# 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

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# *Letter from the Editors*

Dear Reader,

Forced migration continues to be one of the defining issues of our time. Each year, the number of those internally displaced and forced to seek refuge across borders increases to historic numbers, raising questions about progress, solidarity, and whether the international migration and refugee systems can adapt to the complex and evolving challenges before them. This year has been no different, and there continue to be no easy answers.

Over the past year, new global realities have emerged in the wake of COVID-19 and its aftershocks, Russia's invasion of Ukraine, the Taliban's takeover of Afghanistan, and the continued effects of climate change. These realities have forced millions of people to move in search of stability, economic security, and safety. Naturally, new realities generate new challenges and demand new solutions. This volume engages in the ongoing global discussion regarding who is permitted to migrate, who is granted entry, and who receives protection.

Within this issue, one author examines the new forms of xenophobia imposed on Nicaraguan forced migrants due to COVID-19, and how the community organised to resist these xenophobic forces. Through legal developments in New Zealand, another explores how and when climate change can be considered life-threatening.

Other global realities have remained the same. Authors in this volume highlight deadly structural injustices and challenges that further compound the persecution and dangerous journeys asylum seekers have already experienced. One author interrogates how race and whiteness have led to differential treatment among Ukrainian, Kurdish, and Yezidi refugees in Europe, and another intersectionally explores the unique discrimination Black asylum seekers face at the southern United States border. In addition to race, two other authors interrogate the challenges asylum law must overcome if it is to become more protective of queer refugees.

A core part of this journal's purpose is engaging with the potential for new global realities that are more protective and inclusive. Importantly, the global public discourse has shifted, illuminating how we respond to migration and how it is conceptualised. Attention has been called to the overlapping reasons dictating why people are forced to flee, even as the standard of persecution remains firmly rooted in statutory refugee law. Additionally, there are always those strategically advocating to make broken systems of protection work for the most vulnerable. Within this issue you will read about the advocacy of judges and lawyers working to free Rohingya refugees from Indian detention and volunteers providing robust forms of mutual aid to refugees in Calais.

This issue of the Oxford Monitor of Forced Migration features nine pieces of critical scholarship by authors around the world, who engage with forced migration across Africa, Asia, Europe, the Middle East, Latin America, and North America. From

sharing and amplifying illuminating lived experiences of asylum seekers and migrants, to deconstructing categories taken for granted in refugee law, to analysing why some countries take in some refugee groups but not others, the scholarship in this issue envisions a new global reality where those who are forcibly displaced can access protection, return home post-conflict if they desire, or are not even be forced to migrate in the first place.

We would like to thank everyone who has worked to make Volume 11 itself a reality, to the faculty and researchers at University of Oxford for their teaching, mentorship, and support, and to you, the reader, for thinking alongside us.

**Trinh Q. Truong, Sophia Iosue, and Paul Luc Vernon**
*Co-Editors-in-Chief*
*Oxford Monitor of Forced Migration*

# LAW SECTION

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# Rights and Reality: India's response to the Rohingya Crisis

Amrita Paul

## Abstract

*India continues to be a non-signatory state to the United Nations Convention on Refugees, even though it is a country where refuge has been sought by many communities. Still, protection has been a principle which has always been abided by even though differing practices towards different communities have been documented. This article discusses the role of judicial officers and legal aid lawyers in ensuring access to legal representation and due process for detained Rohingya refugees and asylum seekers in the context of a 2017 Ministry of Home Affairs order aiming to identify and deport them. Against the background of an ad hoc nature of the refugee determination process, the efforts of judicial officers assisted by lawyers has been vital for upholding their rights and ensuring justice.*

## Rights and Reality: India's Response to the Rohingya Crisis

India houses in its vast stretches refugees and asylum seekers with names such as *Selima\*, Tenzin\** and *Sathianesan\**[1], all fleeing persecution in their homelands. Refugees and asylum seekers from Tibet, Bangladesh, Sri Lanka, Afghanistan, and Myanmar have all found their way into India. India has a long history of internal and external migration, and yet India is neither a signatory to the United Nations Convention on Refugees nor has it articulated a single rights-based framework on refugees or plans to come up with one. The country's refugee and migration policies have been largely reactive and haphazard. Nevertheless, India has ratified many vital international covenants which have strong bearing on how refugees are treated, like the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

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[1]\* Names have been changed to maintain the confidentiality of persons.

However, in terms of policy and practice, India categorises all asylum seekers and refugees merely as "foreigners" (GOI 1946). Any foreigner arriving in India without a travel permit is designated as an "illegal migrant" (GOI 1955). Three laws govern travel and migrations into India: the Foreigner's Act of 1946; the Registration of Foreigners Act of 1939; and the Passport (Entry into India) Act of 1920.

Together, they allow the Ministry of Home Affairs ("MHA") to establish an authority for the granting of identity documents and continuous monitoring of all foreigners within the territory. These laws leave plenty of discretion and political judgment regarding how foreigners are to be treated.

Domestically, both the Foreigners Act of 1946 and the Passport Act of 1920 continue to regulate the entry of foreigners and officials have wide powers of detention and deportation, irrespective of humanitarian concerns. With no distinction drawn between refugees and asylum seekers, these individuals run a big risk of being detained by authorities and deportation in the absence of a travel permit. Consequently, correctional facilities continue to incarcerate asylum seekers and refugees fleeing persecution and seeking refuge.

In this article, I discuss the crucial role of judicial officers and legal aid lawyers in providing legal support and representation to refugees detained in India. Having placed their role in the larger context of an *ad hoc* nature of the refugee identification process in India that is not backed up by any formal legal instrument, much credit needs to be afforded to them. While all refugees have faced the brunt of this system, the Rohingyas from the Arakan province in Myanmar, and who are fleeing continued persecution, have been particularly vulnerable in light of the Government of India (GOI) calling for their identification and deportation amidst the political turmoil in Myanmar (GOI 2017). Many who survived the carnage and reached India are incarcerated in prisons and shelter homes with no prospects of freedom. In this world of India's refugee *realpolitik*, judges and lawyers who strive to keep alive the constitutional commitments of liberty and justice and values guaranteeing equality, non-discrimination, and the right to life with dignity are often the last bastions of hope.

## India and the United Nation Convention on Refugees

Against the backdrop of India being a non-signatory to the Refugee Convention, United Nations High Commissioner for Refugees (UNHCR) has a critical, though limited role in facilitating registration, determining refugee status, and supporting refugees through its partner organisations. India allowed UNHCR to set up its country office in New Delhi in 1981 (UNHCR 2012). However, UNHCR operates on the basis of an agreement with the Government of India and the refugee status

determination it makes lacks formal basis in statutory law as it is often contested. Thus, the legal force of the outcome remains unclear.

However, in practice, persons whom UNHCR determines to be refugees are considered to be as such by the Government of India and are not detained for violating the Foreigners Act or deported. Still, GOI has treated various groups of refugees differently based on their respective country of origin. The government has dealt directly with some groups, whereas for others UNHCR has played a vital role ensuring their protection. There have been criticisms that this has resulted in discrimination with certain refugee groups being able to access education, health services and welfare, while many others are excluded from doing so and live in unhygienic conditions with poor access to basic services (Chowdhory 2020).

For example, as the Tibetan Refugee crisis unfolded in the 1950s, GOI received them with open arms and continued to be a generous host by facilitating access to documentation and granting them permission to reside and work in India. In contrast, Chin asylum seekers from Myanmar who reached Mizoram in the 1990s continue to live in poor settings and areas, with very few being documented as refugees. They continue to lack legal permission to remain in India and are excluded from education and healthcare.

Until 2017, India never took any formal stance to identify and deport refugees, but rather expressed its commitment to *non-refoulement,* a principle of international refugee law which requires that no state shall return a refugee in any manner to a country where his or her life may be in danger (Anon 2017). Indian Courts have iterated that *non-refoulement* is applicable. For instance, in *Ktaer Abbas Habib Al Qutaifi & Another v. Union of India and Others* (1999), the Gujarat High Court held that the principle of *non-refoulement* is encompassed in Article 21 of the Constitution of India and the protection is available, so long as the presence of the refugee is not prejudicial to national security. Likewise, the Supreme Court in *National Human Rights Commission v. State of Arunachal Pradesh* (1996), held that the state governments are under a constitutional obligation to protect threatened groups such as the Bangladeshi Chakma against forced expulsion. The Court noted that state governments are obligated to intervene when threats against groups exist, especially refugees.

In direct contradiction of these legal precedents, in 2017, the MHA ordered that all illegal immigrants be identified and deported, with no exemptions being mentioned for any class of refugees. In a challenge to this order before the Supreme Court, the MHA took a stance that the principle applied only to those States parties to the Refugee Convention and thus India was not bound by it (Rajagopal 2017).

Thus, with no legal differentiation between aliens, illegal migrants, refugees and all other foreigners who reach India without a travel permit are liable to be deported, resulting in India being in contravention of the principle of *non-refoulment* in international refugee law. Experts and practitioners argue this principle to be part of customary international law, thus binding even for States not party to the Convention (UNHCR 1994).

**India's Treatment of Rohingyas in Detention**

When the plight of detained refugees is presented before Courts, mixed legal outcomes are emerging. The judiciary has championed as well as faltered in protecting their rights.

One of the earliest documented cases is from the Calcutta High Court. When a Rohingya woman was apprehended by the Border Security Forces in 2009 while entering Indian Territory along with her children, the children were put into institutional care while she was convicted and sentenced to a year of imprisonment, to be followed by repatriation (CHRI 2014). The children were subsequently restored to their father living in Jammu at that time. To challenge the impending repatriation, the plaintiff approached the Calcutta High Court, seeking a stay on her expulsion on the ground of continuing violence in Myanmar, arguing that she deserved to be reunited with her family in India. She also approached UNHCR for assistance and recognition of her status. The court passed orders facilitating the process and her eventual reunification with family, and the MHA supported her application (Johura Begum @ Jahira Bibi v. The Union of India & Ors. [2013] Calcutta High Court).

In contrast, a group of 10 Rohingyas arrested in Assam in 2013 continue to be incarcerated to this day (NDTV 2021). Children born during their parents' incarceration have grown up within prison walls. Contemplating freedom, some have returned to Myanmar at the cost of their lives (NDTV 2019). Instances of recanting their versions of the migration undertaken have been recorded to elicit a probable release or 'push-back'.[2]

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[2] This is a practice that has evolved in the correctional facilities and prisons in the Eastern states of India, where prisoners who have completed their sentences possessing Bangladeshi nationality are pushed back to Bangladesh. A nationality verification is mandatory before repatriation or deportation. However, due to how much time the process takes and the consequent delays resulting in the overpopulation of Indian prisons, the government resorts to 'push-backs.'

**Due Process and Legal Representation**

As regards the due process and access to legal representation of Rohingya asylum seekers and refugees, some legal precedents and developments have been instrumental in protecting their rights while others have been detrimental. In *Bittu Das and Anr v. State* (2015), a Magistrate took note of five refugees in judicial custody being Rohingya Muslims and having fled Myanmar fearing persecution. The Court held that since they were duly registered as mandate refugees with UNHCR India, they could not be categorised as foreigners in the wider connotation of that term (Bittu Das and Anr v. State [2015] Court of Judicial Magistrate). Applying the principle established in the Delhi High Court decision in *Sheikh Abdul Aziz v. State NCT of Delhi* (2013), the Judicial Magistrate noted that as per constitutional values and international law commitments, protection must be guaranteed, and they could not be deported. In this instance, the Court ensured access to free legal representation and a fair trial.

Close on the heels of the 2017 MHA Order, the Child Welfare Committee of the North 24 Parganas district in the State of West Bengal directed for the reunification of a child refugee to her mother and brother (State v. Safi Akhtar [2016] Juvenile Justice Board). She had been apprehended with her father when crossing the border into India without any documents. Her father continues to be incarcerated in prison while she is housed in a private shelter home directed by the Juvenile Justice Board established under the Juvenile Justice Act of 2015. Due to the persistence of lawyers, civil society organisations, a Principal Magistrate at the Juvenile Justice Board, and Members at the Child Welfare Committee, the minor was reunited with her mother. The Committee had also directed that she be registered and a refugee status determination to be carried out by UNHCR.

On the other hand, instances of halting release of refugees and minors from detention due to the operation of the 2017 MHA Order has been witnessed and recorded on the ground.

The Punjab and Haryana High Court, acting on a *habeas* petition filed by a mother, directed that her son, Sayedul Amin, who was being illegally detained at a detention centre, be transferred to the Rohingya refugee camp in Nuh Tehsil of Mewat district so that mother and son could be reunited until they are deported back to Myanmar (Julaha @ Julaha Yusuf v. Union of India & Ors [2020] Punjab and Haryana High Court). With no objections being received by MHA or Union of India, the son was reunited with his mother in 2021. Though the operative order dealt with the restoration, it also questioned illegal detention.

In *State v. CCL 'Sd' & Ors*. (2021), the Principal Magistrate of the Delhi Juvenile Justice Board appreciated the underlying facts of the plight of five Rohingya juveniles housed at a state-run shelter home. The Board underlined the principles of the Convention on the Rights of the Child, which mandates state parties to ensure that children are protected against all forms of discrimination or punishment regardless of the outcome of their refugee status determination. The Board also observed that no criminality can be attached to their act of fleeing by accompanying their parents and hence they were not prosecuted. The Board also underlined that the right to life and dignity guaranteed by the constitution also applied to non-citizens.

The order takes a further step forward in suggesting training and sensitivity programmes for the police by UNHCR to equip them in handling such instances of apprehension of refugees and asylum seekers. This would be with the hope of avoiding unnecessary detention in the future (CCL 2021).

## Conclusion

The acknowledgement of the plight of the Rohingya has been case-specific and not of a systemic nature. In the absence of a national refugee framework or explicit policy in place in India, responses to each case have been primarily guided and dependent on individual judicial officers. With differing and competing decisions from high courts either granting rights and denouncing illegal detention or ordering deportations of individuals at risk, there is no singular mechanism at hand to ensure protection measures for the forcibly displaced. Several rounds of crackdowns have been reported followed by the identification, documentation, and deportation of both asylum seekers and refugees to give life to the 2017 MHA Order. In such circumstances, it has never been more appropriate to advocate for the commitment of inclusivity, ensuring access to justice and protecting the refugees and asylum seekers.

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### The Author

*Amrita Paul has worked in the non-profit sector for 10 years in understanding, analysing, and streamlining the access to justice framework from the perspective of a person in custody in the Indian setting. She has extensive experience in the areas of identification, registration, and access to legal representation for refugees and asylum seekers in detention in countries that are non-signatories to the 1951 Refugee Convention like India. She has regular engagement with the state sponsored legal aid framework vis-à-vis both adult and child refugees and asylum seekers in detention. She has been engaged with the Commonwealth Human Rights*

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## Bibliography

**CHOUDHURY, R.** (2019) 'Five More Rohingya Migrants Deported To Myanmar, 10 Still In Prison', Available from: <https://www.ndtv.com/india-news/five-more-rohingya-migrants-deported-to-myanmar-10-still-in-prison-1972318> (Accessed 21 January 2023)

**CHOWDHORY, N.** (2020) Refugees, Citizenship and Belonging In South Asia. Journal of Borderlands Studies. 35 (4), 657-659.

**GOI.** (1946) The Foreigners Act, 1946 ACT No. 31 OF 1946. GOI. Available from: <https://legislative.gov.in/sites/default/files/A1946-31.pdf> (Accessed 25 May 2022)

**GOI.** (1955) The Citizenship Act, 1955 ACT No. 57 OF 1955. GOI. Available from: <https://egazette.nic.in/WriteReadData/1955/E-2210-1955-0023-101599.pdf> (Accessed 24 May 2022)

**GOI, MHA.** (2017) 'Identification of Illegal Migrants and Monitoring thereof - regarding.'. GOI. Available from: <https://www.mha.gov.in/sites/default/files/advisoryonillegalmigrant_10092017_2.PDF> (Accessed 25 May 2022)

**NDTV.** (2021) '10 Jailed Rohingyas Appeal to High Court to get Refugee Status or go home', Available from: <https://www.ndtv.com/india-news/10-rohingyas-in-jail-for-7yrs-appeals-to-hc-for-refugee-status-or-be-sent-back-2651537> (Accessed 21 January 2023)

**PERMANENT MISSION OF INDIA, GENEVA.** (2017) Statement by Anil Kumar Rai, Counsellor, Humanitarian Affairs, 1st Thematic Discussion towards a Global Compact on Refugees, Geneva, Available from: <http://www.pmindiaun.org/pages_id_994.html> (Accessed 25 May 2022)

**CHRI** (2014) 'Release and Grant of Refugee Status to Johra, a Rohingya from Myanmar' New Delhi. Available from https://www.humanrightsinitiative.org/download/1457152671Release%20and%2

0Grant%20of%20Refugee%20Status%20to%20Johra,%20a%20Rohingya%20from%20Myanmar.pdf. (Accessed 24 May 2022)

**RAJAGOPAL, K.** (2017) 'Illegal' Rohingya refugees pose security threat: Centre tells SC', Available from: <https://www.thehindu.com/news/national/rohingya-refugees illegal-pose-security-threat-centre-tells-sc/article61472265.ece.> (Accessed 21 January 2023)

**UNHCR.** (2012) Submission to OHCHR – UPR Mechanism. UNHCR. Available from: <https://www.ohchr.org/en/hr-bodies/upr/uprinun-contributions-s27> (Accessed 25 January 2023)

**UNHCR.** (1994) UN High Commissioner for Refugees, The Principle of Non Refoulement as a Norm of Customary International Law, Response to the Questions posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93. Available from: <https://www.refworld.org/docid/437b6db64.html> (Accessed 25 May 2022)

## Legal Cases

**Bittu Das and Anr v. State** [2015] 3rd Court Bmp. Msd, Court of Judicial Magistrate, Mushidabad, West Bengal.

**Johura Begum @ Jahira Bibi v. The Union of India & Ors.** [2013] W.P. 33910 (W) of 2013 (Calcutta High Court)

**Julaha @ Julaha Yusuf v. Union of India & Ors** [2020] CRWP 7515/2020, Punjab and Haryana High Court.

**Ktaer Abbas Habib Al Qutaifi & Another v. Union of India and Others** (1999) CRI.L.J. 919 (Gujarat High Court)

**National Human Rights Commission v. State of Arunachal Pradesh** (1996) SCC (1) 742 (Supreme Court of India)

**State v. Safi Akhtar** [2016] Case Ref 267/16, Juvenile Justice Board, North 24 Parganas, West Bengal.

**State v. CCL 'Sd' & Ors.**, [2021] FIR No 13/21, Juvenile Justice Board (East), Delhi.

# A Human Ping Pong: the Situation on the Polish-Belarusian Border

Martyna Anna Wierzbicka

## Abstract

*In June 2021, the world witnessed the start of another humanitarian crisis at the external borders of the European Union: thousands of people were stranded between two borders, without either of the bordering countries involved taking responsibility for the people seeking international protection. Poland refused to relinquish to what its authorities described as a 'hybrid attack', by enforcing pushbacks and introducing new legislation to endorse the practice. Meanwhile, the Belarusian regime claimed it will not prevent border crossings (Kuznetsov 2021), stimulating the migrants to cross the border by preventing them from returning to the capital and, therefore, forcing them to cross the border and enter the EU (Fajfer 2021). In the wake of humanitarian inaction on the part of both States, hundreds of people faced extreme weather conditions, violence, health problems, no access to water or food, and even death (Glensk and Vulliamy 2021). Through a detailed analysis of the facts and an extensive academic literature review, this article attempts to justify how the Polish Government's response, as well as its refusal to accept asylum claims, could constitute a crime against humanity against asylum seekers arriving at the EU's external borders.*

## Evolution of the Conflict

In 2020, the European Union (EU) imposed several sanctions on Belarus over its fraudulent elections (Council of the EU 2022). One year later, Alexander Lukashenko's regime, influenced by Russia's geopolitical interests (Śliwa and Olech 2022), took its revenge by encouraging the mobility of migrants arriving in Belarus towards the borders with Poland, in order to force his presidential recognition (Ioanes 2021) and to address and rescind the imposed sanctions (Gotev et al. 2021).

In response, Poland established a state of emergency, constituting exclusion zones on its borders (Gauriat 2021). The Government also limited access to border municipalities to third state nationals and prevented non-governmental organizations (NGOs) from providing them with assistance (Fajfer 2021). Poland has also reformed its asylum systems in order to make it more difficult to access the right to asylum (Cook 2022). According to the new reform, border guards can directly

expel irregular border crossers without the need to initiate any legal proceedings, if they are caught crossing the border (Kancelaria Sejmu 2021a). In addition, the new law makes it possible to abolish the mandatory review of an asylum claim, if the claim is requested by a third state national who has been detained at the very moment of crossing the border (Kancelaria Sejmu 2021b). An amendment has also been approved that allows foreigners who are not on the list of categories of migrants who can cross into EU territory to be "returned to the border". Effectively, the Government attempted to legalize the practice of pushbacks (Dziennik Ustaw Rzeczypospolitej Polskiej 2021; Baranowska 2022), which, between July and November 2021 alone, amounted to more than 27,500 forced returns to the Belarusian border (Boczek 2021) even though these practices are incompatible with international law (Półtorak 2022). In addition to these legislative responses and the illegal practice of pushbacks, Poland has greeted border crossers with violence. Different civil society organizations have claimed that the Polish border guard unleashes dogs on the refugees, threatening them with death, and that they shoot asylum seekers near their feet to force them to cross to the Belarusian side of the border (Boczek 2021). The Government has also introduced new legislation that prevents media and NGOs access to border areas, hindering humanitarian aid as well as making media coverage impossible. According to the opposition, the media ban serves to cover up human rights violations committed by the border guard and the Polish Army (Charlish and Koper 2021), and to avoid transparency and its consequent accountability (Throssell 2021). Although according to the new regulations, NGO workers can enter the area under border guard surveillance, such access is repeatedly denied, as the case of Doctors Without Borders (MSF 2022) demonstrates. Access to the border area was denied even to the Office of the United Nations High Commissioner for Human Rights (United Nations 2021). Even so, the UN Office has been able to establish that both countries have violated international law and that migrants have suffered terrible conditions on both sides of the border (Throssell 2021), such as hunger, dehydration and hypothermia (MacGregor 2021). At least 21 border crossers died in 2021 (MSF 2022), some of them due to frostbite (Akhtar 2021).

