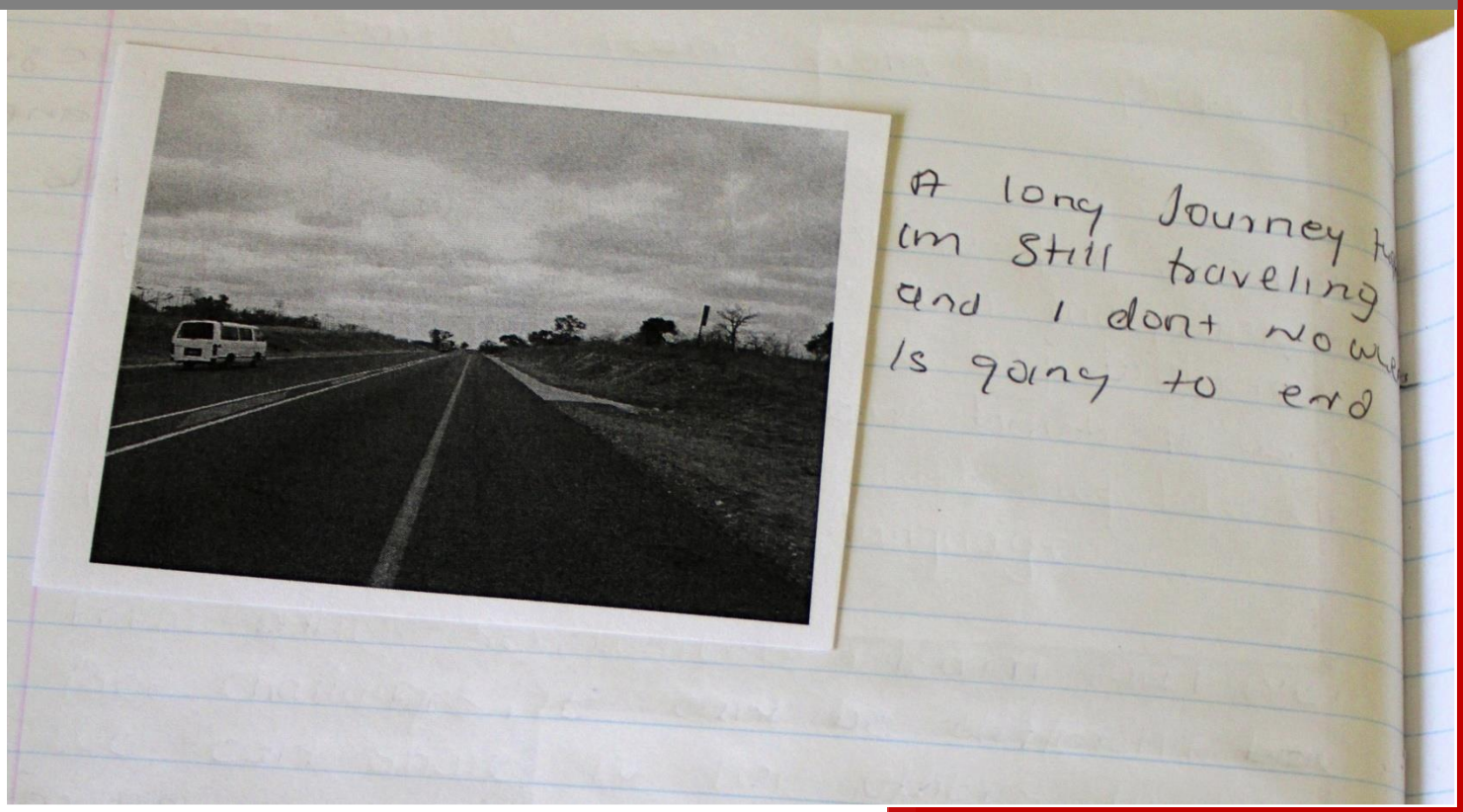
Refugee Review: Re-conceptualizing Refugees and Forced Migration in the 21st Century



An e-publication of the ESPMI Network
www.refugeereview2.wordpress.com
Volume 2, Number 1, June 2015

BY NC ND

Refugee Review:
Re-conceptualizing Refugees and Forced Migration in the 21st Century

An e-publication of the ESPMI Network
www.refugeereview2.wordpress.com
Volume 2, Number 1, June 2015

The Emerging Scholars and Practitioners on Migration Issues Network (ESPMI Network) can be found online at www.espminetwork.com.

The opinions and statements found in Refugee Review: Re-conceptualizing Refugees and Forced Migration in the 21st Century *are solely those of the authors and do not represent the views of the ESPMI Network or its editors, peer reviewers, supporters, or other participating contributors.*

This material is protected through a Creative Commons copyright, Attribution Non Commercial No Derivs 3.0 Unported license. Please contact refugeereview@gmail.com with questions.

To reference work within this e-journal, please use the following attribution style (or a standardized variation that includes the following information): Author, "Article Title," *Refugee Review: Re-conceptualizing Refugees and Forced Migration in the 21st Century*, Vol 2, No 1(2015): Page Number, accessed date, url. Please note that papers are printed in the dialectical preference of their author; American, British and Canadian English are present.

Cover Image: ©Poppy

Featured image is from a participant's journal for *Volume 44,* a participatory photo project with migrant men, women, and transgender sex workers in South Africa. For more information on this project and other participatory arts-based work of the African Centre for Migration & Society (ACMS), an interdisciplinary African-based Centre dedicated to research on human mobility and social transformation, please read: "*Move (method.visual.explore): The use of visual and narrative methodologies' when working with marginalised migrant populations in South Africa*" by Elsa Oliveira.

Index

Refugee Review: Re-conceptualizing Refugees and Forced Migration in the 21st Century

Acknowledgements **5**

Managing Editors' Statement **6**

ARTICLES

The Shifting Borders of Interdiction and Asylum: A Canadian case study of safe country of origin policies
MICHELLE BALL **9**

The perils and possibilities of citizenship transformation: health-based claims and the Canadian Interim Federal Health Plan reform debate
LUCIA FRECHA **26**

Continental Drift: Realigning the Humanitarian Purpose and Practical Reality of International Refugee Law in Western States
BEN MILLS **42**

Statelessness Protections as a Remedy for Protection Gaps in Jordan and India
MIRIAM ACED AND ANWESHA GHOSH **59**

Co-Ethnicity, Security and Host Government Engagement: Egypt as a Non-Traditional Receiver of Migrants and Refugees
KELSEY P. NORMAN **77**

Politicizing Environmental Displacement: A Four-Category Approach to Defining Environmentally Displaced People
NICOLE MARSHALL **96**

OPINION PIECES

Germany as Host: Examining ongoing anti-immigration discourse and policy in a country with a high level of non-national residents
SABINE LEHR **113**

Understanding India's Refusal to Accede to the 1951 Refugee Convention: Context and Critique
SREYA SEN **131**

Climate refugees? Alternative and Broadened Protection Avenues for Refugees from Small Island Developing States (SIDS)
MAINÉ ASTONITAS, JACQUELINE FA'AMATUAINU, and AHMED INAZ **138**

Refugee decision-making in Canada: difficulties in accessing the research site and strategies for resolution
SULE TOMKINSON **151**

PRACTITIONER REPORTS

MoVE (method:visual:explore): Marginalized migrant populations and the use of visual and narrative methodologies in South Africa
ELSA OLIVEIRA **161**

Compassion and Pragmatic Action: The Restoring Family Links Program
CHRISTA CHARBONNEAU KUNTZELMAN **176**

