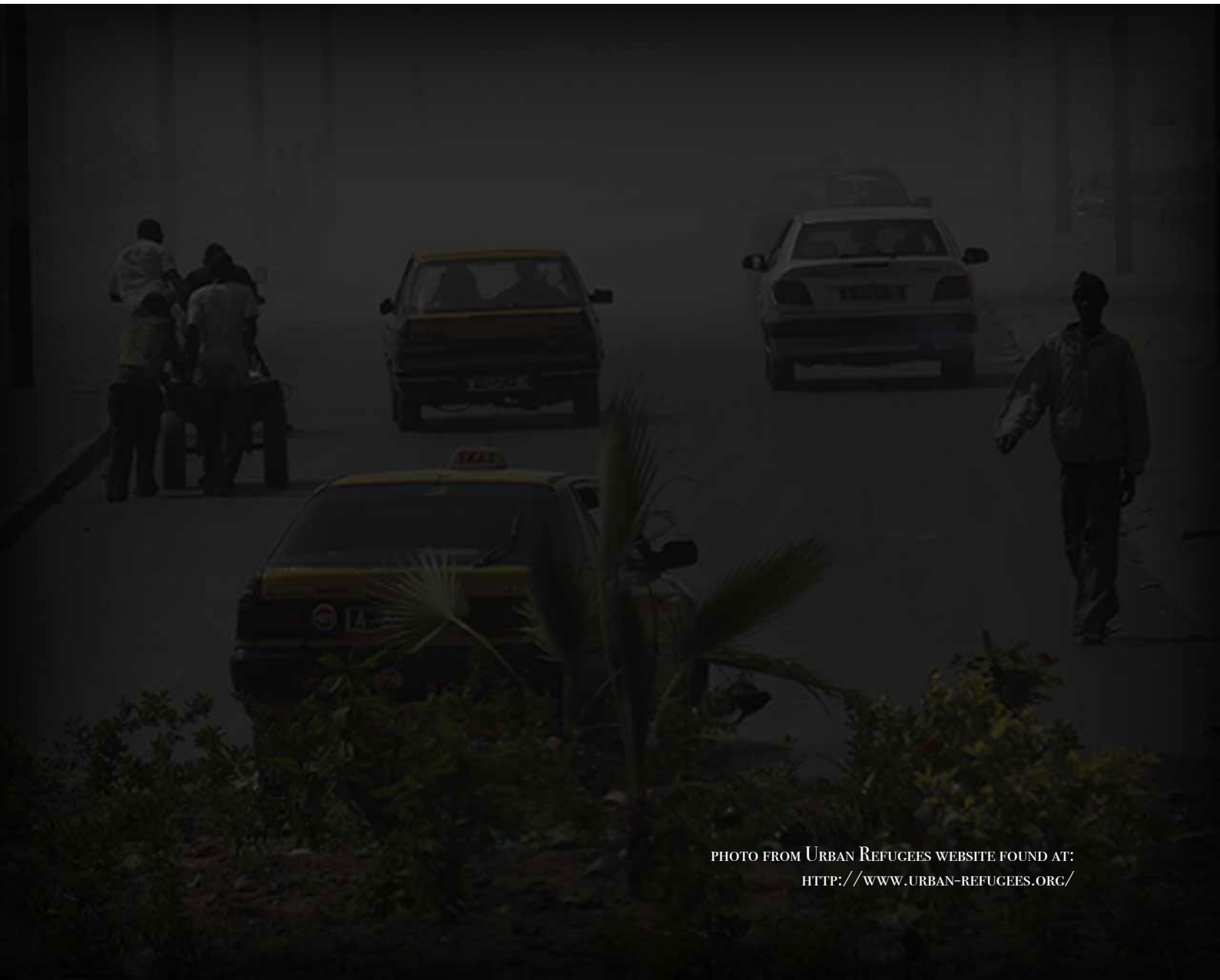

PHOTO FROM URBAN REFUGEES WEBSITE FOUND AT:
HTTP://WWW.URBAN-REFUGEES.ORG/

resulted from having an international Head of Mission for our capacity building programme; the second resulted from the fact that that RLO leaders are not fully guaranteed provision of their salary at the programmes end.

Tensions posed by having an international Head of Mission in Uganda

UR contracted a French Head of Mission who is not a refugee to implement the Uganda URIP. The reasons for this appointment included: the fact that the recruited individual was already working in Uganda for an INGO and thus had an awareness of the national context and a national and regional network; that the individual had a strong understanding of INGO structures and humanitarian context in which other actors collaborate; and that they understood and had mastered the specific communication tools and strategies used. This recruitment process undergone by UR corresponds with common recruitment patterns in the humanitarian and development world, where strategic high-level positions are mostly occupied by international employees, while a base of national employees are typically recruited for the management and implementation of programmes.