The Polish Ombudsman notes that, even in the case of not having crossed the border, in cases where Polish border guards hinder entry into Polish territory, the border guard has interacted with migrants and, therefore, in accordance with the law, the migrants are under Polish jurisdiction and are entitled to have their asylum claim registered. Supplementarily, the Ombudsman affirms that the right to asylum is a constitutional right, enshrined in Article 56.2 of the Polish Constitution and, therefore, cannot be conditioned or restricted. In this regard, the Ombudsman states that even if a person remains on the other side of the border, if they verbalize the intention to apply for asylum in Poland, the person should be admitted into

Polish territory (Rzecznik Praw Obywatelskich 2021). A large proportion of the people who arrive at European borders are people of Iraqi Kurdish, Syrian and Afghan origin who are seeking protection from war and terrorism. Among them are also people of the Yazidi ethnic group who have managed to escape the genocide perpetrated by ISIS (Bigot 2021). Similarly, the Helsinki Foundation for Human Rights (HFHR 2021), referring to data from the European Union Agency for Asylum (EASO), argues that most of the people who are on the border with Belarus meet the requirements to obtain international protection. Even when a migrant does not want or does not meet the requirements to request asylum, they cannot be expelled collectively and without judicial guarantees through the practice of a pushback. In these cases, a return procedure must be initiated (Baranowska 2022). On March 28, the Bielsk Podlaski District Court condemned as illegal and inhumane the practices of collective expulsion of migrants by the Polish border guard. The trial concerns three Afghan nationals who irregularly crossed the Polish-Belarusian border, were arrested by border guards and taken to the guard barracks close to the border. Despite having repeatedly expressed their intention to apply for asylum in the country, the migrants suffered a forced return in the early hours of the morning of August 30, 2021 (European Council on Refugees and Exile [ECRE] 2022).

According to European legislation, more specifically Article 38 of Directive 2013/32/EU, a Member State can deport an asylum seeker to a third state if the latter meets five requirements as a "safe third country": that "life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion", "the principle of *non-refoulement* in accordance with the Geneva Convention is respected", "the prohibition of removal is respected in the event of violation of the right not to be subjected to torture or cruel, inhuman or degrading treatment, established in international law" and if there is "the possibility of requesting refugee status and, if a refugee, receiving protection in accordance with the Geneva Convention" (Official Journal of the European Union 2013). Only when all these conditions are met can the expulsion procedure be executed. However, the Republic of Belarus does not meet any of these criteria (Górski 2022). The repression that the regime exerts on its own civil society is a sign that it does not guarantee the freedom or security of people with beliefs contrary to those of the government (IMS 2021). As reported by Amnesty International (2021), migrants forcibly returned at the border suffer violence and other degrading treatment at the hands of Belarusian border guards, through the deprivation of water, food and shelter, in addition to extortion and robbery. Article 15 of Directive 2011/95/EU cites the death penalty as one of the serious harms required for achieving subsidiary protection; therefore, it is possible to understand that the only European state that not only has not repealed the penalty, but also continues executing it cannot be considered safe (Amnistía Internacional 2018; Górski 2022).

Furthermore, Belarus is a country in which the principle of independence of the judiciary is not respected (Human Rights Watch 1997; International Federation for Human Rights 2016). In addition, the European Court of Human Rights has ruled on at least three occasions that the Belarusian asylum system is dysfunctional and that, by deporting migrants to the country, Belarus is condemning migrants to a chain return in violation of Article 3 of the European Convention on Human Rights (Górski 2022). It has also been confirmed that returnees are subjected to degrading treatment (Fajfer 2021), even to the point of death, as a result of violence executed by Belarusian forces after they have been expelled from the Polish territory (Human Rights Watch 2021). Additionally, it is known that the Belarusian regime is deporting people who have not managed to cross the border with the EU, despite the danger it poses for many of the refugees to return to their countries of origin in which they are being persecuted by the authorities (ECRE 2021; Sherlock and Malouf Khattab 2021).

Finally, and in accordance with Article 7 of the Rome Statute, pushbacks practiced by Polish authorities amount to a crime against humanity (International Criminal Court 2002). The systematic, recurrent and coordinated manner of pushback incidents confirms that they are not only carried out with the knowledge, but also with the approval of the government, the main motivation being the reduction of migrants arriving in the country, as well as the prevention of future migratory movements, confirming that the target of the attack is a vulnerable group of the civilian population. All the requirements established by the Rome Statute for these illegal practices to be considered crimes against humanity are therefore met (Kalpouzos and Mann 2015; Wierczyńska 2022).

## Conclusions

This paper has analysed how the Polish Government ignores its European and international human rights obligations as well as the principle of *non-refoulement* by arguing for the need to defend itself against a hybrid attack. However, regardless of Belarusian geopolitical pressures, the illegal practice of pushbacks to an unsafe third country and the direct violence exercised upon an extremely vulnerable group constitutes a flagrant violation of human rights and international law and could be considered a crime against humanity. The rising death toll and continued violent practices at the Belarusian-Polish border are concerning and warrant international attention and action.

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## Bibliography

**AKHTAR, R.L.** (2021). AYS Special from Poland, Belarus, Lithuania: A Border Crisis Hell. Available from: <https://medium.com/are-you-syrious/ays-special-from-poland-belarus-lithuania-a-border-crisis-hell-c5a3ab5c257f> (accessed 16 April 2022).

**AMNISTÍA INTERNACIONAL** (2018). El secreto que rodea la pena de muerte en Bielorrusia. Available from: <https://www.es.amnesty.org/en-que-estamos/blog/historia/articulo/el-secreto-que-rodea-la-pena-de-muerte-en-bielorrusia/ > (accessed 18 April 2022).

**AMNESTY INTERNATIONAL** (2021). Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum-seekers and migrants facing pushbacks from the EU. Available from: <https://www.amnesty.org/en/latest/news/2021/12/belarus-eu-new-evidence-of-brutal-violence-from-belarusian-forces-against-asylum-seekers-and-migrants-facing-pushbacks-from-the-eu/> (accessed 9 April 2022).

**BARANOWSKA, G.** (2022). Legalność i dopuszczalność procedury push-back (wywózek) i ocena prób ich legalizowania w Polsce. Klaus, W. (red.), Poza prawem. prawna ocena działań państwa polskiego w reakcji na kryzys humanitarny na granicy polsko-białoruskiej. DOI: 10.5281/zenodo.5838513

**BIGOT, C.** (2021). How politics caused a humanitarian crisis on the EU's eastern border. The New Humanitarian. Available from: <https://www.thenewhumanitarian.org/news-feature/2021/11/18/Belarus-EU-how-politics-caused-a-humanitarian-crisis-eastern-border> (accessed 16 April 2022).

**BOCZEK, K.** (2021). Jakby to nie byli ludzie. 13 form bezwzględnej przemocy polskich służb granicznych. OKO.press. Available from: <https://oko.press/jakby-

to-nie-byli-ludzie-13-form-bezwzglednej-przemocy-polskich-sluzb-granicznych-katalog-bezprawia/> (accessed 13 April 2022).

**CHARLISH, A. and KOPER, A.** (2021). Polish parliament rejects unlimited media access to the Belarus border. Reuters. Available from: <https://www.reuters.com/world/europe/poland-limits-access-belarus-border-migrant-crisis-simmers-2021-11-30/> (accessed 14 April 2022).

**COOK, L.** (2022). Latvia, Lithuania, Poland rapped over Belarus border methods. Associated Press. Available from: <https://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=52fc6fbd5&id=61e11c3c3> (accessed 13 April 2022).

**COUNCIL OF THE EUROPEAN UNION** (2022). EU restrictive measures against Belarus. Available from: <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-belarus/> (accessed 31 May 2022).

**DZIENNIK USTAW RZECZYPOSPOLITEJ POLSKIEJ** (2021). Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 20 sierpnia 2021 r. zmieniające rozporządzenie w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych. Available from: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001536/O/D20211536.pdf (accessed 15 April 2022).

**EUROPEAN COUNCIL ON REFUGEES AND EXILE (ECRE)** (2021). EU Eastern Borders: Poland Celebrates its Border Guard and Restricts Border Access Amid Deadly Humanitarian Crisis, EU Condones Restriction of Rights. Available from: <https://ecre.org/eu-eastern-borders-poland-celebrates-its-border-guard-and-restricts-border-access-amid-deadly-humanitarian-crisis-eu-condones-restriction-of-rights/> (accessed 16 April 2022).

**EUROPEAN COUNCIL ON REFUGEES AND EXILE** (2022). Poland: District Court finds collective expulsion of Afghans on Polish-Belarusian border illegal. European Legal Network on Asylum.

**FAJFER, A.** (2021). The cost of deterring migration on the Polish-Belarusian border in 2021. Scott, J.W., (online) Cross-Border Review. Central European Service for Cross-Border Initiatives. Available from: <https://budapest.cesci-net.eu/en/cross-border-review-2021/> (accessed 13 April 2022).

**INTERNATIONAL FEDERATION FOR HUMAN RIGHTS** (2016). Death Penalty in Belarus: Murder on (Un)lawful grounds. Available from: <https://www.fidh.org/IMG/pdf/belarus683angbassdef.pdf> (accessed 18 April 2022).

**GAURIAT, V.** (2021). El drama de los migrantes 'atrapados' entre Bielorrusia y Polonia. Euronews. Available from: <https://es.euronews.com/2021/12/17/el-drama-de-los-migrantes-atrapados-entre-bielorrusia-y-polonia> (accessed 12 April 2022).

**GLENSK, U. and VULLIAMY, E.** (2021). Miles de migrantes atrapados y maltratados entre las fronteras de Bielorrusia y Polonia. elDiario.es. Available from: <https://www.eldiario.es/desalambre/miles-migrantes-atrapados-maltratados-fronteras-bielorrusia-polonia_1_8469414.html> (accessed 13 April 2022).

**GOTEV, G., KACZYŃSKI, P. and MICHALOPOULOS, S.** (2021). 'Legal' pushback: EU walking on a tightrope. Euractiv. Available from: <https://www.euractiv.com/section/politics/short_news/legal-pushback-eu-walking-on-a-tightrope/> (accessed 15 April 2022).

**GÓRSKI, M.** (2022). Czy deportacja na Białoruś jest legalna, czyli czy Białoruś może być uznana za bezpieczne państwo trzecie? En Klaus, W. (red.), Poza prawem. prawna ocena działań państwa polskiego w reakcji na kryzys humanitarny na granicy polsko-białoruskiej; Wydawnictwo INP PAN. DOI: 10.5281/zenodo.5838491

**HELSINKI FOUNDATION FOR HUMAN RIGHTS** (2021). Uwagi Helsińskiej Fundacji Praw Człowieka do projektu ustawy o zmianie ustawy o cudzoziemcach oraz ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej. Available from: <https://www.hfhr.pl/wp-content/uploads/2021/09/HFPC-uwagi-do-projektu-ustawy-o-cudzoziemcach-i-o-udzielaniu-ochrony06092021.pdf> (accessed 5 March 2022).

**HUMAN RIGHTS WATCH** (1997). Available from: <Republic of Belarus. https://www.hrw.org/legacy/reports/1997/belarus/Belarus-03.htm> (accessed 18 April 2022).

**HUMAN RIGHTS WATCH** (2021). "Die Here or Go to Poland". Belarus' and Poland's Shared Responsibility for Border Abuses. Available from: <https://www.hrw.org/report/2021/11/24/die-here-or-go-poland/belarus-and-polands-shared-responsibility-border-abuses> (accessed 9 April 2022).

**IMS** (2021). Joint call: Amidst escalating crackdown, international community must stand with the people of Belarus. Available from: <https://www.mediasupport.org/news/joint-call-amidst-escalating-crackdown-international-community-must-stand-with-the-people-of-belarus/> (accessed 16 April 2022).

**INTERNATIONAL CRIMINAL COURT** (2002). Rome Statute of the International Criminal Court. Available from: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf > (accessed 15 April 2022).

**IOANES, E.** (2021). Why Belarus is using migrants as a political weapon. Vox. Available from: <https://www.vox.com/2021/11/14/22781335/belarus-hybrid-attack-immigrants-border-eu-poland-crisis> (accessed 13 April 2022).

**KALPOUZOS, I. and MANN, I.** (2015). Banal Crimes Against Humanity: The Case of Asylum Seekers in Greece. (online) Melbourne Journal of International Law 16(1). Available from: <https://ssrn.com/abstract=2601844> (accessed 28 April 2022).

**KANCELARIA SEJMU** (2021a). Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach. Available from: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19900780461/U/D19900461Lj.pdf> (accessed 8 March 2022).

**KANCELARIA SEJMU** (2021b). Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej. Available from: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf> (accessed 15 April 2022).

**KUZNETSOV, S.** (2021). Lukashenko sends mixed signals over Belarus migrant crisis. Politico. Available from: <https://www.politico.eu/article/alexander-lukashenko-sends-mixed-signals-over-belarus-poland-migrant-crisis/> (accessed 1 June 2022).

**MACGREGOR, M.** (2021). Poland: 'The conditions are very cold. We're not wearing shoes'. InfoMigrants. Available from: <https://www.infomigrants.net/en/post/36011/poland-the-conditions-are-very-cold-were-not-wearing-shoes/> (accessed 14 April 2022).

**MÉDICOS SIN FRONTERAS** (2022). Frontera entre Polonia y Bielorrusia: la situación es inaceptable e inhumana. Available from:

<https://www.msf.es/actualidad/bielorrusia/frontera-polonia-y-bielorrusia-la-situacion-inaceptable-e-inhumana> (accessed 9 April 2022).

**OFFICIAL JOURNAL OF THE EUROPEAN UNION** (2011). Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>(accessed 15 April 2022).

**OFFICIAL JOURNAL OF THE EUROPEAN UNION** (2013). Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. Available from: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0032>(accessed 15 April 2022).

**PÓŁTORAK, M.** (2022). Czy można odmówić przyjęcia wniosku o ochronę międzynarodową i kiedy uznaje się go za złożony? KLAUS, W. (red.), Poza prawem. prawna ocena działań państwa polskiego w reakcji na kryzys humanitarny na granicy polsko-białoruskiej. DOI: 10.5281/zenodo.5838505

**RZECZNIK PRAW OBYWATELSKICH** (2021). RPO: nieprzyjmowanie wniosków o ochronę międzynarodową w strefie przygranicznej to naruszenie prawa. Odpowiedź MSWiA. Available from:<https://bip.brpo.gov.pl/pl/content/rpo-nieprzyjmowanie-wnioskow-o-ochrone-miedzynarodowa-w-strefie-przygranicznej-naruszenie> (accessed 15 April 2022).

**SHERLOCK, R. and MALOUF KHATTAB, C.** (2021). Syrians say Belarus deported them even though they're wanted by Assad's regime. NPR. Available from: <https://www.npr.org/2021/12/24/1066806101/belarus-poland-border-deported-syria-migrants> (accessed 1 September 2022).

**ŚLIWA, Z. and OLECH, A.K.** (2022). 'Wyzwania w kontekście migracji i kryzys na granicy polsko-białoruskiej', (online) Wiedza Obronna 278: 89-107 Available from: <https://doi.org/10.34752/2022-d278> (accessed 9 April 2022).

**THROSSELL, L.** (2021). Press briefing notes on Poland/Belarus border, 21 December 2021. Office of the High Commissioner for Human Rights. Available from:<https://reliefweb.int/report/poland/press-briefing-notes-polandbelarus-border-21-december-2021> (accessed 14 April 2022).

**UNITED NATIONS** (2021). End 'appalling' Belarus-Poland border crisis, UN rights office urges. Available from: <https://news.un.org/en/story/2021/12/1108502> (accessed 24 April 2022).

**WIERCZYŃSKA, K.** (2022). Stosowanie przez polskich funkcjonariuszy tzw. polityki push-back z punktu widzenia postanowień Statutu Rzymskiego Międzynarodowego Trybunału Karnego. Klaus, W. (red.), Poza prawem. prawna ocena działań państwa polskiego w reakcji na kryzys humanitarny na granicy polsko-białoruskiej. DOI: 10.5281/zenodo.5838515

# ACADEMIC SECTION

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# *Fixed Categories vs. Fluid Identities: How Are Queer Voices Silenced in the Theory and Practice of Asylum Law?*

SAMUEL BALLIN AND IRENE MANGANINI

## Abstract

*Taking a queer theoretical approach, our article explores the challenges inherent in defining and/or categorising the sexual and gender identities of certain forced migrants, which can result in queer voices being less heard. We focus on the asylum system as a practical example, examining the tensions between its demands for strict categorisation and the fluidity at the core of certain queer identities. We interrogate the circumstances in which categories may be genuinely necessary or beneficial in adjudicating forced migrants' protection claims. Other practical issues we touch upon include data collection in forced migration settings, and the limited fixed categories and legal statuses available to forced migrants to assert and/or declare.*

## Introduction

This article examines the knowledge and ignorance which is produced in the process of categorising the sexual orientation and gender identity (SOGI) of asylum claimants. We use a queer theoretical approach to critique the narrow identity categories applied within asylum law. Queerness is a useful analytical lens not least because of its ability to challenge and destabilise common presumptions, including those about LGBTQIA+ identities – particularly the presumption that white gay male experiences are representative or standard. We illustrate our arguments with reference to the queer and/or LGBTQIA+ community generally, and to trans* and non-binary people as particular examples of a marginalised group within a larger marginalised group. We find that the onus is primarily on practitioners and decision-makers to retain a critical awareness and scepticism towards categories; given the circumstances in which asylum claims are made, it cannot be expected that claimants themselves can, will or should challenge the structures of the asylum system or its role in the articulation and regulation of identity. We make here a general comment about a structural characteristic of asylum law generally, and therefore we do not describe or evaluate any national or international framework in close detail. We also examine data collection as a practical example of the real-world manifestations of the legal discourses we analyse.

## Our Queer Theoretical Approach

The fact of classifying people according to their SOGI in refugee law is, of course, reflective of wider social, cultural and political norms. SOGI minorities exist in the context of a particular model of gender normativity, whose origins are found in conjunction with the historical projects of European colonialism, human taxonomy, and race. We observe the legacy of these projects in the phenomenon of 'homonationalism', i.e. the instrumentalization of LGBTQIA+ rights in characterising Western states as the site of inclusive and progressive values, in contrast to others' homophobia and regressive attitudes (Puar, 2007, 2013). At the same time, we observe the continued othering of minority groups within these same Western states, as in the contemporary marginalisation of certain SOGI minorities – particularly trans* and non-binary communities (Berg and Millbank, 2013). Refugee law is one arena in which both strands of these legacies interact. In this context, asylum claims can clearly serve to draw attention to a global inequality in access to LGBTQIA+ rights. However, we contend that while the asylum system promises protection for SOGI minorities, it also functions as a site for the regulation and marginalisation of their identities.

Our queer theoretical approach takes a step beyond the interrogation of the specific categories currently employed in the practice of refugee law (Spijkerboer, 2013; Fineman, Jackson, Romero 2016; Otto, 2017; Powell, 2021). Instead, we examine the theoretical foundations of the act of *categorising* identities and consider some of the challenges inherent in categorisation of SOGI *per se* in the context of asylum. The categorisation of forced migrants is clearly central to questions of their visibility, agency and data-gathering. For law and policy to be made equitably and effectively, it is necessary to have a broad picture of the people for, with and about whom it is made. Moreover, the use of collective labels and categories to describe SOGI claimants is an inescapable fact of the asylum law regime; a claimant's well-founded fear of persecution must be based on their 'membership of a particular social group' (PSG) or another of the 1951 Refugee Convention grounds. Though the formulation of PSGs based on SOGI can vary a great deal across time and jurisdiction, it must by definition attach to a social 'group' or category of some description.

Situating contemporary understandings and assumptions about gender and sexuality in their historical context, however, we maintain that the definition and categorisation of people according to SOGI continues to function as a process by which some narratives and voices are made into intelligible identities, while others are necessarily marginalised, silenced and erased. It is crucial to understand that recognition has often meant foreclosing other possibilities. There are thus no easy answers to the complex and important questions around categorisation in SOGI

asylum claims. Our aim here is simply to highlight the tension between the way fluid (queer) identities are lived and the way fixed categories in asylum law are articulated.

## Fixed Categories in Asylum Law

In this article, we focus on asylum as one key arena for the adjudication of queer protection claims, whilst noting that there may be many other people for whom this may be relevant, including *inter alia* many who are internally displaced, undocumented, or engaged in regular labour or family migration. One of the reasons for focusing on asylum is that the expansion in PSG interpretation, setting the preconditions for SOGI-based asylum and resulting to a great extent from the past and current battle for recognition from queer claimants, has been 'necessary but not sufficient' (Spijkerboer 2013). Spijkerboer argues that 'the acceptance of minority sexualities in social and political discourse made it possible to articulate LGBTQIA+ rights in legal discourse,' but that they 'have been accepted only to a certain extent – as subdominant, boxed, and unstable categories.' This instability and contestation can be seen in the fact that SOGI asylum procedures regularly involve such profoundly personal questions as 'who are you?', 'how do you know?', 'what do you desire?' – questions which would be more commonly associated with, for instance, psychotherapeutic settings, and which reveal asylum law as 'one of the arenas where debates about the very meaning and significance of gender identity are waged.' If a fact of the claimant's life, such as SOGI, is invoked as the reason for persecution, then, given the asylum system's *raison d'être*, that fact of life will of course be rigorously interrogated and contested by asylum adjudicators whose knowledge and sympathies cannot be assumed.