The Jesuit Commons: Higher Education at the Margins Program: *An Ongoing Community Project Report: Reflections On Higher Education In A Refugee Setting*
THEOGENE BARAVURA **182**

ESPMI NETWORK'S DISCUSSION SERIES

Introduction: Seeking Safety on the High Seas
HILLARY MELLINGER **191**

Conceptualising 'people on the move' in the Horn of Africa and Yemen
MELISSA PHILLIPS **193**

Seaborne Asylum Seekers in the 21st Century: An Australian's Perspective
BAYAN EDIS **195**

How to Re-Frame? European State Reactions to the Situation of "Seaborne Migrants" in the Mediterranean
SOPHIE HINGER **197**

How To Re-Conceptualize The Right To Asylum In The Lethal Sea-Crossing Age?
CHIARA DENARO **201**

Changing State Responses in the Central Mediterranean: Search and Rescue, Interdiction, and Externalisation
KEEGAN WILLIAMS **204**

From "Boat People" to "Irregular Maritime Migrants:" A Re-conceptualization of Seaborne Refugees after 40 Years
OLIVIA TRAN **207**

INTERVIEWS

Secret Trial 5: Interview with Director **AMAR WALA** **211**

Liberia: Past, Present, Future: Interview with **LAURA BERLINGER, WILLIAM JACOBS and GARRETSON SHERMAN** **218**

Acknowledgements

Managing Editors: Petra Molnar and Brittany Lauren Wheeler
Managing Editorial Team: Dacia Douhaibi, Bani Gill, Ina Jahn

The ESPMI Network would like to thank the following individuals and groups:

Contributors

Miriam Aced, Mainé Astonitas, Michelle Ball, Theogene Baravura, Laura Berlinger, Chiara Denaro, Bayan Edis, Jacqueline Fa'amatuainu, Lucia Frecha, Anwesha Ghosh, Sophie Hinger, Ahmed Inaz, William Jacobs, Christa Charbonneau Kuntzelman, Sabine Lehr, Nicole Marshall, Hillary Mellinger, Ben Mills, Kelsey P. Norman, Elsa Oliveira, Melissa Phillips, Shreya Sen, Sule Tomkinson, Olivia Tran, Garretson Sherman, Amar Wala, Keegan Williams

Editors and Peer Reviewers

Louise Chricton, Courtney Cox, Negin Dahya, Heather Donald, Dacia Douhaibi, Claire Ellis, Eda Farsakoglu, Bani Gill, Ina Jahn, Patricia Martuscelli, Hillary Mellinger, Matt Stevens, Shreya Sen, Alison Stanley

ESPMI Executive Committee

Negin Dahya, Dacia Douhaibi, Eda Farsakoglu, Bani Gill Ina Jahn, Hillary Mellinger, Petra Molnar, Shreya Sen, Brittany Lauren Wheeler

Supporters

The International Association for the Study of Forced Migration (IASFM), Susan McGrath, Michele Millard, Jennifer Hyndman, Christina Clark-Kazack, The Refugee Research Network (RRN), The Social Sciences and Humanities Research Council (SSHRC)

The ESPMI Network would particularly like to thank the Refugee Research Network and the funding support it has received through the related SSHRC Strategic Research Clusters Grant. This funding has allowed members of the Executive Committee of the ESPMI Network to travel several times to meet with one another and to liaise with others in the field, at conferences such as the Canadian Association for Refugee and Forced Migration Studies (CARFMS) and the International Association for the Study or Forced Migration (IASFM).

Website Design: Negin Dahya and Brittany Lauren Wheeler; ***PDF Design***: Petra Molnar

Managing Editors' Statement

Welcome to the second volume of *Refugee Review*, the open access, multidisciplinary, multimedia, and peer-reviewed journal of the ESPMI Network. We are delighted to be able to share with you another rich edition of varied and challenging articles, opinion pieces, practitioner reports, discussions, and interviews from emerging scholars and practitioners around the world.

Human beings have been migrating for millennia; "migration is in..[our] DNA,"[1] as Francois Crepeau eloquently stated. However, with persistent migration flows come new and troubling responses that lack flexibility and awareness of contemporary reality. The sealing of borders, tightening of security measures, and perhaps most troublingly, the perpetuation of rigid categories of refugee protection, exacerbate the many abuses perpetrated against migrants today, and lend little to solutions that might bring forward resolution for all parties. Rigid categories of asylum obfuscate the nuanced experiences and motivations of migrants and static categories—*refugee*, *economic migrant*, *asylum seeker*, *smuggler*, and *irregular migrant*—cloud the diversification of push and pull factors of migration. The needs for protection continue to be complex, and they often fall outside of established categories in international instruments and jurisprudence used to determine who can and cannot access rights inherent to being designated a *refugee*. In an era of increasing environmental migration, extraterritorialization, and the ever-pressing need for durable solutions all across the globe, categories which and policies that concretize migrants into problematic hierarchies of protection and exclusion must be re-conceptualized.

For these reasons and many others, we have chosen to focus this edition of *Refugee Review* on the worthy topic of the reconceptualization of forced migration and refugees in the 21st century. The journal encompasses many themes that can contribute to the places we can look to re-conceptualize forced migration and refugeehood: environmental displacement, citizenship and integration, international law conventions accessions and exceptions, protracted situations of displacement or lack of access to services once settled, statelessness, seaborne migration and state response, domestic and international policy, the recognition of agency, the importance of education, and ignorance of state, regional and ethnic histories.

The policies of the nation state emerge in a number of papers, whether in Miriam Aced and Anwesha Ghosh's piece concerning *de jure* and *de facto* statelessness as they exist for

[1] Francois Crepeau, "From Enforced Closure to Regulated Mobility: The Need for a Paradigm Shift in Migration Policies," RCIS Working Paper No. 2015/4, Keynote address delivered on May 13, 2015, at the 8th Annual Conference of the Canadian Association for Refugee and Forced Migration Studies (CARFMS) at Ryerson University, Toronto. Available at: http://www.ryerson.ca/content/dam/rcis/documents/RCIS%20WP%202015_04%20Crepeau%20Final.pdf.

communities in Jordan and India, or Sreya Sen's related depiction of the reasons India is unlikely to accede to the 1951 Refugee Convention in the future. The theme of non-traditional receiving countries or countries with counter-narratives to their own long-term host status can be found in both Kelsey P. Norman's close look at Egypt's engagement with migrants and refugees as well as in Sabine Lehr's exploration of long-term anti-immigration discourse in Germany. Challenges within the Canadian state in particular are reflected on in Lucia Frecha's analysis of the potential for citizenship transformation as it may or may not occur in relation to health-based claims, in Michelle Ball's case study of safe country of origin policies, and in Sule Tomkinson's discussion of the challenges involved in accessing the refugee hearing room of the *Immigration and Refugee Board of Canada (IRB).* The lack of clarity regarding environmental displacement emerges in a number of texts, most notably in Main*é* Astonitas, Jacqueline Fa'amatuainu and Ahmed Inaz's discussion of the alternative and broadened protection that should be offered to Small Island Developing States (SIDS) or Nicole Marshall's call for definitional clarity regarding environmentally displaced persons, for which she offers a four-category approach.