We first circulated the call for applications to refugee candidates within the network of a well-regarded RLO in Uganda, but the few applications received were incomplete. The opportunity was also directed to local candidates, but the need for rapid distance training and autonomy in the position presented a recruitment barrier. The remote recruitment process, language barrier, format of CVs received, and the fact that our staff was limited to headquarters in France also posed barriers, which were accentuated by our lack of network when arriving in Uganda. This arrangement forced UR to confront a problematic moral dilemma: although the coordination of the programme is national, the main position of power and voice liaising with donors, INGO leaders, and headquarters staff is held by a non-national, non-refugee staff member. Our vision was challenged by the tension between appointing a non-national Head of Mission and the localised, refugee-led humanitarian approach we work to enact.

We have taken steps to try and reconcile this tension and to enact deeper programme localisation and increase the number of refugee community members on our Board. We always favour merit in our recruitment, and are always concerned with increasing talent at the local level, both by training our local staff and by developing skills within the refugee population. For example, the Sudanese Women for Peace and Development Association (SWPDA) is an RLO addressing the challenges faced by the Sudanese refugee women and girls in Kampala, which is currently benefiting from URIP. We have identified individuals within SWPDA with high potential who are included in the training so they can also assume leadership within the SWPDA governance structure. We will continue to favour the applications of refugees and/or local people for the opening of our next URIP, and will remain careful not to undermine the abilities of local RLOs.

Non-payment of RLO leaders

Our experience working with RLOs has also shown that tools for financial

sustainability and income generation are a priority we must cover in each programme to ensure the continuity of the organisations after the conclusion of the URIP.

However, since UR cannot continue to compensate these RLO leaders long-term and compensation is an essential condition to ensure the sustainable operation of RLOs, the non-guarantee of ongoing salary provision for RLO leaders remains an area of tension. UR advocates with donors in favour of special funding arrangements for RLOs to compensate their leaders, but currently has no ongoing solution to this problem. Unfortunately, this challenge limits the ability to expand the role of RLOs to provide ongoing, strong assistance to their community with stable leadership. RLOs risk high leadership turnover due to the departure of talent. Once trained, leaders may disengage from their RLO to find paid work (e.g. in an INGO), leaving the RLO in the hands of volunteer leaders who do not match the competency level of an employee, particularly in degree of investment.

Conclusion

We recognise that our full resolution of these challenges remains a work-in-progress and is indicative of a more general, pervasive tension inherent in facilitating refugee capacity-building programmes and humanitarian assistance more broadly: how to advocate for programme localisation and refugee leadership and representation while remaining aware of, and sensitive to, our position as an international, non-refugee-led organisation.

Fortunately, international stakeholders are beginning to recognize the need to regard RLOs as 'equal partners' but RLOs will not achieve this recognition until their capacities are strengthened and their leaders receive a salary, similar to any NGO employee. We hope that articulating these challenges will provide a point of reflection for actors engaged in similar efforts.

The authors

Julia Zahreddine is leading the advocacy and campaigning activities as well as the refinement of URBAN REFUGEES' capacity building program. Her role is more specifically to facilitate Refugee-led Organizations' preparedness for strategizing and influencing decision-making processes. With a background in International Law and Political Science, Julia has worked in recent years with local and international development and advocacy NGOs in France and Latin America.

Daphne Kolios has worked in multiple capacities with URBAN REFUGEES. Her academic background lies in international relations, and she has recently spent time in Athens, Greece engaging with the refugee response there.

Bibliography

ALIO, M., ALRIHAWI, S., MILNER, J., NOOR, A., WAZEFADOST, N. and ZIGASHANE, P. 'By Refugees For Refugees, Refugee Leadership during COVID-19 and beyond' (online). Available from: <https://www.kaldorcentre.unsw.edu.au/publication/refugees-refugees-refugee-leadership-during-covid-19-and-beyond> (Created 20 April 2020, accessed 20 May 2020).

IFRC, (n.d.) 'The Grand Bargain Localisation Workstream' (online). Available from: <http://media.ifrc.org/grand_bargain_localisation/> (Accessed May 26, 2020).

UNITED NATIONS (2018) 'Report of the United Nations High Commissioner for Refugees, Part II Global compact on refugees' General Assembly, Official Records, Seventy-third Session, Supplement No. 12. (online) Available from: <https://www.unhcr.org/gcr/GCR_English.pdf> (Accessed March 24, 2020).

UNHCR (2009), 'UNHCR policy on refugee protection and solutions in urban areas' (online). Available from: <https://www.unhcr.org/en-us/protection/hcdialogue%20/4ab356ab6/unhcr-policy-refugee-protection-solutions-urban-areas.html> (Accessed May 25, 2020).

UNHCR (2019), 'Global Trends Forced Displacement 2018' (online). Available from: <https://www.unhcr.org/5d08d7ee7.pdf> (Created June 20, 2019, accessed May 25, 2020).

UNHCR INNOVATION SERVICE (n.d.) 'At the Heart of the Community: How to work with community-based organizations' (online). Available from: <https://www.unhcr.org/innovation/heart-community-work-community-based-organizations/> (Created 13 September 2018, accessed 24 March 2020).