This can be challenging enough in the case of gay men, who are often expected to meet certain stereotypes and reproduce established stories of self-discovery and sexual behaviour. It is even more so when asylum claimants assert fear of persecution based on other identities within the LGBTQIA+ umbrella. When faced with less familiar SOGI minorities, as in the recent case of the first successful non-binary claimant in *Mx M* [UKUT 2020], adjudicators will not only have to understand and empathise with such an identity, but they will also have to *categorise* it to determine whether the claimant is entitled to international protection. The primary question being decided here is whether or not a person fits within the category of the refugee (or another international protection status), and the whole system is based on the near sacrality of this binary in/out distinction. Respect for this exercise is what generates the necessary impression of certainty and predictability in asylum law.

It is not surprising that queer asylum claimants represent a challenge for refugee law's need for strict categorisations. As Berg and Millbank (2013) put it, being 'more committed to identity blurring than identity building,' they can be

> 'extremely confronting for refugee law which evinces a preference for static and concrete identity groupings …. The process of asylum claims is built on an unrealistic ideal of a definitive and revelatory self, whereas [queer] claims necessarily involve fluidity – of sexed status, identification and bodily expression.'

Queer resistance to categorisation is a political project but it is also an inescapable consequence of the inherent fluidity and uncategorisable nature of (queer) identities, which are lived as fluid, often not entirely definable, ever-changing, blurred, intersecting, and unruly. While categories expressed in law may be fixed, (queer) identities as lived and experienced in the world generally are not. The consequence of such dissonance between the asylum legal system and the realities of queer lives is the tension at the heart of our critique: that of fixed categories vs. fluid identities. While we do not anticipate a resolution of this tension, we nonetheless want to draw attention to those who fall through the cracks, those who cannot or will not constrain themselves into a given category which does not adequately represent them, and whose voices, as a result, are silenced in the theory and practice of asylum law. As we will argue below, this does not necessarily translate into a lack of protection for queer asylum applicants, but it often results in the misrepresentation, and thus the invisibility, of their identities.

## Invisibility in Asylum Claims

Not only are some queer forced migrants unwilling or unable to present their identities in legally intelligible ways, but those who strive to do so may nonetheless find their voices become lost or distorted in efforts to moderate and strategically (mis)represent their narratives. Because claimants need to present themselves and their identities in ways that will lead to recognition as a refugee, there is a pressure to repeat (and continue to reinforce) established narratives for which successful precedents exist and a strong disincentive to produce riskier, more novel or nuanced self-descriptions. This means that more divergent voices may silence themselves for fear of being denied protection and returned to situations of queerphobic persecution. They thus remain effectively invisible within case law, policy and guidance on SOGI asylum. If one were uncritically to survey SOGI asylum jurisprudence, including country of origin information (COI) discussed therein, one might remain substantially unaware of queerphobic persecution facing anyone other than gay men. *Mx M* again provides an illustrative example; before recognition as a refugee on the basis of their non-binary identity, they were

previously rejected for asylum as a gay man. While the case recognises that the claimant's identity had in fact changed since the time of the original claim, it is notable that the first successful invocation of non-binary identity only arose in a context where the invocation of a more 'conventional' gay identity would not have been possible.

There are two parts to this knowledge gap, comprising a 'lesser' and a 'greater invisibility'. The 'lesser invisibility' refers to those who are often acknowledged to be missing or underrepresented in case law and COI on SOGI-related persecution. COI often focuses mainly or exclusively on gay men, by whom the majority of SOGI asylum claims are made, while, as Jansen (2013) reminds us, 'information on lesbians and trans people is scarce and information on bisexuals and intersex people is practically non-existent.' They are, at least to this extent, somewhat conspicuous by their absence. In contrast, we use the notion of 'greater invisibility' to describe situations where absence and invisibility itself remains largely invisible. The experiences of these latter groups are thus almost impossible to analyse or discuss beyond the blunt fact of their invisibility. While both phenomena may attach to the same claimants to varying degrees, we suggest that the 'greater invisibility' is particularly severe in the case of asylum claimants belonging to less familiar SOGI minorities such as trans* and non-binary gender identities – not to mention sexual orientations other than lesbians, gay men and bisexuals.

## Invisibility in Data Collection

These problems are compounded by the challenges which arise in data collection and the registration of forced migrants more generally. While the challenges related to data collection in forced migration are complex and go well beyond the scope of this article, it is interesting to observe that the invisibilities generated in asylum law are also evident and inexorably linked to other similar moments of the migratory journey in which asylum applicants find themselves governed and assisted by institutional powerholders (which may be governmental asylum adjudication systems but also supranational entities). Categorisation, which we analyse in the context of asylum law, is ubiquitous within settings in which individuals need to be managed as a group, as in data collection for purposes of migration management. Observing, however superficially, how this works in other instances may offer useful insights into how the categories expressed in asylum law take concrete shape in the practice of organisations working with forced migrants.

UNHCR and IOM, for instance, both have relatively up-to-date guidelines in place for the biographic data collection and registration of forced migrants which recommend going beyond binary sex and gender options (IOM, 2021). The incorporation of such guidelines into regional or national data collection and

registration tools varies greatly, complicated at times by the need to align records with national authorities' prescribed terminologies. However, even when not expressly provided for, spaces for self-definition beyond the sex and gender binary are generally available. For example, the open entry of 'specific needs' enables people being surveyed by various authorities at different stages of their migration journey to disclose personal conditions which might entitle them to heightened forms of protection. Cultural and linguistic barriers, lack of specialist training, and other practical difficulties aside, it would be unfair to suggest that efforts are not being made by international organisations for greater queer inclusion in response to the lesser invisibility. How then do both lesser and the greater invisibility persist in data collection?

In the asylum context, one central obstacle is that, even when queer forced migrants indicate their SOGI as 'other', for example, such responses are rarely reflected in official statistics and reports. As one IOM data analyst described to us in January 2022, 'among hundreds of classical binary options, for instance, you have those two or three who are marked as "other" and you never know how to include them, even if you would like to.' (Bartolini, 2022) Aside from the heavy burden already placed on forced migrants in identity profiling, in which they are required to discuss complex private matters with officials of whom they may be understandably wary, silencing is also a consequence of the apparent statistical irrelevance of the relatively very small number of people who identify beyond established categories. Statistically negligible, these people are rarely included in official outputs such as reports or policy papers, and thus cannot influence decision-makers. Key actors consequently remain largely unaware of the issue, or overlook it to focus on other issues deemed more pressing in terms of urgency and resources. In migration data collection contexts, where large numbers of people with a multitude of different backgrounds are profiled, the voices of those who slip through the cracks do not resound through force of numbers.

**Conclusion**

Queer forced migrants' voices are thus silenced because the current asylum system is structured in ways that impede their being heard. Though the asylum regime is in many ways dynamic and evolutive, jurisprudence continuing to develop also around the PSG as it relates to SOGI minorities, the refugee definition itself is made to appear fixed. In the tension between fixed categories vs. fluid identities, the former thus prevails as a necessary means by which to preserve the stability of the asylum system. Expanding LGBTQIA+ 'inclusion' and bringing ever more categories within the umbrella of the PSG cannot entirely resolve this tension. The same is true for data collection practices in forced migration, where the proliferation of categories and the recognition of 'others' and migrants with 'specific needs',

however valuable, does not represent a shift away from the basic starting point of categorisation. The fluidity of lived identities remains constrained and cannot be fully expressed within systems that demand and presume fixed categories. Our queer analysis thus represents a more fundamental disruption and challenge to asylum law. It is the need for categorisation itself, we argue, so inherent to the asylum system as it is structured and imagined today, which is central to the silencing of queer voices.

We reiterate, however, that this is not an argument against the categorisation of SOGI *per se*. Rather, we encourage a greater degree of critical distance from the categories being used, considering them not as isolated legal phenomena, but as reflections and articulations of wider social and historical (mis)conceptions and assumptions regarding human sexual and gender diversity. We observe that the ways in which SOGI asylum claims are processed and interpreted can have a regulatory and restrictive effect on the expression of queer identities in these contexts, while often also offering the only realistic route for claimants to escape queerphobic persecution. From this perspective, and without arguing to dispense with categories altogether, we have sought to outline and evaluate some of the tensions that exist within asylum jurisprudence. Remembering always that our queer methodology is also about the permanent contestation of our own methodological and analytical tools, we do not suggest an ideal or even a 'correct' approach to defining SOGI for asylum purposes. Rather, our aim is to maintain a critical awareness as to the potentially violent consequences of different terminologies and constructions, the knowledge and ignorance that they continue to produce and reinforce, and the legal and policy-making consequences thereof. Our queer critique is built around precisely this idea – in Butler's (1993) terms, that 'it is necessary to learn a double movement: to invoke the category and, hence, provisionally to institute an identity, and at the same time to open the category as a site of permanent political contest.' Given how it destabilizes the fixed categorisations core to the asylum system, this conflicting impulse is gradually becoming more visible in SOGI asylum claims, which is why close and critical engagement with the categories currently invoked is, in our view, urgent and imperative.

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**Bibliography**

**BARTOLINI, L.** (2022), Interview with author at IOM Regional Office Vienna, January 2022.

**BERG, L. and MILLBANK, J.** (2013) 'Developing a Jurisprudence of Transgender Particular Social Group', 6, in Spijkerboer, T., (ed.) Fleeing Homophobia: Sexual Orientation, Gender Identity and Asylum, London, Routledge.
**BUTLER, J.** (1993), Bodies That Matter, London, Routledge.

**FINEMAN, M. A., JACKSON, J. E. and ROMERO, A. P., eds.** (2016) Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations. London: Routledge.

**JANSEN, S.** (2013) 'Fleeing homophobia, asylum claims related to sexual orientation and gender identity in Europe', 1, in Spijkerboer, T., (ed.) Fleeing Homophobia: Sexual Orientation, Gender Identity and Asylum, London, Routledge.

**OTTO, D. ed.** (2017) Queering International Law: Possibilities, Alliances, Complicities, Risks. Routledge Research in International Law. Abingdon, Oxon ; New York, NY: Routledge.

**POWELL, A.** (2021) '"Sexuality" through the Kaleidoscope: Sexual Orientation, Identity, and Behaviour in Asylum Claims in the United Kingdom'. Laws 10, no.4: 90.

**PUAR, J.** (2007) Terrorist Assemblages: Homonationalism in Queer Times. Terrorist Assemblages. Duke University Press; (2013) 'Rethinking Homonationalism'. International Journal of Middle East Studies 45, no. 2: 336–39.

**SPIJKERBOER T.** (2013) 'Sexual Identity, Normativity and Asylum', 10, in Spijkerboer, T., (ed.) Fleeing Homophobia: Sexual Orientation, Gender Identity and Asylum, London, Routledge.

**UNHCR - IOM** (2021) Facilitation Guide on Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (SOGIESC) in Forced Displacement and

Migration.                           Available                           at:
https://www.iom.int/sites/g/files/tmzbdl486/files/documents/Facilitation-Guide-Modules-1-12-2021.pdf.

**Case References**

**Mx       M       [2020]       UKUT       313       (IAC).**       Available
from:<http://www.bailii.org/uk/cases/UKUT/IAC/2020/313.html>

Migration.                           Available                           at:
https://www.iom.int/sites/g/files/tmzbdl486/files/documents/Facilitation-Guide-Modules-1-12-2021.pdf.

# *Understanding the EU's Selective Refugee Policy Towards Ukrainian and Kurdish Asylum Seekers*

## Dr. Veysi Dag

## Abstract

*This paper examines why European governments have inconsistent asylum policies in regard to Ukrainian asylum seekers fleeing the Russian invasion and Kurdish and Yezidi refugees fleeing Turkish attacks in Iraq's Kurdistan Region and Northern Syria. It contends that European cultural values on the one hand and geopolitical European interests on the other generate selective asylum policies toward both asylum groups. European states accept Ukrainian asylum seekers as white Europeans and encourage their inclusion, whereas Kurdish and Yezidi asylum seekers are ethnicised as non-white and non-European and are excluded from European legal, social and territorial jurisdictions. Similarly, geopolitical and interstate European relationships with Russia as a rival state and Turkey as an allied state define an inclusive refugee policy towards displaced Ukrainians and a restrictive and exclusive policy towards Kurdish asylum seekers. By comparing the examples of Ukrainian and Kurdish asylum seekers resulting from Russian invasion and persistent Turkish aggression in its neighbouring states, this paper aims to demonstrate how double standards and inconsistency in European asylum policy are formed and affect asylum seekers differently.*

## Introduction

Russia launched a large-scale invasion of Ukraine on 24th February 2022. It was not only the Ukrainian military forces and bases that were attacked, but also civilians and their homes (Mezzofiore and Polglase 2022). While many Ukrainians sought shelter in subway stations and away from the urban regions under attack, others – mainly children and the elderly – sought refuge in neighbouring states (Chebil 2022). The governments of neighbouring European states welcomed Ukrainian asylum seekers and deployed charter trains to transfer them away from Ukrainian borders. The Polish Prime Minister announced that his country's borders were open to Ukrainians regardless of their identity documents, and he invited them to bring their pets as well (Sky News 2022). Finally, the European Union (EU) activated the Temporary Protection Directive for the first time to grant Ukrainian asylum seekers temporary refugee status, which spares them from going through refugee status determination procedures and provides them with access to education services and the labour market (European Commission 2022).

Yet, whereas the Polish and other European governments were willing to accept Ukrainian asylum seekers unconditionally as European citizens, the same governments adopted restrictive and exclusionary policy towards Kurdish, Yezidi, and other non-European asylum seekers. Kurdish asylum seekers from Iraq's Kurdistan Region, the majority of whom have been displaced by Turkish military campaigns and airstrikes, provide an interesting comparison (Kurdpress 2021; Rogg 2021). In November 2021, a few thousand asylum seekers, predominantly Kurds and Yezidis, attempted to cross the borders from Belarus into Poland. In response, the Polish government deployed highly armed forces to the border region and erected barbed wire barricades to prevent asylum seekers from crossing its borders, forcing these traumatised people to starve and freeze. At least eleven asylum seekers perished, including an infant (InfoMigrants 2021). What drives European governments to embrace one group while rejecting another?

To answer these questions, this paper investigates the objectives that shape European states' asylum policies toward European and non-European asylum seeker groups, taking the divergent responses to Ukrainians and Kurds as a case study. The former was generated by violence from Russia, and the latter from Turkey. Both groups of asylum seekers therefore share similar experiences of war and forced displacement. Although the Kurdish and Ukrainian asylum seekers in my case study are compared as non-Europeans and Europeans, respectively, my findings also apply to asylum seekers from other Middle Eastern and African regions who frequently share the experience of Kurdish asylum seekers. I contend that the differences in treatment received by each category are explained by two intertwined objectives that underlie European asylum policy. The first objective is related to the formation of physical and social borders through ethnicised identities, whilst the second is driven by geopolitical interests and interstate relations. Shaped by both objectives, European states' selective asylum policy contradicts Europe's own liberal values, which resulted in the foundation of the 1951 Refugee Convention in Geneva. This guarantees refugees protection from torture, imprisonment, threats to their lives, and discrimination arising from their distinct national, religious, racial, or political identities (UNHCR 1951). This paper demonstrates how European states go against their own values as reflected by the Convention.

## How European Asylum Policy Constructs Cultural Otherness

Both the Kurdish-Yezidi and Ukrainian asylum applicants were displaced by violent events perpetrated by the Turkish and Russian governments, yet European policy-makers approach them differently. Unlike Ukrainian asylum applicants, who are granted temporary refugee status and welcomed with open arms upon arrival, Kurdish and Yezidi groups are frequently denied entry and forced to rely on illegal services provided by criminal smuggler networks. Furthermore, according to

Kurdish asylum seekers in Berlin, Ukrainian refugees are frequently housed in camps next to each other with better facilities or their own flats, whereas other asylum seekers from Kurdistan, Afghanistan, Iraq, Syria, and African countries are accommodated in separate camps with fairly poor conditions. Finally, Ukrainian refugees are encouraged to attend integration and language classes and send their children to school, whereas Kurdish asylum seekers are denied access to German classes simply because they do not meet the criteria for these integration classes, according to German authorities at the Berlin Immigration Office. Kurdish asylum cases are still ongoing, and they have not been awarded refugee status, which would enable them to take advantage of integration-related opportunities. Ukrainian refugees are thus exempted from bureaucratic and structural constraints imposed by local, national, and European asylum regimes in terms of residence permits, settlement in desired European cities, participation in language and integration courses, and freedom of mobility. In contrast, Kurdish asylum seekers continue to be hampered by these structural and legal procedures and restrictions, which frequently result in traumatising experiences.

In this sense, European countries regard the courteous reception of Ukrainian refugees as a matter of course because they are celebrated as 'European' citizens. Bulgarian Prime Minister Kiril Petkow, for example, declared that Ukrainian asylum applicants "are Europeans...this is not the refugee wave we have been used to, people we were not sure about their identity, people with unclear pasts, who could have been even terrorists..." (Renata 2022). Other European governments have adopted identical inclusive policies towards Ukrainians and restrictive policies towards non-Europeans, including Kurdish and Yezidi asylum seekers, who are designated as "non-European" citizens and endure maltreatment and rejection. According to the Bulgarian Prime Minister, the continued exclusion of non-Europeans is justified since they are viewed as a threat to European identity, values, and sovereignty. His statement, as well as the views of other European governments mentioned above, imply that asylum policies "ethnicize" and "racialize" non-white and non-European asylum seekers, portraying them as alien to European cultural and social values, and even as potential terrorists (Keskinen and Andreassen 2017).

By constructing physical borders and cultural and social boundaries between identities, European asylum policy generates ethnic and racial otherness as well as categories of "wanted" Europeans and "unwanted" non-Europeans. Physical borders, according to anthropologist Didier Fassin (2011), serve as "external...frontiers" to regulate the entry of immigrants, whilst socially-constructed boundaries serve as "internal social categorization" for their ethnicization and racialization. For example, despite shared experiences of violence and forced displacement, Ukrainians benefit from a welcoming European policy marked by open borders, but Kurds are subjected to restrictions and closed borders. Kurds

were forced to pay smugglers €6000 each to be trafficked from Belarus to Berlin because they were not allowed to enter Europe legally. Kurdish asylum seekers in Berlin reported that while crossing forests and mountains to reach their European destinations, infants, children, and pregnant women were fatigued and sick, with no essentials, medical equipment, or legal rights. Kurds face a rigorous European border policy as a representative case for non-European asylum applicants, due to their differing cultural, ethnic, and racial non-white identities, as implied by European policy-makers. These identities are translated into socially constructed boundaries that serve as markers of exclusion and rejection of Kurds as non-Europeans and inclusion and acceptance of Ukrainians as Europeans. Thus, differing European approaches to diverse immigrants with the same experience illustrate how cultural, ethnic, racial, and social norms and values drive the European asylum policy.

## How Geopolitical Interests and Interstate Relations Shape European Asylum Policy

The other objective of European states' asylum policies concerns interstate relations and geopolitical objectives, which revolve around the dichotomy of rival (hostile) states and allied (friendly) states (Moorthy and Brathwaite 2016; Saleyan and Rosenblum 2008). While some states are willing to receive refugees from rival states and bear a substantial economic cost to accommodate them, they are reluctant to embrace refugees from allied states. There have been numerous studies on the receptive and restrictive asylum policies linked with both rival and friendly states. During the Cold War, for example, US governments embraced Cuban asylum seekers to use against their regime but refused to accept Haitian asylum applicants. Western European governments welcomed asylum seekers from communist countries to instrumentalise them against communist regimes, but they had tight policies towards refugees from other regions. Similarly, the Turkish government has taken in Sunni and Turkmen asylum seekers in order to weaponise them against the Syrian regime but has refused to accept Kurdish and Afghan asylum seekers. The Indian government in South Asia grants Tibetan and Sri Lankan Tamil refugees free passage and accepts them in order to highlight Chinese repression, while closing its borders to Rohingya and Chin refugees from Burma and mistreating those from these ethnic groups who have already fled to India (Abdelaaty 2019; Kuznetsova 2020; Moorthy and Brathwaite 2016; Saleyan and Rosenblum 2008, Stoffelen 2020; Tesfahuney 1998). Thus, recipient governments embrace asylum seekers from rival regimes in order to undermine them, portray them as authoritarian and evil, and tarnish their reputations (Greenhill 2010).

In the cases of Russia and Turkey, European governments are presented with two neighbouring states, both of which play critical roles in European foreign and security affairs. Their actions contribute to the creation of Ukrainian and Kurdish

asylum seekers. However, Russia, as the successor state to the Soviet Union, is viewed as a traditional rival to Western and European states, whereas Turkey is construed as a traditional ally due to its pro-Western stance during the Cold War, NATO membership, European Union candidate status, and participation in numerous bilateral and multilateral economic and legal treaties with the EU. Historically, during the Cold War, European countries accepted asylum seekers from the former Soviet Union (Moorthy and Brathwaite 2016). This policy is arguably still in effect today, as evidenced by the welcoming of Ukrainian asylum seekers displaced by the Russian invasion, as well as dissident Russian asylum seekers. Acceptance of these asylum seekers paints Russia as a repressive and belligerent state responsible for refugee displacement. However, European powers pursue different policies in response to Kurdish asylum seekers, who are produced and displaced by repressive and aggressive Turkish actions as a result of Turkey's military invasion in northern Iraq and Syria. European ignorance of Turkish aggression, the underlying cause of Kurdish displacement, is likely attributable to the fact that Turkey is still viewed as a difficult and less reliable, but still European ally that pursues both a cooperative and confrontational policy with European states. Turkey, for example, plays a critical role as a "gatekeeper," preventing flows of asylum seekers from Syria, Iraq, Afghanistan, Iran, and the Caucasus regions into Europe (Okyay and Zaragoza-Cristiani 2016). However, the Turkish regime often uses Turkey's role to weaponize asylum seekers in order to obtain additional funding and political concessions from European states (Jennequin 2020). The Turkish regime has received billions of euros from Europe in this context (Adam 2016). In addition, according to my own interviews with leaders of the Kurdish diaspora in Paris, Berlin and Stockholm, the Turkish regime has exerted pressure on European states to disregard its repression of dissidents and ethnic communities, such as the Kurdish population in Turkey and Northern Syria.