The important role of education is expressed not only in Theogene Baravura's encapsulation of a higher education project within the Dzaleka refugee camp in Malwai, but in the work of William Jacob's educational and aspirational dance work and the underpinning of Garretson Sherman's work with youth in Staten Island, as interviewed by Laura Berlinger, who was mentored by both. Taking action to support the mental and psychological well-being of migrants is explored in both Christa Charbonneau Kuntzelman's rumination on her work reuniting separated families through the Red Cross/Red Crescent and Elsa Oliveira's assistance in aiding sex workers in Johannesburg to use visual and narrative methodologies to capture their lives. The calamitous situations surrounding seaborne migrants are taken up in earnest by seven scholars and practitioners in our Discussion Series, as introduced by Hillary Mellinger. Melissa Phillips considers the Horn of Africa and Yemen and the need to re-conceptualize the rigid distinctions between refugee, migrant and asylum seeker. Chiara Denaro calls for a re-conceptualization of the right to asylum during a time of restriction and lessening of political, civil and social rights that she refers to as the "emptying process." Sophie Hinger discusses the Mediterranean and the way in which migrants are treated as security concerns that require military response, deterring "irregular migration" at any cost. Keegan Williams also confronts the Mediterranean, laying out the profound externalization of European Union borders with statistics that cannot be ignored. Bayan Edis discusses the serious gaps between Australia's domestic policy and international obligations, and Olivia Tran asks whether we are likely to see another instance of complicated collaboration on resettlement such as that which took place during the Indochinese refugee crisis. Lastly, several publications ask us to question the very bedrock of understanding that supports how human rights and humanitarian purposes unfold around us, whether in Amar Wala's interview that showcases the horrific damaging nature of the

security certificate's regime in Canada's refugee policy, or within Ben Mills rumination on the realignment of humanitarian purpose and Western reality.

We are incredibly proud to have worked directly with more than forty emerging scholars and practitioners to bring the second edition of our journal forward. We believe that the multidisciplinary, multi-locative nature of forced migration underlines the need for a diverse submission invitation, a rigorous but collaborative peer-review process, and a platform of open presentation. Once again, we state a commitment to the presentation of research and work that has allegiance less to particular institutions or geographies, and more to the lessons we can draw from utilizing the collective brilliance of the many institutions, non-profit organizations, projects, and personal involvements that our authors draw from and contribute to in their daily lives. Migrants past and present, emerging and established scholars, practitioners, artists, photojournalists, activists—all are welcome to speak here. We hope that this is journal can, in a small way, act as a venue for bringing multiple strains of work and study into closer proximity for those that seek to know more about forced migration. It is too often that we are stymied by disciplinary boundaries, lack of funding, and lack of knowledge about how to come together.

We know that human migration—in an array of possible categorizations—will not cease. We also know that, in the 21st century, aspects of its nature will continue to change. It is thus practical, ethical, and imperative to engage with one another in critical discussion in order to consider not only the re-conceptualization of forced migration, but a new paradigm for action.

Petra Molnar and Brittany Lauren Wheeler

The Shifting Borders of Interdiction and Asylum: A Canadian case study of safe country of origin policies

MICHELLE BALL*

Abstract:
This article examines the ways in which safe country of origin policies are used as a form of interdiction by liberal states. This is explored through a case study of Canada's 2012 immigration reforms and adoption of a "Designated Country of Origin" (DCO) policy to interrogate the motivation of Canada's adoption of this safe country of origin policy at this particular time. I argue that this policy was adopted as a type of visa-replacement which could discourage the arrival of refugee claimants, mostly European Roma, while still maintaining positive relations with the EU. This is examined through the perspective of interdiction literature and related literature on securitization, remote policing, and legal emulation. The case study is structured around two types of analysis. What was the policy environment in which DCOs were developed and who were its intended targets, as evidenced by refugee arrivals and the effects of this policy? I conclude that in the breakdown of visa policies, the motivation for a safe country of origin policy emerged in the Canadian context as DCOs allowed Canadian officials to discourage refugee flows of European Roma and also fulfill its diplomatic goals with the EU.

Michelle Ball is a MSc Graduate from the London School of Economics and Political Science

Introduction

"The border itself has become a moving barrier, a legal construct that is not tightly fixed to territorial benchmarks. This shifting border of immigration regulation… is selectively utilized by national immigration regulators to regain control over their crucial realm of responsibility, to determine who to permit to enter, who to remove, and who to keep at bay."[1]

Many liberal states manage these shifting borders of immigration regulation through the use of interdiction policies which restrict the arrival of migrants physically or legally from their country of destination. Through an array of policies, immigration regulators are constantly

[1] Ayelet Shachar, "Shifting Border Of Immigration Regulation," *Michigan Journal of International Law* 3 (2007): 811.

navigating the conflicting objectives of the security needs of the sovereign state, international obligations towards migrants, and diplomatic considerations. These practices can involve the visually arresting turn-back operations in the Mediterranean of boats of migrants travelling from North Africa, or the less controversial use of visas or safe country of origin policies which prevent full access to asylum proceedings. However, all of these practices have in common the shifting of the physical or legal borders of a state to determine who falls within their migration responsibilities.

However, the obscure nature of interdiction practices renders analysis of such policies difficult. This is due to most interdictory practices being empirically difficult to track and often subsumed within national security and criminal prevention practices. In this obscure environment, and in the face of questions over its legality under international law, it becomes even more important to uncover the motivations of more "*passive-pre-emptive*" forms of interdiction.[2] It has been suggested by Kernerman that interdiction can be best understood through studying not those interdiction scripts which 'work', but rather extraordinary cases where they do not, offering a glimpse into the breakdown and repair inherent in managing interdiction contradictions.[3] I would like to extend the focus of this analysis and suggest that interdiction can be better understood when governments are forced to adopt more subtle interdictory tools in response to current challenges. Tools such as visas, safe third country or safe country of origin policies which deter or expedite potential refugee claimants work in a more passive way and are therefore less understood. I will therefore be focusing on one particular tool of interdiction that is often overlooked, that of safe country of origin.

Including safe country of origin tools within the category of interdiction is perhaps counter-intuitive, but can add considerably to its holistic analysis. Safe country of origin policies are used by a number of liberal states, with the UNHCR defining them as "countries determined to be non-refugee producing countries."[4] While interdiction is sometimes understood to refer to policies which physically push back migrants before arrival, the Canadian Counsel for Refugees identifies two categories of interdiction: measures which are applied pre-arrival and post-arrival.[5] These can be seen either as barriers which prevent refugee claimants from accessing territory where they might find protection, or barriers which more subtly "push back" refugee claimants through preventing an effective asylum adjudication procedure.[6] Essentially, the effect of both types of policies is the same as they deny access to protection for potential refugee claimants.[7] In

[2] Gerald Kernerman, "Refugee Interdiction Before Heaven's Gate," *Government and Opposition* 43:2 (2008): 231.
[3] Kernerman, "Refugee Interdiction," 232.
[4] Anca Gurzu,"Safe Country Of Origin List At The EU Level: The Bargaining Process And The Implications," *Review of European and Russian Affairs* 7:1 (2012), 2.
[5] Canadian Council for Refugees, "Interdiction and Refugee Protection: Bridging the Gap," (International Workshop, Ottawa, Canada. May 23, 2003): 3.
[6] *Ibid., 9.*
[7] Attila Ataner, "Refugee Interdiction And The Outer Limits Of Sovereignty," *JL& Equal.* 3 (2004): 7, 12.

what follows, I will argue that analyzing safe country of origin policies as a type of interdiction enables a more thorough analysis of such controversial tools and allows connections to be made between policies which have the ultimate effect of restricting the arrival of refugees.