With the Russian invasion of Ukraine, the geopolitical relevance of Turkey to European security increased due to its geostrategic position and Finland and Sweden's subsequent applications to join NATO. The Turkish regime has used Turkey's leverage to prevent Finland and Sweden from joining NATO until it obtains political concessions from European states regarding its repressive anti-Kurdish measures. Following that, the European and American governments, as well as NATO's Secretary General, encouraged the Swedish, Finnish, and Turkish governments to sign a trilateral memorandum to address Turkey's "security concerns" (Kauranen 2022). These "security concerns," on the other hand, constitute the Turkish perspective and version of "terrorism," alluding to the Kurdistan Workers' Party (PKK)'s status and the legitimacy of continued oppression of Kurds and denial of Kurdish cultural and political rights. However, the Swedish and Finnish governments were severely criticised by the Kurds for abandoning their countries' reputations for upholding democratic norms and rights in order to

comply with Turkey's illegitimate demands. Nonetheless, both state governments underlined their commitments to rigorously review the requests of Kurdish asylum seekers and to extradite those Kurds sought by the Turkish government, which had an immediate impact. As part of the agreement, Swedish authorities arrested Znar Bozkurt, a 26-year-old asylum seeker, for extradition to Turkey (Milne, Foy and Pitel 2022). The Swedish government deported another Kurdish asylum seeker, Mahmut Tat, to Turkey, where he was promptly imprisoned (Toksabay and Ahlander 2022). Furthermore, Kurdish interpreters told me that, according to lawyers who represent Kurdish asylum clients, European authorities would approve more applications from Kurdish asylum seekers from Turkey if the European governments pursued a confrontational strategy with the Turkish government. However, Kurdish refugee applications are frequently refused or delayed when the Turkish government maintains good relations with these governments and complies with their demands, such as preventing Middle Eastern asylum seekers from reaching European territory. In this sense, European powers, in pursuit of their geopolitical interests, agree with Turkish demands to disregard the oppression of the Kurdish population and renounce their liberal values and human rights in asylum cases, while the Turkish government meets European conditions and receives a blank check for its repressive Kurdish policy. This tit-for-tat relationship between the European states and Turkey indicates that Kurdish individuals seeking asylum from persecution and violence become entangled in geopolitical interests and international relations.

## Conclusion

To conclude, the asylum policies of European states are selective and result in a double standard. European states have pursued a generous reception policy toward Ukrainian asylum applicants – a largely white European population – but a restrictive policy towards non-white and non-European Kurdish and Yezidi asylum seekers with differing cultural and social values. The conflicting interests of European states against a rival state, Russia, provide the second prerogative driving the receptive European asylum policy towards Ukrainian asylum seekers. However, due to the nature of European relationships with Turkey as an ally and Turkey's role in preventing non-European asylum seekers from reaching Europe, as well as other contributions to European interests, this relationship produces a restrictive and prohibitive European policy towards Kurdish and Yezidi asylum seekers. By weaponizing its geopolitical position, the authoritarian Turkish regime holds sway over European asylum discourses and polices. In a nutshell, the double-standard and inconsistency of European states' asylum policies, moulded by cultural and ethnic "othering" and *realpolitik*, undermine the credibility of the EU's commitment to human rights and democratic values, which serve as its cornerstone.  The failure of European states to comply with the 1951 Refugee Convention and to uphold the EU's liberal values raises serious questions of European hypocrisy and sparks

political and moral outrage. European states are compromising the fundamental values they proport to uphold by engaging with an authoritarian regime that disrespects human rights and causes the displacement of innocent people.

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## Bibliography

**Abdelaaty, L.** (2019) 'Refugees and Guesthood in Turkey', Journal of Refugee Studies, 34 (3): 2827- 2848.

**Adam, L.B.** (2016) The Refugee Card in EU-Turkey Relations: A Necessary but Uncertain Deal', Working Paper 14: 1-12.

**European Commission** (2022) Information for people fleeing the war in Ukraine (online). Available from: https://eu-solidarity-ukraine.ec.europa.eu/information-people-fleeing-war-ukraine_en#:~:text=1.,protection%20in%20any%20EU%20country. (Created 1 June 2022, last accessed 31 August 2022).

**Chebil, M.** (2022) Exodus from Ukraine: A night spent with civilians fleeing Russia's invasion. France24. (online). Available from: https://www.france24.com/en/europe/20220226-exodus-from-ukraine-a-night-spent-with-civilians-fleeing-war-russia-s-invasion. (Created 26 February 2022, last accessed 02 August 2022).

**Fassin, D.** (2011) 'Policing Borders, Producing Boundaries: The Governmentality of Immigration in Dark Times', Annual Review of Anthropology, 40: 213–226.

**Milne, R. Foy, H. and Pitel, L.** (2022) Finland and Sweden hold talks with Turkey to push Nato bid. Financial Times. (online). Available from: https://www.ft.com/content/957b7696-9079-452a-809f-9c6fecc351dd. (Created 30 August 2022, last accessed 11. January 2023).

**Greenhill, K.M.** (2010) Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy, Ithaca and London: Cornell University Press.

**InfoMigrants.** (2021) Tenth migrant found dead on Belarus-Polish border (online). Available from: https://www.infomigrants.net/en/post/36166/tenth-migrant-found-dead-on-belaruspolish-border (Created 29 November 2021, last accessed 05 July 2022).

**Jennequin, A.** (2020) 'Turkey and the Weaponization of Syrian Refugees', 1-8, Policy Brief at the Brussels International Center, January 2020.

**Kauranen, A.** (2022). Turkey's security concerns are legitimate, NATO chief Stoltenberg says. Reuters. (online). Available from: https://www.reuters.com/world/europe/nato-chief-stoltenberg-says-turkeys-security-concerns-are-legitimate-2022-06-12/. (Created 12 June 2022, last accessed 07 August 2022).

**Keskinen, S. and Andreassen, R.** (2017) 'Developing Theoretical Perspectives on Racialisation and Migration', Nordic Journal of Migration Research, 7 (2): 64-69. Kurdpress (2021) Iraqi Kurds blame Turkey invasion on civilians, villages (online). Available from: https://kurdpress.com/en/news/950/Iraqi-Kurds-blame-Turkey-invasion-on-civilians,-villages/ (Created 26 May 2021, Last accessed 23 August 2022).

**Kuznetsova, I.** (2020) "To Help 'Brotherly People'? Russian Policy Towards Ukrainian Refugees", Europe-Asia Studies, 72 (3): 5050-527.

**Mezzofiore, G. and Polglase, K.** (2022) Russia says it's not hitting Ukraine's civilian infrastructure. Evidence suggests otherwise. CNN World. (online). Available from: https://edition.cnn.com/2022/02/25/europe/ukraine-russia-videos-civilians-intl-cmd/index.html (Created 26 February 2022, last accessed 05 July 2022).

**Moorthy, S. and Brathwaite, R.** (2016) 'Refugees and Rivals: The International Dynamics of Refugee Flows', Conflict Management and Peace Science, 36 (2): 131-148.

**Okyay, A. and Zaragoza-Cristiani, J.** (2016) 'The Leverage of the Gatekeeper: Power and Interdependence in the Migration Nexus between the EU and Turkey', Italian Journal of International Affairs, 51(4): 51-66.

**Renata, B.** (2022) Europe welcomes Ukrainian refugees – others, less so. AP News. (online). Available from: https://apnews.com/article/russia-ukraine-war-refugees-diversity-230b0cc790820b9bf8883f918fc8e313 (Created 28 February 2022, last accessed 01 August 2022).

**Rogg, I.** (2021) They survived the Islamic State. But can Yazidi refugees make it out of Belarus? NZZ. (online). Available from: https://www.nzz.ch/english/yazidis-and-kurds-among-the-many-crossing-from-belarus-to-poland-ld.1654752 (Created 11 November 2021, last accessed 23 August 2022).

**Saleyan, I. and Rosenblum, M.R.** (2008) 'International Relations, Domestic Politics and Asylum Admissions in the United States', Political Research Quarterly 61(1) 104-121. Sky News. (2022) Ukraine news live (online). Available from: https://news.sky.com/story/ukraine-russia-news-live-mariupol-steel-plant-final-message-as-russia-takes-first-city-of-new-offensive-12541713 (Created 25 February 2022, accessed 27 January 2022).

**Stoffelen, A.** (2020) "Managing people's (in)ability to be mobile: Geopolitics and the selective opening and closing of borders", Royal Geographical Society, 243-256.

**Tesfahuney, M.** (1998) 'Mobility, Racism and Geopolitics', Political Geography,17(5): 499-515-

**Toksabay E. and Ahlander, J.** (2022). Sweden deports man with alleged ties to Kurdish militant group. Reuters (Online). Available from: https://www.reuters.com/world/europe/sweden-extradites-man-with-alleged-terrorism-links-turkey-media-2022-12-03/ (Creates 03 January 2023, last accessed 11 January 2023).

**UNHCR.** (1951) The 1951 Refugee Convention (online). Available from: https://www.unhcr.org/1951-refugee-convention.html (Created 30 November 1951, last accessed 05 July 2022).

# POLICY SECTION

OXFORD
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MIGRATION

# Teitiota v. New Zealand: Exemplifying the Legal Complexities of the 'Climate Refugee' Debate

ABBY KLEINMAN

**Abstract**

*Under the current system of international refugee law, persons facing displacement due to the migratory driver of climate change are often excluded from the protections of refugee classification. This is due in large part to the reality that a significant percentage of climate displacement stems from slow-onset environmental degradation, in which territory becomes gradually less fit for human habitation rather than becoming immediately uninhabitable as a direct result of a sudden environmental event. The key question is thus posed: do deteriorating conditions resulting from climate change make impacted persons 'refugees' under the 1951 Refugee Convention, and is such deterioration a violation of the 'right to life' enshrined in the International Covenant on Civil and Political Rights (ICCPR)? The case of Teitiota v. New Zealand placed the Human Rights Committee in the position to analyse this issue from the 'right to life' lens, and the procession of Teitiota's case through domestic and international courts sheds light on the complexities behind the question of 'climate refugees' and their entitlements under international human rights law.*

**Introduction**

Climate displacement holds an extremely complex position on the continuum between forced and voluntary migration. As climate change is rarely the sole driver of displacement, it is difficult to isolate as a migratory catalyst and thus its management is legally complicated. This is largely due to the gradual tendencies of climate phenomena; though some climate events can be categorised as sudden-onset and thus drive immediate, consequently forced migration, much of climate degradation is slow-onset. When devastating climate effects unfold slowly, many people choose to migrate in anticipation of increasingly harmful impacts as an adaptation tool. As this migration is driven by environmental circumstances outside of the inhabitant's control, it is arguably forced, yet legal bodies rarely categorise it as such.

The struggle to legally define the concept of a 'climate refugee' reflects this difficulty: as persons displaced by climate change often fail to meet the persecution-focused requirements of the refugee definition originally enshrined in the 1951 Refugee Convention, they are generally excluded from refugee status and its

ensuing legal protections. Given the common reality that climate impacts are often one factor among multiple that drive migration, the granting of refugee status becomes even more convoluted. The drastic rise in the number of persons displaced by climate change has increased the importance of rectifying the protection gap in international law regarding climate displacement, given the current lack of sufficient mechanisms or protocols to address this issue. While broadening the scope of the refugee definition is a potential, albeit politically difficult solution, the problem could also be addressed by related avenues under international law.

## Case Study

The 2020 landmark decision of the Human Rights Committee in Teitiota v. New Zealand exhibits the continued difficulty of navigating legal protection for climate 'refugees'. This case originated in the New Zealand Immigration and Protection Tribunal (NZIPT), and reached the High Court, Court of Appeal, and Supreme Court of New Zealand prior to being heard by the Human Rights Committee years after its introduction.

In 2013, claimant Ioane Teitiota made the decision to leave his homeland of Kiribati with his family because the island's habitability was rapidly declining due to the impacts of climate change. Evidence in the initial decision described the circumstances of Kiribati as a 'society in crisis'; sea level rise, extreme weather events, flooding, and a plethora of related environmental harms of both the sudden-onset and slow-onset varieties allegedly created significant enough risk for its inhabitants that Teitiota claimed his family's situation entitled them to refugee status and its ensuing protections under the 1951 Refugee Convention. The New Zealand Immigration and Protection Tribunal ruled that despite the fact that Teitiota's standard of living could be reduced by the environmental conditions in his homeland, conditions were not yet severe enough as to endanger his life (AF (Kiribati) [2013] NZIPT). As his environmental degradation-caused circumstances were not unique and did not represent a threat to civil or political status, Teitiota's claim to refugee status under the 1951 Refugee Convention failed. Additionally, he alleged that the environmental conditions of Kiribati were a violation of the 'right to life' enshrined in Article 6 of the ICCPR. The tribunal disagreed, stating that the right to life protects 'against deprivation of life by state action or as a consequence of its omissions,' and that environmental degradation does not fit within this categorization. Thus, Teitota's case originally failed to prove violations under the Refugee Convention, ICCPR, and Convention Against Torture (Kiribati [2013] NZIPT 800413).

The results of the 2013 appeal to this case in the High Court of New Zealand reaffirmed the opinion of the tribunal, emphasising that the 'attempt to expand dramatically the scope of the Refugee Convention' was 'impermissible' (Teitiota v. Chief Exec. Of Ministry of Bus., Innovation & Emp. [2013] NZCA). This court did clarify the vague precedent that environmental causes were not to warrant inclusion under the refugee definition, arguing that environmental degradation can lead to factors such as armed conflict that drive persecution. The complexity of climate change as a driver of migration is reflected in this clarification, as it follows the previous argument that the difficulty of isolating environmental consequences as the sole migratory driver in many situations limits available rights.

The Court of Appeal of New Zealand agreed with the reasoning of the High Court, denying Teitiota's attempt to 'stand the [Refugee] Convention on its head' (Teitiota v. Chief Exec. Of Ministry of Bus., Innovation & Emp. [2014] NZCA). However, the decision notably acknowledges the fact that the Refugee Convention does not adequately address the growing issue of climate change in relation to displacement. While acknowledgement without action does not rectify the issue, it is a first step for international bodies to acknowledge the inadequacy of the current international refugee regime in terms of managing climate impacts.

In 2015, the Supreme Court of New Zealand also ruled against Teitiota. This final national rejection in the country's highest court importantly implied that Teitiota had exhausted domestic remedies regarding the alleged human rights violation, thus providing him grounds to take his complaint to the international level (Teitiota v. Ministry of Bus., Innovation & Emp. [2015] NZSC). By taking his case to the Human Rights Committee, the treaty body of the ICCPR, Teitiota possessed the rare, advantageous opportunity to advocate for protection close to the original source of the law: as Ayako Hatano argues, 'the [Teitiota] case is groundbreaking in bringing the intersectional consideration at the normative-theoretical level into a real and individual climate refugee case in practice' (Hatano 2021: 36).

The Human Rights Committee's (HRC's) issue at hand primarily concerned whether or not Teitiota's expulsion from New Zealand back to Kiribati constituted a violation of his 'right to life' under Article 6 of the ICCPR. Though Teitiota's initial claim also questioned the 1951 Refugee Convention, the scope of the HRC solely focused upon its implications for the ICCPR. As Article 6 reads, 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life' (ICCPR 6[1]). The opinion of the Human Rights Committee notably recognized that the right to life must include the obligation of states to adopt positive protective measures, rather than following a restrictive interpretation. It additionally extends to 'reasonably foreseeable threats and life-threatening situations that can result in loss of life'. While climate change and

environmental degradation do pose such threats, the weakness of Teitiota's claim rested in the fact that a deprivation of life in violation of Article 6 was not, in his case, 'imminent' or 'likely' (Ioane Teitiota v. New Zealand [2020] HRC). The Committee recognized the increasing environmental harms in Kiribati, but Teitiota's case still fell short: the urgency of his circumstances was not yet pressing enough to actively threaten his life, the situation of his family was not unique from the situation of every other inhabitant of Kiribati that was not filing a claim, and Kiribati's government conducted sufficient enough steps to address the growing threat of climate change that the argument that their government was breaking its United Nations Framework Convention on Climate Change (UNFCCC) obligations was not found to be persuasive (Teitiota [2020] HRC). Therefore, the Committee concluded that despite the correctness of the claim that climate change-induced sea level rise is rendering Kiribati increasingly vulnerable, there remains sufficient time before the territory is completely uninhabitable for human life, thus allowing time for 'intervening acts by Kiribati' (Teitiota [2020] HRC). In their majority opinion, these facts demonstrate that Teitiota's 'right to life' was not violated.

## Analysis

While no decision-making body in the Teitiota case's procession through national and international consideration was willing or able to seriously entertain the notion of expanding the refugee definition, the eventual outcome still holds positive implications for the future of the intersection between climate displacement and human rights under international law. This is due in large part to the HRC decision's language surrounding the 'right to life'. Though the Committee ruled that the deprivation of life under Article 6 of the ICCPR was not 'imminent' or 'likely' in Teitiota's case, it did indirectly establish that there is a point of inflection at which the impacts of climate change do violate the right to life. It did not mark where that point lies or create any clear guideline for its determination, but in rejecting Teitiota's specific claim, it did not reject the assertion that climate consequences will eventually pose a threat to the 'right to life.' A key component of the Committee's rationale for this decision was that the absence of immediacy in the situation means that there is time allotted for 'intervening acts by Kiribati'; again, while this may be true in the case of Teitiota, the indirect implication is that a situation in which there is not sufficient time for intervening action by the state means that such a situation could constitute a violation of the legal right to life. As Ginerva Le Moli writes, the Teitiota ruling marked the crystallisation of a 'deeper and wider body of jurisprudence and practice on the existence of an 'undeniable relationship' between environmental protection and the right to life in dignity' (Moli 2020: 750).

Additionally, the Committee's decision explicitly affirms that state parties are required to adopt positive measures to protect the right to life, writing that 'States

parties may be in violation of Article 6 of the Covenant even if such threats and situations do not result in the loss of life' (Teitiota [2020] HRC). By acknowledging this positive obligation and directly confirming that environmental factors actively threaten this right, it is clear that the denial of Teitiota's specific claim is a judicial interpretation of wherein lies the point of inflection in which climate effects become an immediate threat to the right to life. This is supported by the fact that multiple members of the Committee made the decision to dissent, arguing that the conditions in Kiribati do, in their opinion, presently constitute a violation of the right to life. Though there is a pressing need for greater clarity regarding at what point climate consequences constitute a legal violation of the right to life, the Committee's decision to indirectly establish this point of inflection provides space for future actors to argue that certain protections should be triggered when this point is met: those protections could (and should) include legal safeguards for those experiencing climate displacement, currently or imminently. The potential for solutions of that nature is foreshadowed in the Human Rights Committee decision, as it emphasised that 'the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated in Articles 6 and 7 of the Covenant' does not only apply to persons that are legally labelled as refugees: if an asylum seeker's right to life is shown to be violated in their origin state, they must consequently be allotted 'access to refugee or other individualised or group status determination procedures that could offer them protection against refoulement' (Teitiota [2020] HRC).  As the HRC operates as the treaty body of the ICCPR, no decision made by this committee could expand the refugee definition itself, as this internationally accepted definition resides under the purview of the 1951 Refugee Convention. Despite this separation of legal mechanisms, the acknowledgement of state protection obligations noted in the HRC decision is a hugely significant step in recognizing that persons that do not fit the persecution-based refugee definition may find themselves in situations that are 'refugee'-esque, and thus require certain protections that refugee status would provide, a recognition that will likely prove vital for those displaced by climate impacts.

## Conclusion

Ioane Teitiota's case is a fascinating example of the complexities of migration driven by climate effects; though migration as a result of slow-onset degradation may be considered voluntary from a legal standpoint, it realistically represents a more uncertain position on the forced-voluntary continuum. As Lucia Rose highlights, the framework provided by Teitiota to address the plight of climate migrants is 'not comprehensive and riddled with tensions'; nevertheless, it is of great importance to the future of protection for those experiencing climate displacement (Rose 2021:

61). Though the case's outcome did not directly modify the refugee definition, its implications surrounding the ability of climate impacts to breach the 'right to life' holds serious potential in the interest of providing persons harmed by climate impacts with necessary protections, and in ensuring that relevant legal frameworks meet the challenges of the 21st century.

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## Bibliography

**HATANO, A.** (2021) 'Emerging International Norms to Protect "Climate Refugees"?: Human Rights Committee's Decision on Teitiota v. New Zealand', Journal of Human Security Studies 10(1): 32-50.

**INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR).** (1966) opened for signature 19 December 1966, entered into force 23 March 1976.

**MOLI, G. L.** (2020) 'THE HUMAN RIGHTS COMMITTEE, ENVIRONMENTAL PROTECTION, AND THE RIGHT TO LIFE', The International and Comparative Law Quarterly 69(3): 735-752.

**ROSE, L.** (2021) 'The World After Teitiota: What the HRC Decision Means for the Future of Climate Migration', San Diego Journal of Energy and Climate Law 12: 41-62.

## Case References

**AF (Kiribati)** [2013] NZIPT 800413. Available from:
  <http://www.nzlii.org/nz/cases/NZIPT/2013/800413.html>

**Ioane Teitiota v. New Zealand** [2020] CCPR/C/127/D/2728/2016, UN Human Rights Committee. Available from: <https://www.refworld.org/cases,HRC,5e26f7134.html>

**Teitiota v Chief Executive of the Ministry of Business Innovation and Employment** [2013] NZHC 3125. Available from: <http://www.nzlii.org/nz/cases/NZHC/2013/3125.html>

**Teitiota v Chief Executive of the Ministry of Business, Innovation and Employment** [2014] NZCA 173. Available from: <http://www.nzlii.org/nz/cases/NZCA/2014/173.html>

**Teitiota v Ministry of Business Innovation and Employment** [2015] NZSC 107. Available from: <http://www.nzlii.org/nz/cases/NZSC/2015/107.html>

# *Forced Migration, Integration, and Solidarity. Experiences of Nicaraguan 'Autoconvocados' in Costa Rica during COVID-19*

Fiore Bran Aragón

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## Abstract

*Xenophobic discourses against Nicaraguan forced migrants have increased in Costa Rica during the COVID-19 pandemic. Most of these forced migrants were part of the 'autoconvocado' movement and arrived between 2018 and 2020 during unprecedented social polarisation and economic crisis. Despite these challenges, some migrants have co-created initiatives for socio-economic and cultural integration. In this article, I seek to understand how xenophobic discourses may influence the integration of 'autoconvocado' forced migrants to Costa Rica during COVID-19, and how they embrace 'solidarity practices' through self-organized integration initiatives to contest xenophobia and create spaces for integration among forced migrants and with locals. I argue such initiatives could inform and reshape Costa Rica´s integration policy.*

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## Introduction

In this article, I study the socio-economic and cultural integration of Nicaraguan forced migrants in Costa Rica in the context of COVID-19. I particularly seek to understand how integration processes are shaped by government policies, public discourse, and xenophobic practices. During the pandemic, Nicaraguan forced migrants have faced the consequences of xenophobic discourse and practices due to social polarisation resulting from economic and political crisis. In this context, some groups of forced migrants, whom I call '*autoconvocados*'[3] (Rocha 2019: 153) have used their previous experiences as community organizers to create self-organized initiatives for integration, focusing on integration among newcomers, and between migrants and locals. These initiatives have developed 'solidarity practices' (Potoy 2021) that focus on human rights and the contributions of migrants to their host communities, thereby creating spaces for exchange and 'interdependence' (Sandoval 2021a:15)[4] between migrants, locals, and institutions.

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[3] 'Autoconvocados', or 'self-convened' is the name given to participants in the civil uprising against Daniel Ortega´s government in Nicaragua in 2018.

[4] C. Sandoval, one of the interviewees, is Professor of Communications at the University of Costa Rica and expert on Nicaraguan migration.

Like thousands of other *autoconvocados* who participated in the civil uprising of 2018, I left Nicaragua at the end of that year to survive and continue working in human rights. Most members of this movement were youth and other citizens who peacefully protested unjust policies and the repression of Daniel Ortega's government (Rocha 2018). Like many others fleeing Ortega's dictatorship, the first country I arrived in was Costa Rica. In San José, I had the opportunity to meet some of the migrants I interviewed for this article. I continued my migratory journey to the north, but they stayed in Costa Rica for strategic, economic, or family reasons. Since 2018, many *autoconvocados* forced migrants have continued working as political activists in exile, and some have also created initiatives for socio-economic and cultural integration to support newcomers. This article reflects on data collected in semi-structured interviews with forced migrants that founded three initiatives: the Agricultural Camp of the Nicaraguan Peasant Movement, the feminist collective Volcánicas, and the Nicaraguan LGBTIQ+ roundtable. I also interviewed academics, government officials, and journalists who are experts on Nicaraguan forced migration.

My objective in this article is to understand how xenophobic discourses influence the integration of these forced migrants. Furthermore, I will analyse how the 'solidarity practices' carried out by migrant-led initiatives could inform and reshape the national integration policy and counteract xenophobic discourses in the context of the humanitarian and health crisis caused by the COVID-19 pandemic. The article is comprised of five sections: In the first, I present an overview of the integration models and their use in Costa Rican policy; then I describe the construction of Nicaraguans as 'Threatening Others' in public discourses in Costa Rica; the third section addresses the increase in the xenophobic discourses during the pandemic; section four discusses the 'solidarity practices' of the three integration initiatives. In the final section, I discuss possible implications of these practices for reshaping Costa Rica's integration policy.

**On Integration Models and 'Solidarity Practices'**

Until recently, most of the debate on the integration of forced migrants has focused on Europe. In 2011, a study published by the OECD showed that the lack of discussions on the integration of forced migrants in the Global South had negative consequences on the well-being of newcomers. In most cases, governments avoided the topic or imported models from the Global North that did not correspond to local realities. As a result, migrants settled in marginal areas where they had no opportunities to integrate into host communities and became more vulnerable to violence and poverty (Gagnon and Khoudour-Castéras 2011). In

Central America, where 24% of the forced migrant population moves to another country within the region, regional discussions on integration are imperative (Pizarro 2019).

Costa Rica has been a pioneer in integration and has set a good example for the region. It is the only Central American country with a migration policy focused on human rights and development. It has an Integration Directorate, and a National Integration Plan that came into effect in 2013 and began its second edition in 2018 (Villalobos 2021). Based on the goals and indicators of its National Plan, Costa Rica seems to follow a model of integration as a two-way process–a model that has also shaped the policies of the European Union. Despite its possible limitations to responding to the realities of the Global South, this model contains useful indicators to understand integration at various levels: from basic needs such as education, health, and decent employment ('markers and means'), to the needs for 'social connection' among migrants ('bonds'), between migrants and locals ('bridges') and between migrants and the state ('links'). The next level of the model is composed of elements that facilitate adaptation, such as language, culture, and a sense of security. But the foundation of the model is the conceptions of 'rights and citizenship' of the host society (Ager and Strang 2008). Ager and Strang explain that the conceptions of 'rights and citizenship' of a country are intrinsically related to its sense of nationhood, belonging, and cultural norms that shape the way in which integration is approached legally and politically. As a result, to analyse a country's integration policy it is essential to understand the country's values and cultural norms that shape who is considered a citizen, and which non-citizens can become one or be fully integrated into the society (Ager and Strang 2008:173-175).

Despite differences between integration models, most authors agree the conceptions of 'rights and citizenship' of the host society are decisive for integration. Many factors shape these notions, but one of the most relevant is public discourses on rights, citizenship, and nationhood, shaped by media and public actors. Some research has found that more than integration policies, public discourses critically impact forced migrants' sense of belonging and trust in state institutions (Wallace and Wright 2015, Pérez 2015). Therefore, when discussing the integration of   Nicaraguan forced migrants in Costa Rica, it is essential to think beyond policies and consider how public discourses on citizenship, nationhood, and immigration influence this process.

Historically, Nicaraguans have been depicted as racialized 'others' in Costa Rican discourses on nationhood. Public actors have produced and used these discourses during highly socially polarised contexts of political or economic crises; therefore, they are not permanent and can be disputed (Sandoval 2004). According to Sandoval, discourses and practices that emphasize the 'interdependence' between

migrants and locals are critical in contesting xenophobia. Following Martín-Baró, I propose that discourses and practices that also emphasize 'solidarity' among migrants and with locals can contribute to contesting xenophobia during the COVID-19 pandemic. Martín-Baró understands 'solidarity' as a political tool that permeates collective action and facilitates empathy and dialogue between opposing groups in a context of high social polarisation. Solidarity presupposes the existence of 'inequalities' and works 'toward objective justice' (Martín-Baró, 1983: 135). It is also intrinsically anti-ethnocentric and enables the articulation of resistances beyond the nation-state.

Much of the literature on solidarity in forced migration studies refers to the solidarity of host communities with migrants in South-North flows or between migrant workers living in the North. I did not find a systematic record of solidarity between forced migrants in the South nor of solidarity practices of migrants with locals (Bauder and Juffs 2020). However, the case of Nicaraguan *autoconvocados* in Costa Rica offers the possibility to analyse some solidarity practices used by newcomers to create bridges with locals, and contest xenophobic discourses. Sandoval and Rocha have documented experiences of solidarity between binational communities on the Costa Rica-Nicaragua border (Rocha 2008) and informal settlements in San José´s marginal areas (Sandoval, Brenes, Masís and Paniagua 2008), where Nicaraguans and Costa Ricans coexist.

In 2018, due to the massive arrival of forced migrants from Nicaragua, these experiences of solidarity expanded from marginal areas and began to flourish throughout the country. Some have now become self-organized collectives, cooperatives, and spaces for dialogue between migrants and locals. Most of these initiatives work under the premise of solidarity among Nicaraguans. Still, some also support Costa Ricans in vulnerable situations and collaborate with local organisations. Thus, they help create 'social connections' essential for integration. In the long term, they can also contribute to contesting discourses of xenophobia and build solidarity structures in places where the integration policies of the state are absent or insufficient.

## Nicaraguans as 'Threatening Others' in Discourses on Costa Rican Nationhood

Since the second half of the nineteenth century, Nicaraguan immigrants have been relevant figures in national identity discourses in Costa Rica. Public opinion has attributed negative characteristics to them, usually opposite to the positive traits attributed to Costa Ricans. The use of these dichotomous categories has been fuelled by political differences between governments and by border disputes. These categories are present in literature, media, oral traditions, and practices modified according to political agendas and historical circumstances (Soto 2019).

For instance, in the 19th and 20th centuries, discourses on Costa Rican national identity depicts the country as a 'rural democracy', a place for 'free-born peasants', a 'middle-class urban nation', and a 'white and equal' society. On the other hand, Nicaraguans were represented as 'criminals', 'communists', 'violent', 'lawless', and 'rebels' in media and other cultural representations. In the 2000s, after an economic crisis, two different portrayals of Nicaraguans emerged; on one side, they were depicted as 'good workers', 'ants', 'caregivers', and on the other, media associated them with 'plagues', 'floods', 'threat', and 'disease' (Sandoval 2004: 62-68, 313-314). Despite positive changes, Nicaraguan immigrants are still depicted as a threat to the nation's stability and the cause of political and public health disasters. This historical representation could explain the increase of xenophobic discourses after the 2018 forced migration influx and during the pandemic.

The discursive construction of Nicaraguans as an 'Other' has also had its counterpart institutionally. It has been evident in some exclusionary migration policies that have affected Nicaraguans. The first Costa Rican immigration decree of the 19th century prohibited Asian and African immigration, and in the 1920s, the law also extended the immigration ban to Middle Eastern people. Simultaneously, the state promoted programmes to facilitate European immigration under the narrative of bringing civilization and progress (Soto 2005). Although there were positive policy changes in the second half of the 20th century, it was in 2009 that the migration policy shifted towards a focus on human rights and development with the new immigration law. By then, there had been at least three waves of Nicaraguan economic migrants and refugees, they represented 'around 6.7%' of the population (Mora and Guzmán 2018: 8).

In general, xenophobic discourses spread during periods of social polarisation caused by political or economic crises. Therefore, to understand the current use of xenophobia against Nicaraguans, it is worth recalling two relevant moments in which it became common: the deterioration of the welfare state in the 1990s and the presidential elections of 2018. In the 1990s, the upsurge of xenophobic discourse, especially among middle-class citizens, was associated with a reduction in public services, an increase in public debt, and a generalized distrust in state institutions (Sandoval 2004).

In 2018 a similar phenomenon occurred that began with the 2017 presidential campaign. During this period, the debate over urgent fiscal reform, marriage equality, and other human rights, such as migration, was decisive for the electoral result. Although then president-elect, Carlos Alvarado, maintained a human rights discourse, he did not obtain a majority in congress. In contrast, far-right political parties with populist-oriented programmes increased their popularity in marginal areas and won crucial legislature seats (Sandoval 2021b). In this socially polarised

context, and just after former President Alvarado's term started, an unprecedented influx of Nicaraguan forced migrants arrived in the country.

**Nicaraguan Forced Migrants in Costa Rica 2018-2021: State Response, Public Discourses on Migrants, and Integration**

In April 2018, a civic uprising began in Nicaragua against President Daniel Ortega's government. Initially, university students protested the government's corruption of social security funds and its erratic response to wildfires in protected areas. Soon the protestors took the name *autoconvocados*, and they became a popular movement composed of youth, peasants, and other social sectors (Rocha 2019). Between April and July 2018, Ortega's violent reaction to this movement left 328 murdered, 1,900 in arbitrary detention, 2,000 injured, 60 forcedly disappeared, and 552 politically imprisoned (Amnesty International 2018). During the second half of 2018, some 83,000 Nicaraguans sought international protection; most of them fled to Costa Rica. As of July of 2022, Costa Rica has received 181,000 refugee applications from Nicaraguans, of which only 10% have been processed. The number of applicants has continued to increase especially after the illegitimate re-election of Ortega in November 2021, and the increased persecution of critics to Ortega's government in 2022 (Expediente Público 2022).

Since 2018 Costa Rica has consistently received Nicaraguan refugees, in accordance with its immigration law and humanitarian tradition. The 2009 migration law has foundations on human rights instruments and regional development agreements of which Costa Rica is a party.  Based on this law, Costa Rica created the Directorate on Integration and Human Development in 2011, followed by a Comprehensive Migration Policy in 2013 (National Council on Migration 2013).  In 2018, Costa Rica began to execute its second National Integration Plan, which included inter-institutional alliances and activities to promote integration between locals and newcomers. But the government's working plans on integration would change due to the unforeseen arrival of thousands of Nicaraguans.

This influx coincided with a context of post-electoral social and political polarisation and a controversial tax reform. Although Acción Ciudadana (PAC), President Alvarado's party, is progressive, most legislators are members of conservative parties; this made it difficult to reach a consensus on topics like taxes and forced migration. During discussions on the new tax law, some far-right parties' deputies argued that the tax reform would benefit newly arrived Nicaraguans. Although these arguments were unfounded, forced migration, and especially Nicaraguan forced migration, became a relevant topic in the news and political debates.

In addition to traditional media, social media became an important forum for spreading public opinion on Nicaraguan forced migrants. Costa Rica has the highest internet connection rates and the most Facebook users per percentage of the population in Central America (Cruz R 2020). After April 2018, Facebook and WhatsApp groups affiliated with far-right parties and their supporters started spreading fake news about Nicaraguans and accusing them of crimes and symbolic offences such as burning Costa Rican flags. In August 2018, these groups called for a march against the Nicaraguan 'invasion,' which was attended by 600 people, some of whom wore swastikas and national soccer team jerseys. The protest became a riot, and the police arrested demonstrators (Murillo 2018). Later, in May 2019, a Facebook group associated with a far-right party called for a march against Nicaraguan migrants; afterward, their leaders were arrested for placing explosives in front of the Legislative Assembly and a public television channel (Loaiza 2019). Soon after, the PAC and the Frente Amplio Party tried to pass a bill that would condemn hate crimes against migrants and other minorities. However, deputies from far-right parties blocked the initiative because they considered it a threat to freedom of expression (Chinchilla 2019).

The COVID-19 pandemic hit Central America in the context of this social polarisation. While Costa Rica took sanitary measures to prevent the spread of the virus, Nicaragua did not. Since March 2020, Ortega's secrecy around the COVID-19 cases has caused complaints from the medical community. Nicaraguan civil society has registered 44% more COVID-19 cases than the Ministry of Health, and a mortality rate of 19.2% compared to the 1% reported by the government (Covid-19 Nicaraguan Citizen Observatory July 2022). The erratic response to COVID-19 in Nicaragua set the alarms off in Costa Rica because even if the border closed in March 2020, cross-border migration continued. In May 2020, Costa Rican deputies sent a letter to the Pan American Health Organization (PAHO) requesting 'urgent and forceful' actions for the Nicaraguan government to take sanitary measures (Confidencial 2020). The conditions created by this situation enabled an increase in xenophobia.

During the first semester of 2020, there was a 70% increase in anti-immigrant discourses in Costa Rican social media as compared to before the pandemic (Cortez and Rodríguez 2020). This trend continued in 2021, with Nicaraguan migrants as the main target of xenophobic incidents (United Nations Costa Rica 2021). During this period, some public figures resorted to 'inferential racism' using xenophobic terms that were socially normalised during the public health emergency. Other circumstances also contributed to xenophobic discourse. For example, from May to July of 2020, northern Costa Rica had the most COVID-19 cases. Many residents of this region are Nicaraguan undocumented agrarian workers illegally recruited by pineapple growing companies. Later in July 2020, 500 Nicaraguan migrants

organised a caravan to return to their country; however, Ortega refused to receive them. Costa Rica's government and civil society organisations looked after caravan members until they reached a return agreement with Ortega (Regidor 2021).[5]

In August 2020, the Ministry of Health reported that 20% of the registered COVID-19 cases occurred among foreigners, this is a high proportion considering that only 8% of the population are immigrants. Although the nationality of those infected was not revealed, some media began to speculate that most of the cases occurred among the Nicaraguan immigrant community. In 2021 COVID-19 cases among foreigners fell considerably, but this pattern did not receive the same media coverage as the high proportion of cases at the start of the pandemic. After the media coverage of COVID cases among foreigners, discriminatory discourse and xenophobic attacks against Nicaraguans migrants increased (Sandoval 2021a). For example, in 2020, civil organisations registered fifty attacks against Nicaraguan migrants, including physical attacks, threats of deportation, and illegal mobility restrictions (Pérez 2020).

In this context, it is instructive to reflect on the effects of xenophobic discourses on the integration of Nicaraguan forced migrants and consider how they are coping with such circumstances. As previously mentioned, in 2018, Costa Rica began to implement its second National Integration Plan 2018-2022. This plan aimed to be a flexible instrument to facilitate political conditions and institutional mechanisms appropriate for integration. However, the National Integration Plan has not been implemented as intended, as a result of the massive increase in Nicaraguan forced migration since 2018.

According to Villalobos (2021) since mid-2018, all immigration system branches have been occupied with humanitarian assistance, constantly 'putting out the fire' (Villalobos 2021), which has prevented them from executing the National Integration Plan. This situation has left a void in addressing integration needs, especially for migrants who are likely to remain in Costa Rica in the long term. An IOM report on forced migration suggests what this void looks like in practice: in 2019, 50% of Nicaraguan forced migrants did not resort to state institutions when looking for information and support. They argued that they did not have information about policies and laws, and were afraid to seek help, as well as of being discriminated against or deported; these concerns were accentuated by the reality of many lacking financial resources to pay fees for immigration procedures. In addition, at least 20% of migrants reported discrimination when seeking employment, and 30% argued that employers did not accept their temporary job

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[5] C. Regidor is a Nicaraguan journalist based in Costa Rica who works covering human mobility in digital media.

permits. Around 50% experienced discrimination when seeking health or education services (International Organization for Migration 2019: 62- 65).

The fact that forced migrants mention fear and discrimination among reasons for not seeking information and state support suggests that they still face significant obstacles in the context of integration. The factors affecting integration are therefore related to bureaucratic and economic hurdles, as well as to xenophobic discourse. Specifically in response to the latter, some migrants have found an opportunity for mobilisation through the constitution of 'solidarity networks' that began as survival groups providing useful information and emotional and financial support (Silva 2021). In 2021, some of these networks have developed into self-organised integration initiatives that support migrants' rights and facilitate dialogues and alliances between migrants and locals, which advances integration from a bottom-up approach developed by those living in marginal communities. In the next section, I will refer to three of these initiatives and their impact on Nicaraguan forced migrants' integration.

### 'Solidarity Practices Mobilise Us and Keep Us Persisting'. *Autoconvocados* Forced Migrants Working for Integration

Three of the initiatives studied here are the Agricultural Camp of the Nicaraguan Peasant Movement in Upala, an agricultural municipality in northern Costa Rica, the feminist collective Volcánicas, and the Nicaraguan LGBTIQ+ roundtable—both based in San José. All of them started as survival networks among *autoconvocados* forced migrants who arrived in 2018. In the following years, they all expanded their scope to begin working for the social integration of their members. All three initiatives are nationally recognized, and generally are self-funded. I interviewed Francisca Ramírez, peasant activist and founder of the Camp; Ximena, a feminist activist, journalist, and co-founder of Volcánicas; and Yassury Potoy, a transgender activist and nurse, and member of the Nicaraguan LGBTIQ+ roundtable. They all combine their previous experiences as community organisers with their skills and knowledge in agriculture, human rights, communications, and public health to create integration opportunities for themselves and others.

The experiences of these three forced migrants interested me because of my experience as a migrant woman, who was an '*autoconvocada*', lived in Costa Rica, and who witnessed the increase in xenophobic discourses in Costa Rican media at the beginning of the pandemic. To respond to this challenge, some friends and I co-founded *Me lo contó un migrante* (A Migrant Told Me), a digital platform that collected and spread stories and art made by migrants to counteract xenophobia (Canales 2020). The three initiatives studied here also contribute to counteracting xenophobia and building new discourses on migration by focusing on different

contributions of immigrants: the Camp makes visible the contributions of Nicaraguans to the Costa Rican agricultural economy; the two other initiatives focus on building a human rights-centred discourse on migration through digital communication and advocacy. Both Volcánicas and the Nicaraguan LGBTIQ+ Roundtable are feminist, anti-racist, and diverse collectives that have managed to flourish in Costa Rica despite conditions of xenophobia. They have done so because the country offers greater access to women's and LGBTIQ+'s people's civil and political rights than other Central American countries (Sexual Rights Initiative 2019). These characteristics make Costa Rica a favourable country in Central America to articulate integration initiatives led mostly by forced migrant women.

It is also important to highlight the *autoconvocado* or self-convened nature of the three initiatives. By *autoconvocado*, I refer to initiatives that flourish on the margins of the state, or despite the state, and whose members consider themselves volunteers and equals (Bran and Goett 2020). Because of their previous experience of repression in Nicaragua, these *autoconvocados* continue to work from the margins: either because their members are asylum seekers or irregular migrants who 'do not exist on paper' and usually do not receive external support, or because they have a certain distrust of the state and its institutions. Despite that, they have managed to create solidarity networks between Nicaraguan forced migrants and create bridges to connect themselves with locals.