In addition, it is important to deconstruct the motivation of safe country of origin policies as they have the capacity to undermine the integrity of asylum procedures and increase the likelihood of asylum adjudication errors.[8] It is significant to note that the use of visas and safe country policies are not in themselves contradictory to international law or necessarily detrimental. The UNCHR in its 2010 report does not oppose the notion completely, although it recommends that "each application is examined fully on its merits… each applicant has an effective opportunity to rebut the presumption of safety of the country of origin in his/her individual circumstances… and applicants have the right to an effective remedy against a negative decision."[9] It is debatable if safe country of origin policies respects such basic rights of refugee claimants. As safe country of origin policies are an understudied and controversial policy likely to spread in the next decade, a micro analysis of their use in Canada is extremely useful and timely. [10]

I use an illustrative case study to illuminate these tensions and fill the gaps in interdiction literature. My case study focuses on the "Designated Country of Origin" (DCO) category introduced in recent Canadian immigration reform, part of the "Protecting Canada`s Immigration System Act" which received Royal Ascent on June 28, 2012 and came into force December 15, 2012. But what was the motivation for Canada adopting a restrictive DCO instrument at this particular juncture? I will argue that in the breakdown of visa policies, the motivation for a safe country of origin policy emerged in the Canadian context as it allowed Canadian officials to discourage refugee flows of European Roma and also to fulfill its diplomatic goals with the EU. The illustrative case study of DCOs in Canada demonstrates the intricate balancing of interdictory policies between refugee protection obligations, sovereignty and border control goals, and diplomatic concerns. When examining the diplomatic interests of the Canadian government at the time of immigration reform and the effects which have arisen from the designation of certain countries as "safe," the connection between interdiction and DCOs are thrown into stark relief. Therefore, through examining how the breakdown of visas led to the policy need for a new type of interdiction tool, this case study uncovers the often hidden and largely underemphasized mechanisms of safe country policies to block access to the full refugee system.

[8] Ataner, "Refugee Interdiction," 36-37.
[9] UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice.* UNHCR: UN Refugee Agency, March 2010.
[10] Gurzu, "Safe Country Of Origin List," 3.

Following a literature review of debates in the interdiction and safe country literature, the policy environment in which the DCO policy was proposed, developed, justified and adopted will be examined. To this end, the connections as suggested by the literature of the breakdown of visas as a form of interdiction to address the arrival of European Roma refugee claimants are highlighted. Further, the role of the EU and free-trade agreements as an important factor is acknowledged in deconstructing the motivation for DCO adoption. Therefore the question becomes who the intended targets of this DCO policy really are and what effects on interdiction have been. This will be followed by a discussion of the significance of this case study and potential avenues of further investigation.

Debates in the interdiction literature and safe country of origin policies

"Many States which have the ability to do so find that intercepting migrants before they reach their territories is one of the most effective measures to enforce their domestic migration laws and policies." International Organization for Migration[11]

There is significant debate in the interdiction literature regarding the motivation of states engaging in safe country of origin policies and other interdiction practices. The justification for their use may seem at first to be inherently logical and full-proof. Interdiction is justified by states as their exercising of their 'right' to control their borders.[12] There is a contradiction in this as it contravenes the basic principle of international refugee law that refugees are the exception to migration control. Under international law, states must examine the claims of refugee claimants who enter their territory.[13] However, this basic principle is glossed over in the state's quest to rid itself of the obligations which kick in once a potential refugee claimant enters their territory. Each state manages these fundamental tensions through its own mixture of policies. This begs the question as to what purpose interdiction is being engaged if it presents such a fine line of legality. It could be to avoid the expenses of processing and supporting irregular migrants. Alternatively, it could be to avoid international obligations, as suggested by Gibney and Hansen.[14] More plausibly, it could be explained through a desire for security, relating migration with concerns over criminalization and human trafficking.

These questions highlight the ways in which the securitization of migration underpins much of the justification for the use of interdictory tools despite their potential to violate international law. There are four common approaches to the analysis of interdiction: legal

[11] Human Rights Watch, International Catholic Migration Committee, World Council of Churches. "NGO Background Paper on the Refugee and Migration Interface," (paper presented at the UNHCR Global Consultations on International Protection, Geneva, 28-29 June 2001).
[12] Ataner, "Refugee Interdiction," 7, 10.
[13] Thomas Gammeltoft-Hansen, 'The Refugee, The Sovereign, And The Sea: European Union Interdiction Policies," *Sovereignty Games: Instrumentalizing State Sovereignty in Europe and Beyond* (2008): 6.
[14] Kernerman, "Refugee Interdiction," 235.

analysis is undertaken by Hathaway, Ataner, and Soennecken, among others.[15] The role of securitization scripts as justification for interdiction practices is explored by authors such as Didier, and Huysmans.[16] Other perspectives include the role of globalization and the breakdown of national sovereignty as leading to interdiction such as argued by Shachar.[17] Huysmans deconstructs the way in which asylum is framed as a security and social problem instead of human rights.[18] "Exceptional" policies or technologies which deny rights to migrants are justified through associating immigration with terrorism and criminality without necessarily proving a connection between the two phenomena. This type of framing of refugees as "clandestine" or "illegal" enables the adoption of controversial tools to restrict the rights of migrants.[19]

This securitization of migrants is explored in a significant body of literature which focuses specifically on the intersection between the arrival of the Roma in Canada and the development of policies and instruments of exclusion. Molnar Diop explores the coalescence between the state's use of security rhetoric, discourse, and performance using a case study of the Czech Roma in Canada.[20] She documents how discourse formation at the state level which positions the Roma as the "bogus" or "undesirable" refugee justifies increased intervention by the state.[21] Another important article by Levine-Rasky, St. Clair and Beaudoin also explores how the arrival of the Roma in Canada was a catalyst for legislative and policy change in Canada.[22] However, their argument is that the Roma are the casualties of a history of inherent racism in Canadian immigration policy, rejecting certain groups of immigrants as undesirable.[23] These articles are just a few which argue that state responses to unwanted immigration flows can be a lens into understanding policy change and the multiple tools of interdiction used by liberal states such as Canada.

There are a handful of studies which have specifically analyzed Canada's adoption of a DCO policy, with most attributing DCO adoption to be the direct consequence of the breakdown of visas as an available tool of interdiction. Visas are used by states as a mechanism to stem

[15] See: James C Hathaway, *The Rights Of Refugees Under International Law*, 1st ed. (Cambridge, Cambridge University Press, 2005), 297; Ataner, "Refugee Interdiction., and Dagmar Soennecken, "Shifting Up And Back-The European Turn In Canadian Refugee Policy," *Comparative Migration Studies* 2:1 (2014).
[16] See: Didier Bigo, Elspeth Guild and Sergio Carrera, *Foreigners, Refugees Or Minorities?*, 1st ed. (Burlington, Vt.: Ashgate Pub. Co., 2013), and Huysmans, *The Politics of Insecurity*.
[17] See: Shachar, *The Shifting Border*.
[18] Jef Huysmans, *The Politics Of Insecurity*, 1st ed. (London: Routledge, 2006): 3.
[19] Zetter, Roger, "More Labels, Fewer Refugees: Remaking The Refugee Label In An Era Of Globalization," *Journal of Refugee Studies* 20:2 (2007): 183.
[20] Molnar Diop, Petra, "The "Bogus" Refugee: Roma Asylum Claimants and Discourses of Fraud in Canada's Bill C-31," *Refuge Vol* 30:1 (2014).
[21] Petra Molnar Diop, "The "Bogus" Refugee," 69.
[22] Levine-Rasky, Cynthia, Paul St. Clair, and Julianna Beaudoin. "The Roma and Canadian Refugee Policy: A Case of New Racism," *Patterns of Prejudice* 47, No.3 (2013)
[23] Cynthia Levine-Rasky, "The Roma and Canadian," 69.

refugee flows and to be the "first line of defense against the entry of undesirables."[24] This use of visas can be seen as problematic as visas are blunt instruments which cannot differentiate between economic migrants and potential genuine refugee claimants. This leads to a dangerous grey zone of interdiction where protection of refugees is not prioritized or acknowledged. Nevertheless, states are frank about their use of visas as prevention of asylum flows. For example, Canadian officials have stated that, "we look at visa imposition when we think there's a country that should not be a refugee-producing country and we have people coming and making refugee claims."[25] Visas are for Canada, as they are for many liberal democracies, a controversial and widespread interdictory policy.