*'We as peasants have always lived in solidarity with each other'. - Francisca, from the Agricultural Camp of the Nicaraguan Peasant Movement*

The Agricultural Camp was founded in 2019 by 70 families of the Nicaraguan Peasant Movement. Under Francisca Ramírez's leadership, they rented parcels of land from local owners in Upala to grow survival crops and build temporary residences. The project has received support from UNHCR. When I spoke with Francisca about the achievements and challenges of integration during COVID-19, she commented that they are very 'grateful to Costa Rica's government' and local authorities for welcoming them.

According to Francisca, since the pandemic, cross-border trade has slowed and fear among locals and migrants has increased due to fake news accusing Nicaraguans of spreading COVID-19. To contest xenophobic discourse, camp members have decided to show what Nicaraguan rural immigrants bring into this country with our actions. 'We produce beans, coffee… that's what we share with our neighbours' (Ramírez 2021).

Although the camp was founded to respond to resident families' housing and food demands, in 2020, they expanded their activities to collaborate with other Nicaraguan forced migrants and with local people in vulnerable situations. In April 2020, when the pandemic harshly impacted poor forced migrants in San José, the camp sent part of its harvest to them. Later, in June 2020, camp members worked with locals to rebuild houses destroyed by a storm (Cruz A 2020). These actions were both part of the 'solidarity practices' that camp members established to create social connections with locals. When I asked about the origin of these practices, Francisca said: 'we bring them from our home communities because we as peasants have always lived in solidarity with each other'. She admits that raising awareness about the value of immigrants' work has been more difficult since the pandemic, despite that they have continued working in creating spaces to sell and share their food with locals. In 2021 they received funds from UNHCR and started an alliance with Upala's mayor office to participate in local farmers markets and create spaces for dialogue between local farmers and camp members.

When asked about the government's integration policies, Francisca told me that they are aware of the government´s alliances with UNHCR and that such partnerships have benefited them. However, there is not enough information on immigration procedures, migrant rights, and humanitarian aid programmes for forced migrants in the border area, where 4% of forced migrants live (International Organisation for Migration 2019: 65).

*'Migrant women support each other beyond borders'. - Ximena, from Volcánicas*

'Volcánicas' is an anti-racist feminist collective founded in 2019. Its members are mostly Nicaraguan forced immigrants who started meeting in 2018 to create a support network and share information on mental health resources and humanitarian aid. Ximena Castilblanco, one of the founding members, explains that they started the collective to bring young women's voices to 'spaces of leadership' among Nicaragua's political opposition movements in Costa Rica, that were almost exclusively occupied by older men (Castilblanco 2021).

Currently, 'Volcánicas' brings together forced migrant women from five Latin American countries who position themselves from anti-racist feminism. Their work is focused on creating a human-rights centred narrative of forced migration and dismantling xenophobic discourse through social media analysis and communications. In 2021, the collective launched two digital media campaigns, *Sin Xenophobia* (Without Xenophobia) and *El machismo es pandemia* (Machismo is a pandemic), that bring together independent journalists from Nicaragua and Costa Rica. Both campaigns aim to provide information on migration, women's rights, and mental health. They also have a podcast, 'Furia Volcánica' (Volcanic Fury), that won

a Central American media award for its contribution to public liberties. Moreover, the collective has alliances with digital media and radio stations in Nicaragua, Costa Rica, and New Zealand.

According to Ximena, her participation in 'Volcánicas' has allowed her to create broad networks of solidarity and 'sisterhood' with other groups of Nicaraguan migrant women, and with feminist groups and local journalists, with whom they share interests and expertise. These solidarity networks have been very important in creating a sense of belonging and integration for her and other members of the collective. On the other hand, although most members of Volcánicas cannot currently work formally as journalists, their work in the collective has allowed them to continue practising their professional skills and attending networking events with locals. In this way, the work of Volcánicas and the openness and support of local journalists facilitates a type of bottom-up integration that creates 'bonds' and 'bridges' between locals and immigrants (Ager and Strang 2008: 178), but that also contests xenophobic discourse that has historically exclude Nicaraguan immigrants from being able to fully integrate into Costa Rica´s society (Sandoval 2004).

*'Solidarity practices mobilise us and keep us persisting'. - Yassury, from the LGBTIQ + Nicaraguan Roundtable*

The LGBTIQ+ Nicaraguan Roundtable in Costa Rica was founded in 2018 by forced migrants with diverse sexualities. In 2021, the collective brought together Nicaraguan LGBTIQ+ activists living throughout Costa Rica alongside its 'sister organisation', the LGBTIQ+ Roundtable in Managua. They provided 'listening circles' and training on human rights, mental health, and job placement for members. They also work on advocacy for LGBTIQ+ migrants' rights in alliance with local and international organisations and connect humanitarian initiatives with LGBTIQ+ vulnerable populations.

Yassury Potoy explains that she and other activists created the Roundtable to 'position our demands in political opposition circles' among Nicaraguan politicians and activists in exile who were excluding them from political spaces because of 'conservative' views. Like the other initiatives, the Roundtable began as a survival network for Nicaraguan forced migrants who wanted to propose 'a more horizontal and participatory structure' of social organisation as opposed to traditional political parties and NGOs (Potoy 2021). But also, they wanted to emphasise LGBTIQ+ immigrants' agency in telling their stories, and their contributions to their host society. They have done this through storytelling workshops to contest xenophobic and transphobic discourse by highlighting the Roundtable's and its members work with local organizations and the immigrant community.

During the pandemic, the Roundtable has developed various efforts to support the social and economic integration of its members and other immigrants. They have collected and distributed humanitarian aid for other sexually diverse immigrants and locals in vulnerable situations, they have compiled resources on mental health services to share with their community and they have started to plan a cooperative called *Fritanga diversa* which will offer Nicaraguan food and support its members' economic integration into the society. Despite their efforts, the pandemic has been a particularly difficult period for the Roundtable, because some members have not been able to find jobs due to the economic crisis and trans discrimination, which has led them to continue working informally on the streets in precarious conditions. Even then, some members, including Yassury, decided to postulate for an HIVOS project on storytelling and integration at the beginning of 2021. They produced and shared some life stories of members and highlighted their contributions to the host society through their work as nurses, teachers, and merchants, and their work in human rights in Nicaragua and Costa Rica. Because of this project, the Roundtable has been able to create 'social bridges' with local organisations and 'social links' (Ager and Strang 2008: 178-179). Yassury emphasises that the government needs to include more 'grassroots organisations and immigrant voices' in debates on integration to implement programs and practices that are in accordance with immigrants' needs (Potoy 2021) and that also harness the benefits and skills brought by immigrants to Costa Rica (Chávez-González and Mora: 2021, 41).

**Solidarity Practices and Bottom-up Integration in Costa Rica**

The 'solidarity practices' discussed in the previous section can be classified into two types. First, those that attempt to contest xenophobia and build human rights-centred discourse on migration. Second, those that work toward their members' socio-economic integration and create 'social bridges' between migrants and locals (Ager and Strang 2008: 181). Among the first types are Volcánicas and the LGBTIQ+ Nicaraguan Roundtable. They are focused on sharing accurate information about forced migration and human rights while providing safe spaces for immigrants to talk about their experiences. For this, they have created mutual aid groups, listening circles, storytelling workshops, and digital communication campaigns.

On the other hand, the Agricultural Camp, and some activities of the LGBTIQ+ Nicaraguan Roundtable, work towards their members' socio-economic integration. They also seem to impact the creation of social connections with locals and contest xenophobic discourses by highlighting migrants' contributions to local communities. For example, the Camp's support to rebuild local houses in Upala and its partnerships with the local government to organise farmers' markets have fostered 'social bridges' between forced migrants, locals, and 'social links' with the

municipality. Now, Camp members are recognized as farmers who contribute to local development in their host community.

These two types of 'solidarity practices' demonstrate the agency of forced migrants to mobilise for integration even when state policies are insufficient to meet their needs and despite the context of 'social polarisation'. Their practices also show the historical and economic 'interdependence' between Nicaragua and Costa Rica and the contributions of migrants to the national economy, development, and human rights, areas where they have historically been made invisible. The acknowledgment of 'interdependence' and solidarity between locals and migrants is essential to change conceptions of 'citizenship', 'rights' and 'nationhood' of the host society, which as Ager and Strang explain, ultimately facilitate integration.

By recognizing and highlighting the contributions of Nicaraguan *autoconvocado* forced migrants, immigrants and locals can challenge exclusive narratives on nationhood that have historically considered Nicaraguans as criminals or lazy. At the same time, such narratives can contribute to fostering the desire expressed by Francisca Ramírez of 'giving back' and 'thanking' their host community. The three immigrant leaders interviewed for this paper agree that the Costa Rican state should include self-organised, bottom-up integration initiatives in discussions on migrants' integration and the evaluation of the National Integration Plan. Because of their experience and knowledge as forced migrants and organisers, members of these initiatives can become important partners in facilitating collaborations between the state, NGOs, and other local integration initiatives across the country.

In the near future, the inclusion of these initiatives in national dialogues around integration seems impossible. During the COVID-19 pandemic, Costa Rica has faced unprecedented economic challenges, which hinder the country's ability to absorb forced migrants arriving at its borders. Since 2018, Costa Rica's executive branch has requested assistance from the international community to respond to the challenges of receiving forced migrants from Nicaragua, Venezuela, Cuba, northern Central America, and other countries, who are in transit or seeking refuge. In an attempt to respond to the situation, in 2021 the Costa Rican government approved a complementary protection status for refugees, which temporarily alleviates the situation but does not offer a long-term solution. Additionally, since 2018, only 7.48% of refugee claims have been processed due to lack of staff and resources; most of these claims have been denied (Chávez-González and Mora 2021). In this emergency context, improving the integration policy and the National Plan seems impossible. However, the work of the *autoconvocados* initiatives and their bottom-up approach to integration continue. According to the interviewees, some of their initiatives have already managed to establish collaborative relationships with governments and local leaders, with neighbours, and

communities with common interests. These collaborative networks could facilitate the inclusion of essential perspectives in future dialogues on integration between host localities and the state to ensure the already innovative Costa Rican integration policy becomes a more inclusive model of citizenship and rights.

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## Bibliography

**AGER, A. and STRANG, A.** (2008) 'Understanding Integration: A Conceptual Framework', Journal of Refugee Studies 21(2): 166-91.

**AMNESTY INTERNATIONAL** (2018) Instilling Terror: From Lethal Force to Persecution in Nicaragua, Amnesty International. Available from: <https://www.amnesty.org/en/documents/amr43/9213/2018/en> (Accessed 12 September 2020).

**BAUDER, H., and JUFFS, L.** (2020) 'Solidarity" in the Migration and Refugee Literature: Analysis of a Concept', Journal of Ethnic and Migration Studies 46 (1): 46-65.

**BRAN, F and GOETT, J.** (2020). '¡Matria libre y vivir! Youth Activism and Nicaragua's 2018 Insurrection', Special Edition on Generations and Change in Central America, Journal of Latin American and Caribbean Anthropology 0 (0): 1-20.

**CANALES, R.** (2020). Me lo contó un migrante. A Young spot to expose migration stories, United Nations Major Group for Children and Youth (online). Available from: <https://www.unmgcy.org/me-lo-conto-un-migrante-project> (Accessed 27 February 2021).

**CASTILBLANCO, X.** (2021). Interview with author, March 2021.

**CONFIDENCIAL.** (2020). 'Costa Rica solicita a OPS evaluar "manejo temerario" de la covid-19 en Nicaragua', May 15. Available from: <https://www.confidencial.com.ni/nacion/costa-rica-solicita-a-ops-evaluar-manejo-temerario-de-la-covid-19-en-nicaragua/> (Accessed 15 February 2021).

**CHÁVEZ- GONZÁLEZ, D. and MORA, J. (2021).** The State of Costa Rican Migration and Immigrant Integration Policy, Washington DC, Migration Policy Institute.

**CHINCHILLA, R.** (2019). 'Crímenes de odio. Teclado abierto', Delfino June 5. Available from: <https://delfino.cr/2019/06/crimenes-de-odio> (Accessed 4 March 2021).

**CORTEZ, C. and RODRÍGUEZ, M.** (2020). ¿Qué se ha dicho en las redes sociales sobre los migrantes durante la pandemia?, in La Maleta Abierta- Inter American Development Bank (online). Available from: https://blogs.iadb.org/migracion/es/redes-sociales-migrantes-prejuicios-pandemia/> (Accessed 4 April 2021).

**COVID-19 CITIZEN OBSERVATORY.** (2022). Estadísticas de COVID- 19 en Nicaragua. Informe actualizado en     Julio de 2022    . Available from: https://observatorioni.org/informe-del-30-de-junio-al-13-de-julio-de-2022/

**CRUZ, A.** (2020). 'Campesinos nicas refugiados en Costa Rica donan parte de su producción a 170 familias pinoleras', La Lupa April 16. Available from: <https://lalupa.press/campesinos-nicas-refugiados-en-costa-rica-donan-parte-de-su-produccion-a-170-familias-pinoleras/> (Accessed 25 March 2021).

**CRUZ, R.** (2020). 'Digital Democracy: Sentiment Analysis in a Polarized Multi-Party-Political Context in Costa Rica'. Paper delivered at     the European Consortium for Political Research General Conference, Online, 24th- 28th August 2020.

**EXPEDIENTE PÚBLICO.** (2022). "Éxodo masivo de Nicaragüenses en Costa Rica: migrantes ante el rechazo y condiciones poco favorables", June 23. Available from: <https://www.expedientepublico.org/exodo-masivo-de-nicaraguenses-en-costa-rica-migrantes-ante-el-rechazo-y-condiciones-poco-favorables/>          (Accessed September 30 2022).

**GAGNON, J. and KHOUDOUR- CÁSTERAS, D.** (2011). Tackling the Policy Challenges of Migration. Regulation, Integration, Development, Paris, Organization for Economic Cooperation and Development.

**INTERNATIONAL ORGANISATION FOR MIGRATION.** (2019). Estudio preliminar de flujos migratorios mixtos nicaragüenses. Abril 2018- Junio 2019, San José, International Organization for Migration.

**LOAIZA, V.** (2019). 'Página de detenido por explosiones atacaba a grupos LGBTI y migrantes con noticias falsas', La Nación October 22. Available from: <https://www.nacion.com/sucesos/crimenes/pagina-de-detenido-por-explosiones-atacaba-a/DASL6QUH5JEJRLI2OFXNNRAJOM/story/> (Accessed 10 April 2021)

**MARTÍN-BARÓ, I.** (1983). 'Polarización Social en El Salvador', Estudios Centroamericanos, 38 (412): 129-142.

**MORA, A. and GUZMÁN, M.** (2018). Aspectos de la Migración Nicaragüense hacia Costa Rica, San José, Inter-American Development Bank.

**MURILLO, A. (2018).** '"Fuera nicas": la llegada de refugiados nicaragüenses a Costa Rica se topa con una escalada de xenofobia'. Univisión 19 August. Available from: <https://www.univision.com/noticias/xenofobia/fuera-nicas-la-llegada-masiva-de-nicaraguenses-a-costa-rica-se-topa-con-una-escalada-de-xenofobia-y-confusion> (Accessed 17 October 2020).

**NATIONAL COUNCIL ON MIGRATION.** (2013). Política migratoria integral para Costa Rica, San José, National Council on Migration.

**PÉREZ, E. (2015).** 'Xenophobic Rhetoric and Its Political Effects on Immigrants and Their Co-Ethnics', American Journal of Political Science 59 (3): 549- 564.

**PÉREZ, N.** (2020). 'Nicaragüenses exiliados en Costa Rica denuncian que pandemia del COVID-19 aumenta la xenofobia', Artículo 66 7 April. Available from: <https://www.articulo66.com/2020/04/07/nicaraguenses-exiliados-en-costa-rica-denuncian-que-pandemia-del-covid-19-aumenta-xenofobia/> (Accessed 17 October 2020).

**PIZARRO, J.** (2019). 'Nuevas tendencias de la migración en América Latina y el Caribe y urgentes problemáticas'. Paper delivered at the Regional Forum of the Economic Commission for Latin America and the Caribbean, Santiago, 10th- 12th March 2019.

**POTOY, Y.** (2021). Interview with author, February 2021.

**RAMÍREZ, F.** (2021). Interview with the author, January 2021.

**REGIDOR, C.** (2021). Interview with the author, January 2021.

**ROCHA, J.** (2008). 'Identidades binacionales en la frontera líquida. Construyendo la ticaraguanidad contra la ley y las políticas', L'Ordinaire des Amériques 211 (2008): 121- 144

_____ (2018). 'El tigre nica en la rebelión de abril', Revista Envío 434 May. Available from: <https://www.envio.org.ni/articulo/5480> (Accessed 14 April 2021).

_____ (2019). Autoconvocados y conectados. Los universitarios en la revuelta de abril en Nicaragua, San Salvador, UCA Editores y Fondo Editorial UCA Publicaciones.

**SANDOVAL, C.** (2004). Threatening Others: Nicaraguans and the Formation of National Identities in Costa Rica, Ohio, Ohio University Press.

_____ , **BRENES, M, MASIS, K. and PANIAGUA, L.** (2008) 'La Carpio: Segregación urbana, inseguridad y estigmatización social en una comunidad binacional en Costa Rica', Iberoamericana 8 (32): 119- 135.

_____ (2021a). 'Nicaraguan immigration to Costa Rica in times of Covid-19', [Unpublished working paper].

_____ (2021b). Interview with the author, March 2021.

**SEXUAL RIGHTS INITIATIVE.** (2019). 'Examen periódico universal de derechos sexuales y reproductivos', Acceder. Available from: <https://ipascam.org/uploads/1573156578284_ES_ARCHIVO_1.pdf> (Accessed 8 April 2021).

**SILVA, G.** (2021). 'Experiences of Nicaraguan Political Refugees in Costa Rica', Oxford Monitor of Forced Migration 10 (1): 22- 35.

**SOTO, R. (2005).** 'Discursos y políticas de inmigración en Costa Rica: 1862-1943', Nueva Época 5 (19):119- 133.

_____ **(2019).** 'Nicaragüenses en Costa Rica : el juego histórico del contraste de identidades', Diálogos, Departamento de História e Programa de Pós-Graduação em História da Universidade Estadual de Maringá 23 (1): 104-129.

**UNITED NATIONS COSTA RICA.** (2021). Discursos de odio y discriminación en redes sociales en Costa Rica, San José, United Nations and COES.

**VILLALOBOS, M.** (2021). Interview with the author, March 2021.

**WALLACE, S. and WRIGHT, M.** (2015). 'Does Mandatory Integration Matter? Effects of Civic Requirements on Immigrant Socio-economic and Political Outcomes', Journal of Ethnic and Migration Studies 41 (12): 1-24.

# *Integrating Culture into Return Migration Programming*

Shivan Fazil

## Abstract

*The Islamic State's (IS) three-and-a-half-year occupation in northern Iraq caused devastating human suffering and unprecedented destruction of cultural heritage. Between 2014 and 2017, hundreds of thousands of Iraqis were killed, and millions more were displaced as a result of the IS onslaught and the subsequent military campaign to defeat it. IS particularly targeted the ethnic and religious minority groups in Nineveh Plains – historically home to many cultural groups living side by side, as part of Iraq's rich mosaic of ethno-sectarian diversity – including Christians, Yezidis, Shabaks, Turkmen, and Kaka'I, among others. Members of these minorities were executed, enslaved, or forcibly converted to IS's radical form of Sunni Islam. IS also destroyed many historical and heritage sites and the sacred religious structures of various communities such as Christian churches, Yezidi temples and Shia Shrines, leading to a sense of spiritual loss and community estrangement (Isakhan, 2018). In short, this was a deliberate bid to erase their cultural identity and traces of centuries of ethno-sectarian coexistence in the region, a notion that the group vehemently rejects.*

*Nearly five years after IS' territorial defeat, almost 1.2 million Iraqis remain displaced (IOM, 2022). A large body of humanitarian work has examined the obstacles to returning home for the ethnic and religious minorities, and security and livelihood are seen as the most significant barriers (IOM 2019b; IOM 2019c). However, no study has explored the significance of cultural identity and ability to practice culture in relation to displacement and attitudes toward return. This policy brief seeks to address this gap based on empirical research with members of minority groups.*

*The findings show that the ability to practice culture has played an important role in the sense of belonging of ethno-religious minorities in Iraq and, for many, in their decision to return home after IS' retreat from the Ninewa Plains in 2017. Such empirical research has implications for humanitarian actors and refugee agencies. As humanitarian actors continue to determine the viability of return for displaced populations, it is imperative to look beyond the barriers and physical aspects, which are well studied and understood, and understand how cultural identity and ability to practice culture could facilitate voluntary return and for post-conflict peace and stability.*

**Introduction**

The Islamic State's occupation and the war against it forced nearly six million Iraqis from their homes between 2014 and 2017, almost 15% of the entire population of the country (IOM 2018). Members of minority communities in particular were executed, enslaved or forcibly converted to Islamic State's radical form of Sunni Islam. Their sources of livelihood, such as farmland, olive groves and livestock, were also devastated. IS destroyed historical and cultural heritage and desecrated religious structures such as churches, mosques, temples, and shrines, including the 12th century Al-Nouri Mosque where the organization's leader proclaimed the 'new caliphate' from its pulpit (Shehadi 2021). In even less tangible ways, IS' actions also undermined the communities' ability to perform cultural practices, such as rituals and pilgrimages. In short, IS sought to prevent them from living as Christians, Yezidis, Shabaks or Kaka'i. This was a deliberate bid to erase the traces of centuries of ethno-sectarian coexistence in the region, a notion that the group vehemently rejects.

Some scholars argue that IS' destruction of heritage sites (historical monuments, museums, and religious structures) can be viewed as a form of "place-based violence" that aims to obliterate the local sense of belonging, and the collective sense of memory among local communities, to whom the heritage belongs (Harmanşah, 2015). Others have sought to establish how the destruction of cultural heritage was experienced, its links to trauma and genocide, causing a rupture to their sense of belonging and memory, and shaped displacement among minorities (Isakhan, 2018, Isakhan et al. 2019)

Nearly five years after IS' territorial defeat, almost 1.2 million Iraqis remain in protracted internal displacement, 56% of which originate from Nineveh Province (IOM, 2022). Those internally displaced face general unmet humanitarian needs and specific impediments to achieve durable solutions, including return to their areas of origin. This is especially true for the ethnic and religious minorities that continue to languish in displacement. In determining the viability of return for displaced populations, humanitarian actors have focused on various aspects such as security, livelihoods, and services in both areas of origin and displacement (IOM, 2019a; IOM, 2019b; IOM, 2019c). These are undoubtedly important conditions for facilitating return. However, what is often neglected, and missing from existing literature, is that no study has explored the significance of cultural identity and the ability to practice culture (traditions, rites, and rituals) – which underpins sense of belonging – and the complex ways in which culture and the ability to practice culture shapes displacement and attitudes toward return.

This policy brief seeks to address this gap based on household survey and key-informant interviews conducted with members of ethnic and religious minorities from Nineveh Plains. Such empirically rich research has important implications for humanitarian actors and refuge agencies. Understanding the significance of cultural identity and the ability to practice culture could help these actors to first, achieve their goals of using cultural pulls in conjunction with addressing impediments and physical aspects facilitating returns, and second, foster social cohesion in the wake of the conflict.

## Research Methodology

This study is based on empirical data collected between May 2020 and April 2021 through mixed methods research, namely 900 survey samples and 200 interviews, with community leaders from the Nineveh Plains of Iraq, such as civil society activists, religious figures and political leaders. The survey was programmed on tablets in Arabic, Syriac and Kurdish, and respondents were given the option to complete potentially sensitive information such as ethno-sectarian affiliation directly on a tablet without the enumerator seeing the responses. Sampling was designed to ensure proportional representation of ethno-sectarian groups as well as geographical representation throughout the data collection process.

## The Nexus of Culture, Displacement, and Return

The destruction of cultural heritage and religious structures has been a catalyst driver of displacement especially among ethnic and religious minorities in northern Iraq, who felt there was nothing left to keep them in their areas of origin (Isakhan, 2018). In the same vein, our research on cultural practices of minorities in post-IS Nineveh, Iraq demonstrates both the importance as well as the potential of culture in influencing decisions to return home among displaced communities. For instance, the majority of the survey respondents reported that their ability to practice culture and rituals were key to their decision to return home, with 73% seeing it as very or somewhat important. Additionally, in interviews, community members often discussed return in conjunction with traditional cultural practices that they missed and connected them to the land. Moreover, 86% of the survey respondents from ethnic and religious groups reported that the freedom to practice culture is very important in relation to their community's identity, sense of belonging, and future in the country.

In addition, our findings also demonstrate that access to religious sites and people of the same faith (or lack thereof) in locations of displacement can impact the ability to practice culture, and in turn could have influence on intentions to return among displaced communities. For example, the results were higher than the overall average for Yezidi and Kakai respondents, with 76% and 78% respectively stating

their ability to practice culture as very or somewhat important in their decision to return home.

Again, in interviews, community members linked this to the dynamics of displacement. Following the IS takeover of northern Iraq, Christians, Yezidis and Kakai sought refuge in the Kurdistan Region, known for its outwardly favourable environment to religious freedoms and peaceful coexistence. While Shabaks and Turkmen, especially of Shia denomination, sought refuge in Baghdad, Najaf, and Karbala. Christian and Shabak interviews noted that their communities had access to alternative houses of worship in locations of displacement in the Kurdistan Region and southern Iraq, respectively, and hence they were able to continue practicing their rituals during displacement. However, Yezidi and Kaka'i community leaders reported that their houses of worship, temples, and shrines are located solely in their areas of origin in Nineveh Plains, and unlike Christians and Shabaks have no houses of worship in the Kurdistan Region or southern Iraq. This likely helps explain why the desire to resume cultural practices and hence the decision to return home was more pronounced among Yezidi and Kaka'i respondents.

Moreover, community members and leaders interviewed provided especially rich, complementary details about the importance of culture for their sense of belonging, peaceful coexistence, and how their rituals were affected during displacement. This can potentially explain how the longing to practice cultural practices informed intentions toward return. The conflict and the ensuing displacement fragmented communities and cut members off from each other. While in displacement, the lack of mobility, coupled with feelings of insecurity, had effectively prevented minority groups from full expression of their cultural practices. Respondents noted that during displacement they were not able to carry out rituals and seasonal commemorations, altogether, or in large numbers due to lack of mobility, among other reasons.

Activities that formerly promoted community cohesion both within and between ethno-sectarian groups, such as seasonal commemorations and large celebratory gatherings, were impacted not least because of displacement and the destruction wrought by IS. In a related way, as movement across landscapes has been restricted by multiple factors, research participants noted a concurrent loss of community connection previously forged through shared gatherings. The interviewees pointed to cultural practices, including the gathering for community events, and the collective participation in religious rites, as a way of bringing various communities together. Some of these events reinforced intra- and inter- group solidarity, especially when elders, religious figures, and other notables participate. These include attending condolence services in each other's house of worship, as well as cultural exchange during seasonal commemorations and celebrations. In short,

culture and the ability to practice was the glue that held many communities together. In addition, the inability to practice rituals has arguably caused a sense of spiritual loss and community estrangement, and hence not only led to longing and desire to resume practicing these activities, but also led to the decision to return home.

Finally, the interviewees underlined how different communities, regardless of ethno-sectarian belief, collaborated in the wake of the conflict. Members of different faiths worked together to rebuild each other's sites of religious and spiritual importance, including places of worship, sites of religious learning and pilgrimage, which they saw as being crucial to encourage return as part of wider efforts to help resurrect communities and their bid to revive the spirit of ethno-sectarian diversity and coexistence that IS sought to exterminate.

## The Implications of Cultural Practices for Return Migration

The research findings suggest that cultural identity, cultural meaning and the ability to practice one's rites and rituals and their influences on intentions towards returns warrant a deeper understanding. It also highlights the importance and potential of culture in influencing dynamics of displacement and return. While the barriers and physical aspects to facilitate return are well studied and understood, they should be partnered with understandings of cultural pulls.

It is also imperative for humanitarian and refugee agencies to examine how cultural practices can be included in more holistic programming on return migration and how culture can be included into broader return migration thinking. Post-conflict reconstruction and humanitarian programming must go beyond the visible and physical aspects, which are undoubtedly essential in facilitating return. However, if the aim is to help re-establish displaced communities in the long run and enable them to flourish and thrive, more attention needs to be given to reinstate cultural identity and the ability to practice the unique customs and traditions which underpin a sense of belonging for many communities (Fazil and Dylan 2020).

The findings clearly show that cultural issues are extremely important and relevant to displacement, whereas implementing partners avoid engaging in assessing and incorporating cultural issues into their programs either because they lack interest and/or capacity. There are concerns about cultural issues becoming politicized, thus affecting neutrality, simply because donor requirements do not include culturally sensitive approaches as part of their programs. To be sure, the same cultural issues were crucial in fostering ethno-sectarian coexistence in Iraq and in preserving the country's rich mosaic of diversity and have been essential for restoring peace and stability in the wake of the conflict (Robson 2015; SIPRI 2022).

The importance that culture and the ability to practice it has on senses of belonging cannot be overstated in the context of displacement and return.

## Funding

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## Bibliography

**Aldroubi, M.** (2021) 'Iraqi Christians see little prospect of returning to former homes'. Available from: < https://www.thenationalnews.com/mena/iraq/2021/08/16/iraqi-christians-see-little-prospect-of-returning-to-former-homes/> (Accessed 1 May 2022).

**Al Aqeedi, R.** (2022) 'It's Still A Merry Christmas in Nineveh'. Available from <https://newlinesmag.com/reportage/its-still-a-merry-christmas-in-nineveh/> (Accessed 9 January 2023).

**Fazil, S.** (2022) 'The Political Marginalisation of Ethnic and Religious Minorities in Iraq'. Manara Magazine. Available from: <https://manaramagazine.org/2022/03/17/the-political-marginalisation-of-ethnic-and-religious-minorities-in-iraq/?elementor-preview=4129&ver=1647469045#_edn19> (Accessed 4 May 2022).

**Fazil, S. and O'Driscoll, D.** (2020) 'Cultural reconstruction is critical after Islamic State occupation'. Available from: <https://www.sipri.org/commentary/essay/2020/cultural-reconstruction-critical-after-islamic-state-occupation> (Accessed 5 May 2022.)

**Fernandez, A.** (2017) 'Want to defeat the legacy of ISIS? Try rebuilding non-Muslim communities it has destroyed', Available from: <https://www.washingtonpost.com/news/democracy-post/wp/2017/05/24/want-to-defeat-the-legacy-of-isis-try-rebuilding-non-muslim-communities-it-has-destroyed/> (Accessed 5 May 2022).

**Gaston, E. and Derzsi-Horvath, A.** (2018) 'Iraq After ISIL Sub-State Actors, Local Forces, and the Micro-Politics of Control', Global Public Policy Institute. Available from: <https://www.gppi.net/2018/03/21/iraq-after-isil-sub-state-actors-local-forces-and-the-micro-politics-of-control> (Accessed 9 May 2022).

**Harmanşah, Ö.** (2015) ISIS, Heritage, and the Spectacles of Destruction in the Global Media. *Near Eastern Archaeology*, *78*(3), 170–177. https://doi.org/10.5615/neareastarch.78.3.0170

**IOM.** (2019a) 'Rural Areas in Ninewa: Legacies of Conflict on Rural Economies and Communities in Sinjar and Ninewa Plains', International Organization for Migration. Available from: < https://reliefweb.int/report/iraq/rural-areas-ninewa-legacies-conflict-rural-economies-and-communities-sinjar-and-ninewa> (Accessed 8 May 2022).

**IOM.** (2019b) 'Protracted Displacement Study: An In-Depth Analysis of The Main Districts of Origin', International Organization for Migration. Available from: <https://reliefweb.int/report/iraq/protracted-displacement-study-depth-analysis-main-districts-origin> (Accessed 11 May 2022).

**IOM.** (2019c) 'Understanding Ethno-Religious Groups in Iraq: Displacement and Return', International Organization for Migration. Available from: <https://publications.iom.int/books/understanding-ethnoreligious-groups-iraq-displacement-and-return-february-2019> (Accessed 8 May 2022).

**IOM.** (2022), 'Displacement Tracking Matrix, Iraq Master List Report 125, January-March 2022', International Organization for Migration. Available from: <https://iraqdtm.iom.int/images/MasterList/20224264632942_DTM_125_Report_January_March_2022.pdf>. (Accessed 10 May 2022).

**Isakhan, B.** (2018) How to Interpret ISIS's Heritage Destruction. *Current History*, *117* (803), 344–349.

**Isakhan, B, Zarandona, JA Gonzalez and Al-Deen, T.** (2019) Cultural cleansing and iconoclasm under the Islamic State: attacks on Yezidis and Christians and their

heritage. In Oruc, Firat (ed), *Sites of pluralism community politics in the Middle East*, Hurst Publishers, London, Eng., pp.181-194.

**IOM.** (2018) 'Iraq Displacement Crisis 2014-17', International Organization for Migration. Available from: <https://reliefweb.int/report/iraq/iraq-displacement-crisis-2014-17-enar> (Accessed 24 January 2022).

**Robson, E.** (2015) 'Past and Futures Entwined: supporting humanities and culture for a sustainable Iraq', Middle East in London, vol. 11, no. 4. Available from: <https://www.baytalmosul.com/uploads/2/0/5/3/20530602/saad_aljadir.pdf> (Accessed 9 January 2023).

**Schlick, K. (2021)** 'Yazidis still displaced in their own country', Available from: <https://www.dw.com/en/yazidis-still-displaced-in-their-own-country/a-59725928> (Accessed 12 May 2022).

**Shehadi, L. (2021)** 'The Clock and the Hunchback; Rebuilding Mosul's Sacred Sites', Available from: <https://disegnojournal.com/newsfeed/mosul-rebuilding-unesco-iraq> (Accessed 16 May 2022).

**SIPRI. (2022)** 'the Nineveh Plains of Iraq: How culture is helping to restore peace', Available from: <https://www.sipri.org/news/2022/new-sipri-film-nineveh-plains-iraq-how-culture-helping-restore-peace> (Accessed 9 January 2023).

**Walsh, D. and Chaim, G.** (2021) 'The Muslims and Christians rebuilding Mosul's old city'. Available from: <https://www.bbc.com/news/av/world-middle-east-55941928> (Accessed 17 May 2022).

# FIELD SECTION

OXFORD MONITOR OF FORCED MIGRATION

# *Connecting with NGOs in Calais*

STANTON GEYER AND VICTORIA JONES

**Abstract**

*In December 2021, staff from the language edtech NGO, ELNOR, travelled to the port city of Calais, France to meet with NGOs serving refugees and to conduct pilot research on language needs in the area. This article serves as an introduction to this long-lasting and ongoing humanitarian crisis and local NGO efforts to provide where successive French and British governments have lacked. It highlights the historical and geographical point of migration, criticisms of the conditions and treatment of refugees, and NGO efforts to address the crisis.*

Map depicting the distance from Calais to Folkestone as shown by the Eurotunnel.

The French and British governments have long disputed and thereby protracted living conditions of thousands of people seeking asylum and family reunification across the English Channel. Since the late 1990s, asylum seekers have continuously resided and rebuilt their communities in the Greater Calais Area despite teardowns and mass evictions (Welander and Gerlach 2018). In 1994, Calais opened the

Folkestone-Calais Eurotunnel and as of 1998, it has hosted numerous government-run and NGO-run refugee camps and informal settlements. Calais is located at a historically ideal place for transit over the Franco-British maritime border, given that the port of Calais is approximately 31 miles (49 km) from the English port of Dover.

## Criticism of Government Policies and Relations

Prevailing differences in asylum management, coupled with poor diplomacy between the two countries (Peck 2017), have complicated access to the British asylum system for refugees in Calais and Dunkirk. The area has seen formal camps such as the Sangatte camp (2001-02), the Jules Ferry site (2015-16) referred to as the Calais 'Jungle', La Linière in Dunkirk (2016-18), as well as informal camps built by NGOs and displaced people themselves in the surrounding woodlands (Chrisafis 2016). By 2016, the overpopulated Calais 'Jungle' area hosted an estimated 10,000 people seeking refuge, far above the camp's capacity (HRW 2017).



People living in temporary cabins and tents in Calais' 'Jungle' in 2016.

*Reuters via BBC (Source)*

The pathways to apply for asylum are not clear or viable, despite calls from local NGOs to improve asylum procedures. The local government has implemented policies to deter welcoming efforts to those arriving. Reminiscent of the criminalization of water stations for refugees and migrants along the U.S.-Mexico border (Tomassoni 2019), the municipal government of Calais at times has politicized food distribution. In March 2017, the mayor of Calais prohibited NGO food distribution to those surviving on the streets of the city (Mallevoüe 2016).

Though this decision was subsequently overturned (Care4Calais 2017) such approaches allow governments to turn efforts away from welcoming and processing asylum claims, and instead towards often more expensive – but more bureaucratically expedient – securitization of borders and criminalization of refugees' daily lives (Pasha-Robinson 2018; HRW 2017). The delayed implementation of policies intended to coordinate migration into the EU and ease the challenges of mass arrivals, such as the series of Dublin Regulation treaties, have contributed to this humanitarian crisis. The securitization and eventual closure of refugee camps in the Calais area remains a politically and diplomatically charged challenge for French and British governments.

## NGO Efforts

Through our site visit, ELNOR spoke with some of the main NGOs in the area including the Refugee Community Kitchen (RCK), InfoBus, and Secours Catholique. RCK has operated a hot meals service in Calais since 2015 and was celebrating its six-year anniversary when ELNOR visited. A quick tour of their storage warehouse shows how several organizations coordinate meal preparation, meal delivery, and supplies delivery to local unhoused refugees. Since a fire at another NGO's warehouse in 2018 (Welander and Gerlach 2018), RCK has become the main one of its kind in the Calais area, serving 1,500 meals a day.

Their services benefit people from a variety of backgrounds, including from Sudan, South Sudan, Iraq, Iran, Pakistan, Yemen, Syria, Kuwait, Palestine, Egypt, Nigeria, Chad, Libya, Morocco, and Senegal. English serves as a medium within NGOs, between volunteers and beneficiaries, and between different refugee communities.
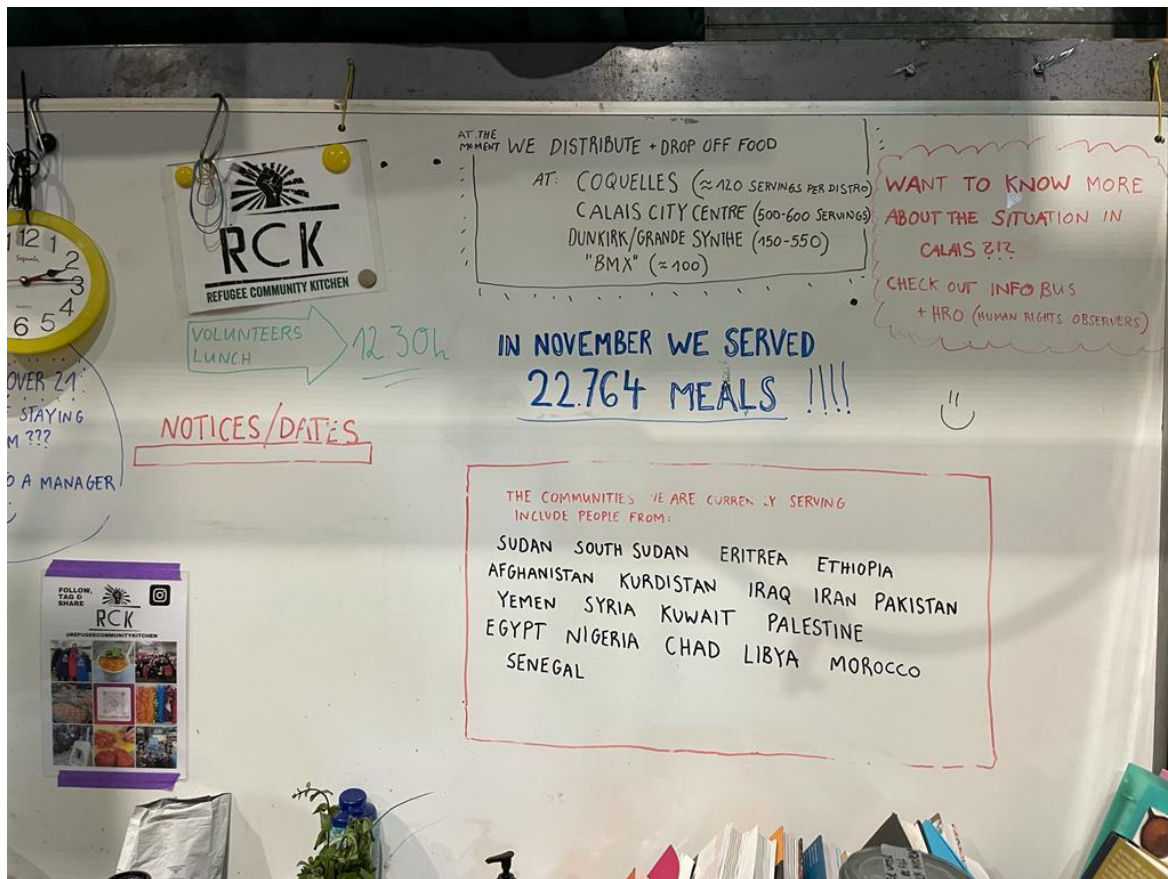
Inside RCK.

In November 2021, RCK served 22,764 meals. Food is prepared by approximately 20 volunteers in the kitchen, with a dedicated and experienced managerial team, and then distributed by volunteers in vans. Temporary distribution sites are located wherever NGOs have determined people are gathering to rest.

Working out of the same warehouse, InfoBus volunteers discussed how their program operates to provide temporary Wi-Fi access and charging stations for people in the greater Calais area. InfoBus utilizes a vehicle equipped with charging tables, portable Wi-Fi boxes, and information flyers about other social services. They also supply some local charity centres with materials, as they welcome unhoused people during the day. Like RCK, InfoBus identifies where locals are congregating and waits just down the road out of respect for privacy. People can pass by the van to access its services and speak with InfoBus's 3-7 volunteers. They explained that many people use prepaid sim cards with Android phones to access the internet and contact family and friends back home.

Finally, ELNOR staff met with volunteers at the Secours Catholique activity centre in Calais to discuss the educational needs of their beneficiaries. Secours Catholique, (Catholic Charities) is the French branch of Caritas International. They open their community centre doors to a capped number of refugees three days a week. They

offer an indoor and courtyard space with tables and chairs, air conditioning, device charging stations, basketball and card games, and a modest collection of movies on VHS. Volunteers there help distribute basic clothing, like warm jackets and shoes. The Red Cross also offers a service here to help people make calls and access Wi-Fi. When we arrived, the centre was bustling but was preparing to send people out for the night. The centre is unable to accommodate people spending the night but offers some regularity to whomever comes in the afternoons.



Secours Catholique posters at their indoor activities centre.