Visas are not only problematic for legal reasons but are also "blunt" instruments of migration control due to diplomatic tensions they can cause. This use of visas as asylum prevention can lead to states needing to look for a visa-replacement which is more subtle and yet still interdictory in its outcomes. The most commonly cited example of this in the literature is that of the relationship between Canada and the Czech Republic. Canada reintroduced a temporary resident visa on the Czech Republic in July of 2009, a visa which had been imposed and lifted before in the 1990s. This was due to high numbers of Czech nationals, most likely Czech Roma, claiming refugee status in Canada.[26] However, this time was more problematic as the Czech Republic was now a member of the European Union (EU). This placement of a visa on a European country by Canada invalidated the reciprocal agreements between Europe and Canada of visa free movement between the two areas.[27] Due to the independent nature of Canada's asylum adjudication system, a number of claims were accepted and the government was forced to use interdiction tools to avoid the arrival of increasing numbers of Czech Roma seeking refugee status. This caused a great deal of friction between Canada and the EU, highlighting that "when a crisis of confidence occurs, the visa reassumes its diplomatic character rather than its migratory character."[28] Most analysts attribute this diplomatic tension as key to understanding the need for a DCO category in Canada which could interdict such flows while maintaining positive relations with the EU.

Beyond the replacement of visas, however, there are alternative motivational factors of DCOs suggested in the literature. One avenue suggested is that of legal emulation of safe country policies from EU law. This avenue is explored by Macklin who compares the DCO policy in Canada to the EU-level safe country list, part of the Procedures Directive, in order to determine

[24] Harvard Immigration and Refugee Law Clinical Program, *Bordering On Failure: Canada-U.S. Border Policy And The Politics Of Refugee Exclusion* (Harvard Law School, 2013): 38.
[25] Harvard Immigration, *Bordering On Failure*, 40.
[26] Didier Bigo, Elspeth Guild and Sergio Carrera, *Foreigners, Refugees Or Minorities?*, 1st ed. (Burlington, Vt.: Ashgate Pub. Co., 2013): 13.
[27] Bigo, Guild and Carrera, *Foreigners, Refugees Or Minorities*, 91.
[28] *Ibid., 29.*

whether the case of adoption was one of strict legal emulation.[29] She concludes that the link between safe country of origin lists and the DCO is tenuous, although acknowledges that Canada emulated normative concepts based on the Aznar Protocol.[30] This normative emulation included erasing the possibility of a European refugee as a possible legal subject, arguing that Europe could not produce refugees.[31] Soennecken also uses legal comparison to uncover the motivation of DCO policies in Canada, and concludes that this adoption is explained by Canada going from a world leader in refugee protection to "a student, follower and adaptor of a key set of restrictionist asylum policies practiced in Europe."[32] These two authors contradict one another regarding the likelihood of emulation from the EU to Canada. Soennecken concludes that changes in Canada's immigration system were "directly inspired by events in the EU" while Macklin argues that "Canada's posture towards the EU is less about emulation than appeasement."[33] As may be deduced from both of these authors, the extent to which emulation was the primary motivational factor in the adoption of DCOs in Canada is uncertain. In Macklin's analysis, there is a logical leap from concluding that DCOs were not a direct consequence of emulation but rather the normative and political power of the EU. There is certainly a connection, but in my case study below I hope to augment her conclusions as well as address some alternative explanations which she leaves unexplored.

From this brief literature review, it becomes clear that the study of safe country of origin spans a variety of theoretical backgrounds and requires a number of strategies to uncover its motivations, effects, and justifications. The main motivational factors identified in the literature for safe country of origin adoption includes the emulation of the EU, the breakdown of visas as a possible policy, and the securitization of migrants in the face of increasing conflicts between state's objectives. Through the illustrative case study below, the consequences for refugee protection and the way in which interdiction practices become entangled with other security and diplomatic interests will be explored.

Case Study: Canada's safe country of origin policy and its interdictory consequences

"An initial examination of European Roma seeking refugee status in Canada opens out into a series of sharp insights into the contested meaning of security, the political framing of illegal

[29] Lambert, McAdam, and Fullerton, *The Global Reach*, 129-130.
[30] The 1999 Aznar Protocal to the Treaty of Amsterdam denies access to asylum in the EU to EU citizens, based upon the assumption that a citizen of the EU must be inadmissible due to the democratic nature of all EU member states. (See Lambert, McAdam, and Fullerton, *The Global Reach*, 118).
[31] Hélène Lambert, Jane McAdam and Maryellen Fullerton, *The Global Reach Of European Refugee Law* (Cambridge, Cambridge University Press, 2013) 129-130.
[32] Ataner, "Refugee Interdiction., and Dagmar Soennecken, "Shifting Up And Back-The European Turn In Canadian Refugee Policy," *Comparative Migration Studies* 2, iss 1 (2014): 102.
[33] Lambert, McAdam, and Fullerton, *The Global Reach*, 103.

immigration, new techniques of surveillance, and the effects of different refugee systems and forms of visa reciprocity. The precise details are crucial…"[34]

This illustrative case study focuses on the new category of "Designated Country of Origin" which came into force in 2012.[35] This act amended the existing Immigration and Refugee Protection Act as it shortened the timelines for asylum adjudication, barred access to permanent residency and family reunification for certain refugees, and enabled greater control over the ability to detain refugee claimants.[36] Many of these restrictions are based upon the designation of certain nationalities as originating from a "safe" country. This DCO category is determined by the Minister of Citizenship and Immigration who has complete control to designate certain countries of origin as unlikely to produce refugees. The objective of designation is to funnel these refugee claimants through a truncated and expedited process which results in shorter timelines, denial of basic health care, and a denial of appeals.[37] In December 2012, 27 countries were added to the list, with more added later in 2013 and 2014.[38] This list very clearly targeted certain nationalities for expedited processes, mainly those originating from Europe.

First line of analysis: the policy environment

The first step in the analysis of the motivation of DCO adoption at this particular juncture is to probe the policy environment in which the category of DCOs was introduced and adopted. This section will be structured through two main lines of inquiry, one focusing on the link between visas and DCOs as suggested by the literature review and the other exploring the impacts of the Canadian-European Union Comprehensive Economic and Trade Agreement (CETA) to uncover the role of this trade agreement in the development of DCO adoption.

As evidenced by the literature reviewed above, the use of visas as interdiction for unwanted refugee claims, especially towards the Czech Republic and Hungary, has been extensively highlighted as an essential background to the adoption of DCOs. I will not review this literature at length except to make a few salient points. Between 2009 and 2010 when the visa was imposed, refugee claims from the Czech Republic fell dramatically. In 2009, refugee claims from the Czech Republic were at 2,085 and by 2010 they had fallen to 30. While visas

[34] Bigo, Guild and Carrera, *Foreigners, Refugees Or Minorities*, forward.
[35] Immigration and Refugee Protection Act, SC 2001, c 27, accessed February 20, 2015, http://canlii.ca/t/52dg2.
[36] Lambert, McAdam, and Fullerton, *The Global Reach*, 100.
[37] Lambert, McAdam, and Fullerton, *The Global Reach*, 101.
[38] Citizenship and Immigration Canada, *Making Canada's Asylum System Faster And Fairer*, 2012, accessed August 21, 2014.

achieved their goal of preventing the arrival of refugee claimants from some of the top refugee-producing countries at the time, its consequences on diplomacy were too substantial to ignore.

Secondly, a number of sources have emphasized the important role of trade priorities in influencing the development of the DCO category at this particular juncture. Since 2002, Canada has been in conversation with the EU to secure a free trade agreement but has been prevented in part due to disagreements over visas. This point was emphasized by EU Ambassador Mattias Brinkman who indicated that, "if visa restrictions on EU members … aren't lifted by the time a deal is to be concluded, those countries would probably frustrate its implementation."[39] CETA is unique as it requires each EU Member State to individually ratify the agreement, and states such as the Czech Republic have frequently expressed that visa restrictions to Canada would impede their ratification.[40] If Canada wanted to close the trade deal, it was clear that visas to frustrate European refugee claimants were going to impede agreement.

It is difficult to over-emphasize the importance of this trade deal to Canada and its subsequent impact on immigration policy. Macklin argues that placating Europe would be essential as Europe is Canada's "second-largest trading partner and the world's largest integrated economy."[41] While having a visa on an EU country is clearly a provocation, the EU countries themselves are not in a position to oppose safe countries policies since they themselves use them.[42] Therefore a new instrument, one more subtle and less controversial for relations with Europe, was needed in order to intercept or divert refugee claimants from accessing the full process.

Second line of analysis: the intended targets and effects of DCO adoption

The second line of questioning regarding the motivation of DCO policy tools interrogates the intended targets of this policy. For this analysis, I examine the statistics on arrivals of refugee claimants before and after DCO adoption. In examining the effects on refugee arrivals since this policy was adopted, it becomes clear that there was one main target of the DCO category: European Roma.

When comparing the arrivals of refugee claimants before and after immigration reform, it becomes clear that certain nationalities were affected more than others. Through his experience as the Director of Policy in the Prime Minister of Canada's Office, Wilson suggests that the way policy is developed is that an issue is "flagged" by a crisis and policy is developed in response.

[39] 'The CETA Timeline,' *Embassy*, October 31, 2012, accessed August 26, 2014, http://www.embassynews.ca/news/2012/10/30/the-ceta-timeline/42752 .
[40] Campbell Clark,"Visa feud clouds Harper's free-trade dream with Europe," *EU-Canada Partnership,* April 26, 2012, accessed August 30, 2014.
[41] Lambert, McAdam, and Fullerton, *The Global Reach*, 128.
[42] Paul Wilson, Skype (London, England, July 8, 2014).

In the case of DCOs, he stipulates that it was the long-standing problem of being swamped by claimants from countries which do not normally produce refugees.[43] In the years preceding DCOs, the top country of refugee origin making claims in Canada was Hungary.[44] After Hungary had its visa removed in 2008, claims increased almost one hundred fold, rising from a few dozen claims in 2007 to almost three thousand in 2009 (see figure 1).[45]

Table 1: Claims referred, finalized, and decided, Hungary 2005-2011

	Referred	Accepted	Rejected	Abandoned	Withdrawn	% Accepted of total finalized	% Accepted of total decided
2005	60	51	268	41	25	13%	16%
2006	46	67	41	7	12	53%	62%
2007	34	16	15	1	6	42%	51%
2008	285	22	13	9	39	27%	63%
2009	2,418	3	5	47	204	1%	60%
2010	2,296	22	72	107	970	2%	23%
2011	4,423	165	738	249	828	8%	18%

Note: 1.Claims finalized and decided in a given year may have been referred in a previous year.
2. Total finalized= accepted + rejected + withdrawn + abandoned
3. Total decided = accepted + rejected

Figure 1 Refugee Claims at the Immigration and Refugee Board for claimants from Hungary.[46]

[43] Paul Wilson, Skype (London, England, July 8, 2014).
[44] Peter Mazereeuw, "Refugee Claims Drop By Half In Canada, Rise In US, Says UN," *Embassy*, 2014, accessed August 19, 2014.
[45] Canadian Border Services Agency, *Project SARA: International And Domestic Activities Final Report* (Toronto, 2012): 13.
[46] Lambert, McAdam, and Fullerton, *The Global Reach*, 114.

This surge in claims from a European country was neither expected nor controllable by visa since Hungary was too important of a trade partner to have such a restriction. Therefore, this arrival of Hungarian refugee claims necessitated the creation of a DCO policy in Canada.

The DCO policy has been effective at preventing the access and arrival of designated refugee claimants to protection in Canada. At time of writing, there has been a dramatic drop in refugee claims in general and a particular absence of European Roma claimants from top origin countries formerly targeted by visas.[47] According to Citizenship and Immigration Canada's quarterly datasets, in 2013 following the designation of the first round of DCO countries, claims from the top 10 source countries in Canada dropped from 20,503 in 2012 to 10,372 in 2013, a 49% decrease from the previous year.[48] This dramatic fall in refugee claims was acknowledged in the UNHCR's 2013 Report on Asylum Trends which observed that Canada experienced a role reversal in asylum applications in 2013, going from the second and third highest destination country in 2008 and 2009 to a two thirds drop in the following years, and finishing in 2013 in 16th place. They proposed that the recent asylum policies and visa requirements imposed in recent years might be partially responsible.[49] When we isolate the arrivals of designated refugee claims, the drop is even more dramatic, a staggering 87% plunge in designated country of origin asylum claims since the imposition of the new policies.[50] It may be too early to derive any conclusions: however as of writing the DCO policy has disproportionately discouraged the arrival and refugee claims of European Roma, fulfilling its intended purpose of being a visa-substitute.

In addition, the government was intentionally searching for a policy tool which would suit their particular domestic needs and solve the Roma crisis. This is evidenced by the actions of government officials and border services who actively and pre-emptively interrogated Roma flows to Canada in order to justify their exclusion from Canada. In 2011, the Canadian Border Services Agency sent officers to Hungary to determine the source of the refugee flow and to develop a responsive "action plan."[51] Their findings were published in the 2012 report "Project SARA" in which they state that Hungary's membership in the EU should negate any need for travel to Canada for asylum and maintain that any problems faced by Roma were strictly a Hungarian domestic issue.[52] Immigration Minister Jason Kenney also visited Hungary in 2012. Citizenship and Immigration Canada called the visit a "fact-finding mission into the situation of minority communities in Hungary," noting that Kenney visited Miskolc, a city from which more

[47] Data.gc.ca, "Top 10 Source Countries - Refugee Claims At All Offices (In Persons)," Data.Gc.Ca, last modified 2014, accessed August 19, 2014.
[48] *Ibid.*
[49] UNHCR, *UNHCR Asylum Trends 2013* (UNHCR: UN Refugee Agency, 2014): 13.
[50] *Ibid.*
[51] Canadian Border Services Agency, *Project SARA: International And Domestic Activities Final Report* (Toronto, 2012):54.
[52] Canadian Border Services Agency, *Project SARA*, 54.

than 40% of refugee claimants originated.[53] Following his visit, Kenney seemed satisfied at the level of protection afforded to Roma in Hungary.[54] Canadian Border Services and the Immigration Minister were looking for policies which would not inhibit relations with Hungary as well as lessen its perceived burden of refugee flows from Europe.