## Conditions in Calais

Several people in Calais mentioned inhumane and problematic practices by the French and British governments that take place in the greater area. Though ELNOR did not specifically ask partners and beneficiaries to elaborate, stories that were shared align with those found in previously recorded narratives (HRW 2017). We heard much about pushbacks, police harassment and brutality, the violence endured during mass evictions of camps and informal sleeping grounds, and the politicization of basic human rights and access to resources. In August 2017, a survey found refugees were generally sleeping 3.5 hrs per night due to constant disruption from police attempting to move them (Welander and Gerlach 2018). A recurring pattern for years, refugees restart their makeshift tent sites weekly,

because police patrol such sites after identifying and clearing them. Clearing often consists of waking up the unhoused people using flashlights and pepper spray, then cutting through their tents or other informal structures and confiscating cell phones. We were told that without a centralized camp, and with rampant police activity day and night, it is hard to offer any stability or regularity to refugees here.

In the aftermath of mass camp evictions by French authorities, and as trade and travel between the two countries has decreased during the pandemic, the UK Home Office has responded offensively to a stark increase in small boat crossing (Glover 2021). When we visited, 27 people had recently died attempting to cross on 24 November 2021. Though the British government had just rolled back plans to criminalize independent life-saving efforts, the authorities on either end of the channel had avoided jurisdiction over the dinghy and the passengers' pleas for help amidst emergency for 12 hours. 'Pushbacks' are a common practice by maritime border authorities in Greece and Australia (Doherty 2021) whereby migrants are intercepted by authorities and either delivered or set adrift back in the opposite direction, generally without formal documentation. This unofficial practice violates both the EU's ECHR Article 4 on "the prohibition of collective expulsion of aliens" and the principle of non-refoulement, a procedural safeguard and fundamental principle of the 1954 Geneva Convention ensuring that anyone with an asylum claim will be heard (Keady-Tabbal 2021). Importantly, France and the UK are both signatories and have ratified the 1954 Geneva Convention.

The 'pushbacks' policy sees British authorities turn their backs on refugee emergencies at sea, which is similar to the policy seen in the Aegean Sea between Greece and Turkey and in Australia. Pushbacks allow the British government to avoid processing asylum cases of people seeking refuge. Under UK rules, applications for asylum can only be made once applicants are on U.K. soil, as the British government has ignored cases rising in Calais altogether as a foreign issue. Whether sending refugees across the world or back over the channel, the UK government is creating policies that deeply call into question violations of international law (Gentleman and Allegretti 2022).

Additionally, many people we spoke with mentioned the issues of police violence in the wider Calais area. Alongside formal mass evictions and the routine elimination of informal encampments, police violence takes the form of confiscation and destruction of personal property and people's living places, and harassment of NGO workers. It is common for refugees in Calais to reside in tents while awaiting asylum processing, asylum decisions, or just while considering moving elsewhere of their own accord. ELNOR was told that police slash and burn people's tents daily, allegedly to deter people from remaining in the region altogether. On a wider scale, we were told that various levels of the French government contract private construction companies to bulldoze campsites.

Protests against these types of evictions have been ongoing for years, with NGOs, locals, visiting advocates, and refugees themselves uniting to stand against such practices. In October 2021, a hunger strike was organized by some to halt evictions and open a dialogue to reconsider possible solutions (Magdelaine 2021). From ELNOR's conversations in Calais, it seems that people considered this undertaking fairly successful. Nevertheless, as of the publishing of this article the crisis is ongoing. These multinational communities of refugees and the largely British and French volunteers advocating on their behalf continue to demand that their two governments take action in accordance with a basic conception of human rights.

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### Bibliography

**CARE 4 CALAIS** (2017) 'Calais Food Distribution Ban Overturned', March 23. Available from: https://care4calais.org/news/calais-food-distribution-ban-overturned/ (accessed 13 February 2022).

**CHRISAFIS, A.** (2016) 'MSF to open camp for refugees sleeping rough near Dunkirk', The Guardian, February 28. Available from: https://www.theguardian.com/world/2016/feb /28/msf-to-open-first-humanitarian-standard-refugee-camp-near-dunkirk (accessed 25 April 2022).

**DOHERTY, B.** (2021) 'UN human rights expert decries boat turnbacks as Australia criticised for secrecy of 'on-water matters'', The Guardian, July 8. Available from: https://www.theguardian.          com/australia-news/2021/jul/08/un-human-rights-expert-decries-boat-turnbacks-as-australia-criticised-for-secrecy-of-on-water-matters  (accessed 17 March 2022).

**GENTLEMAN, A., ALLEGRETTI, A.** (2022), 'UN refugee agency condemns Boris Johnson's Rwanda asylum plan', The Guardian, April 15. Available from: https://www.theguardian.com          /uk-news/2022/apr/15/un-refugee-agency-condemns-johnsons-rwanda-asylum-plan (accessed 19 April 2022).

**GLOVER, D.** (2021) 'UK 'push-back' policy under focus following English Channel disaster', Courthouse News Service, December 4. Available from: https://www.courthousenews.com/      uk-push-back-policy-under-focus-following-english-channel-disaster/ (accessed 3 February 2022).

**HUMAN RIGHTS WATCH** (2017) 'Like living in Hell', July 26. Available from: https://www.hrw.org/report/2017/07/27/living-hell/police-abuses-against-child-and-adult-migrants-calais# (accessed 23 March 2022).

**KEADY-TABBAL, N.** (2021) ''Pushbacks" as Euphemism', European Journal of International Law, April 14. Available from: https://www.ejiltalk.org/pushbacks-as-euphemism/ (accessed 14 December 2021).

**MAGDELAINE, F.** (2021) 'Migrants: Anaïs and Ludovic, from nomadic life to hunger strike in Calais', LaCroix, November 14. Available from: https://www.la-croix.com/France/Migrants      -Anais-Ludovic-vie-nomade-greve-faim-Calais-2021-11-14-1201185046 (accessed 5 January 2022).

**MALLEVOUE, D.** (2017) 'The mayor of Calais prohibits the distribution of meals to migrants', Le Figaro, March 2. Available from: https://www.lefigaro.fr/actualite-france/2017/03/02/01016-   20170302ARTFIG00236-la-maire-de-calais-interdit-la-distribution-des-repas-aux-migrants.php (accessed 22 February 2022).

**PASHA-ROBINSON** (2018) 'Macron-May talks: UK and France must put a stop to 'systematic violation' of Calais refugees, warn charities', The Independent, January 18. Available from: https://www.independent.co.uk/news/world/europe/macron-may-talks-uk-france-visit-calais-refugees-help-stop-jungle-treatment-immigration-customs-a8166446.html (accessed 20 March 2022).

**PECK, T.** (2017) 'Government backtracks on pledge to take child refugees', The Independent, February 8. Available from: https://www.independent.co.uk/news/only-350-syrian-refugee-children-will-be-allowed-to-settle-in-britain-thousands-less-than-promised-a7569691.html (accessed 4 March 2022).

**TOMASSONI, T.** (2019) 'Activists making 'water drops' for migrants near border say government intimidation is rising', Washington Post, January 29. Available from: https://www.washingtonpost.com/national/activists-making-water-drops-for-migrants-near-southern-border-say-government-intimidation-is-rising/2019/01/29/1f832464-1f52-11e9-8b59-0a28f2191131_story.html (accessed 11 April 2022).

**WELANDER, M., GERLACH, F.M.** (2018), Refugee Rights Europe. Available from: https://refugee-rights.eu/wp-content/uploads/2018/10/History-Of-Calais_Refugee-Rights-Europe.pdf (accessed 6 February 2022).

# *The Experiences of Black African and Haitian Migrants Forced to Remain in Mexico Due to Restrictive U.S. And Mexican Immigration Policies*

Zefitret Abera Molla

## Abstract

*The growing presence of Black African and Haitian migrants in Mexico poses a new set of challenges to a country witnessing its first wave of Black migrants in modern history. Due to restrictive U.S. and Mexican immigration policies since 2016, many of these migrants have found themselves forced to remain in a country they had only intended to transit through on their journey northward to the United States. This paper aims to shed light on the specific issues affecting Black, non-Spanish speaking migrants in Mexico due to their intersecting identities by drawing on the experience of Jean[6], a Cameroonian migrant living in Tijuana, Mexico and waiting for the opportunity to seek asylum in the United States. In Mexico, Black African and Haitian migrants are discriminated against due to the combination of their race, lack of Spanish skills, and migration status. Appropriate measures should be taken by the Mexican government to provide assistance and support to these Black African and Haitian migrants, whose intersecting identities increase their vulnerability to harm and discrimination.*

## Introduction

The US-Mexican border has recently seen the nature of its migration evolve and diversify. For the first time, Mexicans do not represent the largest share of migrants crossing the border. Central Americans from Northern Triangle countries represent the largest share of migrants apprehended by both Mexican officials and U.S. Customs and Border Protection agents. According to the Mexican Interior Ministry, in 2019, Mexican officials apprehended over 152,000 Salvadorans, Guatemalans and Hondurans (Secretaría de Gobernación 2020). In addition to Central Americans, there are now increasing numbers of extracontinental migrants from Asia and Africa. After the European Union signed agreements with Turkey and Libya in an effort to further externalise its borders, many of these migrants consider traditional migration routes to Europe to be too risky and/or expensive. The relatively lax visa and/or entry requirements in Latin American countries such as

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[6] All participants were assigned a pseudonym to protect their identity.

Brazil and Ecuador is another factor increasing the attractiveness of American migration pathways (Yates, 2019).

While African migrants represent a small fraction of overall migrant apprehensions at the southwestern border, the number of African migrants has grown significantly in recent years (Yates, 2019; Bolter, 2017). There are currently thousands of African and Haitian migrants forced to remain in Mexico due to restrictive US and Mexican immigration policies. According to the Mexican Interior Ministry, in 2019, Mexican officials apprehended 7,352 Africans and 3,980 Haitians (Secretaría de Gobernación 2020). This number has been steadily increasing since 2007 (the year Mexico began including African apprehensions in their annual migration reports), when the number of Africans apprehended was at 460 (Secretaría de Gobernación 2012). The lack of legal pathways to immigrate to the United States has forced many of these migrants to embark on dangerous journeys through several South and Central American countries before reaching the US-Mexico border. Many migrants either obtain a visa to Brazil or use Ecuador as an entry point, taking advantage of the country's visa-free travel and then make the journey northward to Mexico via foot and public transportation.

The United States has put in place increasingly restrictive immigration policies which have forced thousands of Black African and Haitian migrants to remain in Mexico. In 2016, the U.S. Department of Homeland Security (DHS) put in place the 'metering' policy (also known as the 'turnback policy'), which limits the number of asylum seekers who are processed every day at U.S. port of entries at the southwestern border (American Immigration Council 2021). In March 2020, at the onset of the COVID-19 pandemic, the Trump administration under a false public health pretence issued an order known as Title 42, barring individuals without valid documentation from entering the United States through the Canadian or Mexican borders (Centers for Disease Control and Prevention 2020). Due to pressure from the Trump administration, Mexico also put in place its own set of restrictive policies to prevent migrants from travelling to its northern border with the United States. Mexico deployed over 6,000 National Guards at its southern border with Guatemala and thousands more at its northern border with the United States. (Melimopoulos 2019). Mexico also ramped up apprehensions and deportations of migrants heading north to the United States. These restrictive policies forced Black African and Haitian migrants to remain in Mexican border towns and cities that are known to be unwelcoming to migrants.

The theoretical framework of intersectionality, coined more than 30 years ago by Kimberlé Crenshaw, a Black feminist and legal scholar, can be used to study the hardships faced by Black migrants in Mexico. Intersectionality is an analytical approach that explores people's overlapping identities and experiences in order to

understand the complexity of the prejudices and discriminations they face. While intersectionality was first used to study race and gender, it has since gained significant traction in the field of migration studies. Taha (2019) argues that an intersectional approach is beneficial to the migration studies field because it highlights the diversity of refugees and their experiences which are shaped by multiple intersecting identities such as gender, race, national origin, class, age, (dis)ability and sexual orientation. As Black migrants whose first language isn't Spanish, these migrants face intersecting discriminations due to their race, their status as migrants and their lack of Spanish. It is impossible to understand the complex experiences of people with overlapping identities – in this case Black, non-Spanish speaking migrants – without recognizing the intersecting nature of their identities.

**Fieldwork Setting**

From 2020 to 2021, I conducted fieldwork in Tijuana, Tapachula, and Mexico City, to study how the intersection of migration, race, and language shapes the experiences of Black African and Haitian migrants forced to remain in Mexico due to restrictive U.S. and Mexican immigration policies. I conducted 23 in-depth semi-structured interviews in English and French with migrants from nine different countries: Cameroon, the Democratic Republic of Congo, Eritrea, Ghana, Guinea, Haiti, Mali, Nigeria, and Uganda. In this article I will focus on one Cameroonian migrant's experience as a Black, non-Spanish speaking migrant navigating Mexico. The first and second part of my interview questions focused on his educational and professional backgrounds, his reasons for leaving his country, and the decision to embark on this treacherous journey. Finally, the third part of my interview focused on his life in Mexico and his interactions with the local Mexican population and Mexican law enforcement agents.

**Findings: Intersection Between Race, Status as Migrants and Lack of Spanish Skills**

In February 2020, I interviewed Jean, a 36-year-old Cameroonian who had made the dangerous journey through South and Central America in hopes of reaching the United States. The interview took place in Tijuana, Mexico where he had been living for a few months while waiting for the opportunity to seek protection in the United States. Jean is from the anglophone region of northwest Cameroon, where he was a farmer on his family's land. Although Cameroon is a bilingual English and French country, anglophones only make up about 20% of the total population. The Cameroonian government has recently attempted to impose French in the anglophone region's schools and courts through the assignment of French speaking personnel (O'Grady 2019). When the anglophone region's teachers and

lawyers went on strike to oppose these measures they were met with repression, and many were arrested (Human Rights Watch 2021).

To supplement his income from farming, Jean owned a motorcycle transportation business in Cameroon. Initially, Jean didn't think the civil unrest would affect him as he thought it would pass like other unrests. However, one night he was called by someone in the village to take their sick mother to the city hospital. On their way there, they were stopped by French-speaking military. Although the military set fire to his motorcycle, Jean luckily managed to escape. But the military didn't stop there. They came to his farm looking for Jean and when they couldn't find him, they destroyed his farm and threatened his wife. Facing persecution from the French-speaking military, Jean decided to flee to neighbouring Nigeria, then transited to Brazil before embarking on a treacherous journey northward to Mexico with the United States as his final destination. Jean's family currently remains in Cameroon.

After travelling through several South and Central American countries, Jean finally arrived in Tapachula, a Mexican town bordering Guatemala. Mexican law enforcement agents put Jean in a migratory detention centre, and when they finally released him three weeks later, he found himself homeless and without a job on the streets of Tapachula. Eventually, Jean started working in construction and saved up enough money to rent a room. However, on his way to rent a room, he was stopped by two unidentified men who threatened him and robbed him. After these two men fled the scene, Jean saw a police car driving his way. Although he tried to ask for their help, due to his lack of Spanish, the police officers couldn't understand him. They eventually got frustrated and said "Negro, vamos, negro" and left him there. Says Jean, "So I didn't know what to do, so I just kept quiet, since they cannot understand me, I just stayed quiet." 'Negro' is a derogatory term, usually used against Black people in Latin America. In many places throughout Latin America, it is closely associated with enslavement (Deaderick 2020).

These experiences illustrate clearly how Jean's multiple identities intersected to cause him to face discrimination. Jean's status as a migrant made him homeless, jobless, and vulnerable to attacks by robbers. As an anglophone who was unable speak Spanish, Jean was unable to communicate with the police officers to get the appropriate assistance and protection he needed. Not only did the police officers refuse to help him, but they also used racial slurs against him before abandoning him on the side of the road in the middle of the night after he had just been attacked.

In addition to being robbed, Jean was also almost abducted in Tapachula. One evening, two men approached Jean and attempted to abduct him, but when they heard sirens approaching they became scared and fled the scene. Jean was traumatised by this incident and asked the Tapachula asylum office if he could move

to a different, safer, city while waiting for his asylum decision, but his request was denied. Jean also tried to file a complaint with the local police but was told that due to insufficient information, the police wouldn't be able to catch the perpetrators of these attacks. Once again, Jean struggled to advocate for himself because of his lack of Spanish skills.

Jean summarised his frustrating experience in Tapachula: "There is trouble here, I can end up being killed here, I ran away from my country because of problems, here again I have to face other problems?" Jean's question captures the frustration that many Black African and Haitian migrants feel about their situation in Mexico. They were compelled to flee their country and endure the treacherous journey through Latin America only to be forced to remain and be discriminated against in Mexico. Eventually, Jean was able to make his way north to Tijuana at the U.S.-Mexico border. Yet even there, the racism continued:

> You get in the bus; people will cover their nose. If I seat behind someone, they cover their nose, and if they don't cover their nose, as soon as they find a free seat, they will change their seat. If they can't change seats, they will get off the bus. Sometimes I think to myself that maybe the person has reached their destination but when I turn around, I see them waiting for the next bus.

Jean spoke to me about his daily struggles with communicating in Spanish:

> Sometimes I communicate in signs with them, or I point at what I want to buy with my hand, or I use Google Translate but not all of them can read. Sometimes if it's too hard for them to understand me, I give up and go to the next place where maybe they can understand me a little bit either by speaking to them or using Google Translate.

As Jean's testimony demonstrates, for migrants who don't speak Spanish, even daily tasks as simple as riding the bus or going to the supermarket can be challenging. Language barriers exacerbate the struggles of migrants like Jean, who have a hard time navigating life in Mexico and accessing services.

Jean also spoke at length about his interactions with Mexican law enforcement and how accustomed he had become to being racially profiled:

> On my way here to Tijuana, I took a night bus, everybody was sleeping in the bus, so I was sleeping too. When the police came to check in on us, they realised everybody was sleeping so they didn't disturb them. But they woke me up and said 'give us your documents' but I could see everybody was still

sleeping. They didn't wake up anybody else, they only woke me up because I was the only Black one in the bus.

Jean also experienced discrimination in detention centres in which Central American migrants were given preferential treatment to African migrants:

When we were in the detention centre and it was time for food, they would come and call Central Americans first. They were the first to be served. Even if you are hungry, they will tell you 'Central Americans first'. They will give you food after because if a Central American eats and wants more, they will give him more but if an African asks for more they will say "Go, go, go!" and chase him.

These daily discriminations are often especially harmful for migrants due to the trauma many migrants experience in fleeing their country of origin and throughout their migration journey. Rather than finding safety and protection, many migrants such as Jean instead are left feeling unwanted and unwelcomed. As Jean explained when asked how he thinks Mexicans perceive him and other migrants, "The people here, they don't like Black people, they prefer white people. They don't like Black people so treating us fairly is not an option."

## Conclusion

Using an intersectional approach to investigate and shed light on the experiences of Black African and Haitian migrants, this article shows how Black, non-Spanish speaking migrants face intersecting discriminations due to their status as migrants, their race, and their lack of Spanish language skills. These overlapping identities put Black, non-Spanish speaking people at a greater risk of extortion from criminals, hinders their access to justice and assistance from the Mexican government, and increases their vulnerability to racist attacks. In addition to facing discrimination from state agencies, Mexican law enforcement such as the National Guard and the local police, Black, non-Spanish speaking migrants also endure daily discrimination from the local population.

The United States' attempt to externalise its border enforcement efforts by putting pressure on Mexico to curb migration flows at its southern border and by entering into safe third country agreements with Central American countries puts vulnerable migrants and asylum-seekers in danger. Instead of externalising its border enforcement efforts, the United States should scale up processing capacity at U.S. ports of entry at the southwestern border so migrants are not forced to remain in Mexican border cities and towns that are known to be dangerous for vulnerable migrants and asylum-seekers.

Mexico should increase funding to its agency processing asylum claims (Comisión Mexicana de Ayuda a Refugiados (COMAR)) and provide well-trained, culturally competent staff to ensure faster asylum processing. It should also provide anti-discrimination and anti-racism training to local police officers in border cities/towns as well as the National Guard to help this new wave of Black migrants. In addition, ensuring that Black African and Haitian migrants have access to interpreters in the languages most spoken by these communities such as English, French and Haitian Creole is vital.

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### The Author

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## Bibliography

**AMERICAN IMMIGRATION COUNCIL** (2021) Metering and Asylum Turnbacks, Washington DC, The American Immigration Council. Available from: <https://www.americanimmigrationcouncil.org/research/metering-and-asylum-turnbacks> (accessed 31 May 2022)

**BOLTER, J.** (2017) 'The Evolving and Diversifying Nature of Migration to the U.S.-Mexico Border', Migration Policy Institute February 16.

**CENTERS FOR DISEASE CONTROL AND PREVENTION** (2020) Order Suspending Introduction of Certain Persons From Countries Where A Communicable Disease

Exists (online). Available from: < https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf> (Created 20 March 2020, accessed 30 May 2022).

**DEADERICK, L.** (2020) 'Latina Professors Discuss Use of 'Negrito' And 'Negrita' In Latin Culture, After J.Lo Controversy', The San Diego Union-Tribune November 1.

**HUMAN RIGHTS WATCH.** (2021). 'Cameroon: Events of 2020'.

**JEAN.** (2020). Interview with author, February 2020.

**MELIMOPOULOS, E.** (2019) 'Mexico's National Guard: What, who and when', Al Jazeera June 30.

**O'GRADY, S.** (2019) 'Divided By Language', The Washington Post February 5.
SECRETARÍA DE GOBERNACIÓN. (2012) Boletín Mensual de Estadísticas Migratorias 2007, Mexico.

**SECRETARÍA DE GOBERNACIÓN.** (2020) Boletín Mensual de Estadísticas Migratorias 2019, Mexico.

**TAHA, D.** (2019) 'Intersectionality And Other Critical Approaches in Refugee Research: An Annotated Bibliography'.

**YATES, C.** (2019) 'As More Migrants from Africa and Asia Arrive in Latin America, Governments Seek Orderly and Controlled Pathways', Migration Policy Institute October 22.

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