In sum, evidence emerging from government publications, interviews with key individuals, datasets and media reports lead to the conclusion that DCO adoption in Canada was primarily motivated in response to a need to deny the "European refugee" and maintain good relations with the EU. It is a tool which, while allowing access to territory, still has the consequences of preventing full access to designated nationals and also discouraging the arrivals of refugee claimants at all. While visas were an effective interdiction tool, Canada was motivated to design and implement a more subtle interdiction policy when visas were no longer feasible in the context of a democratic EU and a desire for positive diplomatic relations.

Discussion

"… The processes of interdiction and immigration management sheds light not only on the evolution of state policy and management in dealing with this anxiety of migration and refugee movement, but also on the specific tactics that the changing nature of frontiers and international travel necessitate."[55]

While this case study focuses on one facet of Canadian migration policy, its response to migratory pressures sheds light beyond its immediate sphere. Uncovering the technologies and policies of interdiction are important because their results have real consequences for individuals seeking protection, despite governments claiming safe country policies are simply benign expedition of processes. Safe country policies are just one tool in the arsenal of states which together have large impacts on the ability of individuals to move freely and access protection. Toth argues that, when combined with readmission agreements and other interdictory tools, safe country agreements "discourage in-depth evaluation of applications and/or prohibition of

[53] Citizenship and Immigration Canada, *Minister Jason Kenney Meets With Roma Leaders In Hungary*, 2012, accessed August 19, 2014.
[54] This article is not able to comment fully on the complex debates surrounding the level of discrimination facing the Roma in Europe and its fit with the Geneva Convention's definition of a refugee. For the purposes of this article, I will simply assume that all individuals deserve the same access to refugee determination regardless of these debates. For more information regarding the situation of the Roma in Europe, see: Amnesty International, *We ask for justice: Europe's Failure to protect Roma from racist violence, (*London, 2014.), and Francois-Xavier Bagnoud Center for Health and Human Rights at the Harvard School of Public Health, *Accelerating Patterns of Anti-Roma in Hungary, (*Harvard University, Boston, 2014).
[55] Robert A Davidson, "Introduction: Spaces Of Immigration Prevention: Interdiction And The Nonplace," *Diacritics* 33:3 (2006): 7.

expulsion or return in transit and destination states."[56] In the Canadian context, DCO policies are just one change in a wide array of new policies in Canadian immigration which when combined represent a drastic altering of refugee protection in Canada.[57] A report from the Harvard Law School suggests these changes mean that "Canada is systematically closing its borders to refugee claimants, and circumventing its refugee protection obligations under domestic and international law."[58]

There are a number of questions which emerge from this case study on which analysis would be useful to push the hypothesis further. One alternative explanation for Canada's adoption of DCO provisions could be an argument of policy emulation. Safe country policies have existed for a number of decades in Europe prior to its adoption in Canada in 2012 and there have been a number of examples of policy sharing and best practices among western liberal democracies. Canadian officials have on numerous occasions explicitly referred to Europe's use of such policies to justify the adoption of DCOs in Canada. For example, in the Canadian government's press release announcing the first designated countries, it was stated that "many developed democracies use a similar authority to accelerate asylum procedures for the nationals of countries not normally known to produce refugees. These states include the United Kingdom, Ireland, France, and Germany."[59] Clearly, Canada is not unique in its adoption of these policies and could be seen as simply joining other liberal states in its adoption of safe county policies.

However, evidence is mixed in regarding emulation of EU safe country policies in the Canadian context. While there are general similarities, there are significant differences between EU safe country policy and Canada's DCO category. At the EU level, the Asylum Procedures Directive sets standards for Member States' safe country policies at the domestic level and also proposes an EU-level list.[60] The EU policy and Canadian policy share similarities in that they both lead to accelerated procedures, but differ in other regards. Unlike in Canada, the EU labels safe country claims as 'manifestly unfounded' and prevents discrimination towards such claimants in regards to access to healthcare, for example. In addition, unlike Canada, the EU Procedures Directive does not allow for quantitative designation of safe countries, meaning that Canadian designation procedures are stricter and based upon ministerial discretion.[61] Macklin suggests that DCOs have more in common with the Aznar Protocol than strictly emulating EU safe country policies. This protocol prevents an EU citizen to make a claim in another EU member state as it is assumed that all Member States respect human rights and are, therefore,

[56] Zsuzsanna Vidra, *Roma Migration To and From Europe: The Czech, Hungarian, and Slovak Case*, 1st ed. (Budapest: Center for Policy Studies Central European University, 2013): 36.
[57] Maytree, *Shaping The Future: Canada's Rapidly Changing Immigration Policies*, 2012.
[58] Harvard Immigration, *Bordering On Failure*, 1.
[59] Citizenship and Immigration Canada, *Making Canada's Asylum System.*
[60] Directive 2005/85/EC of the European Council of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 No.L326/13) (Procedures Directive).
[61] Lambert, McAdam, and Fullerton, *The Global Reach*, 122.

safe.[62] This means that it is impossible for there to exist such thing as a "European refugee" in the EU.

There are more similarities between this normative impossibility of a European Refugee than there is proof of strict legal emulation of EU safe country policies in Canada. This is seen in the continuity between Canadian and British officials in the logic of safe country policies. For example, the UK Home Secretary David Blunkett argued that, "It is frankly absurd that people can routinely claim that they are in fear of their lives in Poland or the Czech Republic. These are democratic countries which live under the rule of law."[63] Compare this to the words of Canada's Immigration Minister Kenney who justified DCOs by arguing that, "we've seen a troubling growth in the fake asylum claims coming particularly from the democratic European Union… and almost none of those European asylum claims turn out to be well-founded."[64] This justifies the avoidance of such claims both in the EU and in Canada, despite the questionable fit of safe country policies with international refugee law.[65] Therefore, while normatively there are parallels in justification for exclusion of Roma claims between Europe and Canada, the case for direct safe country policy emulation is not strong.

Lastly, this detailed analysis of Canada's safe country of origin tool contributes to a mostly absent debate over the legality and consequences of safe country policies. In the last year, important court challenges have emerged in Canada over DCOs which have the potential to contribute to the debate elsewhere over the use of safe country tools. On July 4, 2014, Justice Mactavish at the Federal Court of Canada released her ruling on a case regarding the constitutionality of the health care cuts for refugees as part of immigration reform. In the decision, Mactavish rules that the cuts violate section 15 of the Canadian Charter of Rights and Freedoms as it provides a lesser level of healthcare to those from designated countries. Most importantly, Mactavish argues that the DCO category is problematic as, "It puts their lives at risk, and perpetuates the stereotypical view that they are cheats, that their refugee claims are 'bogus,' and that they have come to Canada to abuse the generosity of Canadians."[66] The ways in which safe country of origin policies have been debated in Canada has the capacity to contribute to the debate beyond the Canadian context and inform other states which may be considering adopting their own safe country categories.

---

[62] Andrew Geddes, *Immigration And European Integration*, 1st ed. (Manchester, UK: Manchester University Press, 2000): 122.
[63] James C Hathaway, *The Rights Of Refugees Under International Law*, 1st ed. (Cambridge, Cambridge University Press, 2005), 297.
[64] Lambert, McAdam, and Fullerton, *The Global Reach*, 129.
[65] There are a number of authors who argue that safe country provisions restrict access to and the integrity of asylum protection in the EU, violating Geneva Convention obligations. For more, see Costello (2005), Gurzu (2012).
[66] *Canadian Doctors For Refugee Care, The Canadian Association Of Refugee Lawyers, Daniel Garcia Rodriquez, Hanif Ayubi, And Justice For Children And Youth V Attorney General Of Canada And Minister Of Citizenship And Immigration*, 2014 FC 651.

Conclusions

The United Nations High Commissioner for Refugees, Antonio Guterres, recognised that "there are indeed Safe Countries of Origin and there are indeed countries in which there is a presumption that refugee claims will probably be not as strong as in other countries."[67] This article is not interested in refuting the legality of such policies or bemoaning their existence. Rather, the article has aspired to investigate the ways in which safe country of origin policies are motivated by and interact with interdictory goals of liberal democracies. The DCO case study illustrates how interdiction not only shifts the border of states physically, but also shifts the state's responsibility legally in the denial of full access to refugee determination. Safe country of origin policies, visas, and other interdictory tools have the capacity to work together to create a zone of exclusion. In the Canadian case, a DCO instrument was motivated by the need to both placate EU concerns and also restrict refugee flows deemed to be problematic. The seemingly absent debate regarding the consequences of safe country of origin policies is therefore addressed through this case study, contributing to a more informed understanding of the interdictory results of such policies.

It was observed by Hannah Arendt, the German-American political scientist, that "as citizens, we must prevent wrongdoing because the world in which we all live, wrong-doer, wrong sufferer and spectator, is at stake."[68] However, in the practices of interdiction it is unclear where to draw the distinction between legitimate policy tool of Western democracies and policies which have the ultimate consequence of preventing the access of individual refugee claimants to seek protection. Indentifying 'wrongdoing' in policy can be difficult. States are increasingly evolving and adopting new interdictory policies which push their borders beyond their territory both physically and legally, flirting with the line between sovereignty and international law. For this reason, it becomes ever more essential to uncover the motivations and consequences of safe country of origin policies both in Canada and beyond.

REFERENCES

Amnesty International. *We ask for justice: Europe's Failure to protect Roma from racist violence.* London, 2014.

Ataner, Attila. "Refugee Interdiction And The Outer Limits Of Sovereignty." *Journal of Law & Equality.* 3,1 (2004): 7.

Bell, Duncan, ed. *Political Thought and International Relations.* Oxford: Oxford University Press, 2008.

Bigo, Didier, Elspeth Guild, and Sergio Carrera. *Foreigners, Refugees Or Minorities?*. 1st ed. Burlington, Vt.: Ashgate Pub. Co., 2013.

[67] Citizenship and Immigration Canada, *Making Canada's Asylum System.*
[68] Duncan Bell, ed, *Political Thought and International Relations,* (Oxford: Oxford University Press, 2008): 114.

Canadian Border Services Agency,. *Project SARA: International And Domestic Activities Final Report*. Toronto, 2012.

Canadian Council for Refugees. "Interdiction and Refugee Protection: Bridging the Gap." International Workshop, Ottawa, Canada. May 23, 2003.

Canadian Doctors For Refugee Care, The Canadian Association Of Refugee Lawyers, Daniel Garcia Rodriquez, Hanif Ayubi, And Justice For Children And Youth V Attorney General Of Canada And Minister Of Citizenship And Immigration, T-356-13 2014 FC 651 (Federal Court of Canada 2014).

Citizenship and Immigration Canada. *Making Canada's Asylum System Faster And Fairer*, 2012. Accessed August 21, 2014. http://news.gc.ca/web/article-en.do?crtr.sj1D=&crtr.mnthndVl=12&mthd=advSrch&crtr.dpt1D=6664&nid=712349&crtr.lc1D=&crtr.tp1D=1&crtr.yrStrtVl=2002&crtr.kw=&crtr.dyStrtVl=1&crtr.aud1D=&crtr.mnthStrtVl=1&crtr.page=12&crtr.yrndVl=2013&crtr.dyndVl=31 .

Citizenship and Immigration Canada. *Minister Jason Kenney Meets With Roma Leaders In Hungary*, 2012. Accessed August 19, 2014. http://news.gc.ca/web/article-en.do?crtr.sj1D=&crtr.mnthndVl=12&mthd=advSrch&crtr.dpt1D=6664&nid=699639&crtr.lc1D=&crtr.tp1D=1&crtr.yrStrtVl=2002&crtr.kw=&crtr.dyStrtVl=1&crtr.aud1D=&crtr.mnthStrtVl=1&crtr.page=15&crtr.yrndVl=2013&crtr.dyndVl=31 .

Clark, Campbell. "Visa feud clouds Harper's free-trade dream with Europe." *EU-Canada Partnership*. April 26, 2012. Accessed August 30, 2014. http://eu-canada.com/visa-feud-clouds-harpers-free-trade-dream-with-europe/

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ 2005 No.L326/13.

Costello, Cathryn. 'The Asylum Procedures Directive And The Proliferation Of Safe Country Practices: Deterrence, Deflection And The Dismantling Of International Protection." *European Journal of Migration and Law* 7 (2005): 35-69.

Data.gc.ca. "Top 10 Source Countries - Refugee Claims At All Offices (In Persons)." Last modified 2014. Accessed August 19, 2014. http://data.gc.ca/data/en/dataset/d8599fcc2822-4a3f-b7c8-b92ce44856bb .

Davidson, Robert A. "Introduction: Spaces Of Immigration" Prevention": Interdiction And The Nonplace." *Diacritics* 33, no. 3 (2006): 3--18.

Francois-Xavier Bagnoud Center for Health and Human Rights at the Harvard School of Public Health. *Accelerating Patterns of Anti-Roma in Hungary.* Harvard University, Boston, 2014.

Gammeltoft-Hansen, Thomas. "The Refugee, The Sovereign, And The Sea: European Union Interdiction Policies." *Danish Institute for International Studies.* (2008): 1-32.

Geddes, Andrew. *Immigration And European Integration*. 1st ed. Manchester, UK: Manchester University Press, 2000.

Gurzu, Anca. "Safe Country Of Origin List At The EU Level: The Bargaining Process And The Implications." *Review of European and Russian Affairs* 7, no. 1 (2012): 1-15.

Harvard Immigration and Refugee Law Clinical Program, *Bordering On Failure: Canada-U.S. Border Policy And The Politics Of Refugee Exclusion*. Harvard Law School, 2013.

Hathaway, James C. *The Rights Of Refugees Under International Law*. 1st ed. Cambridge: Cambridge University Press, 2005.

Human Rights Watch, International Catholic Migration Committee, World Council of Churches. 'NGO Background Paper on the Refugee and Migration Interface.' UNHCR Global Consultations on International Protection. Presented in Geneva, 28-29 June 2001.

Kernerman, Gerald. "Refugee Interdiction Before Heaven's Gate," *Government and Opposition* 43, no. 2 (2008): 230–248.

Lambert, Helene, Jane McAdam, and Maryellen Fullerton. *The Global Reach Of European Refugee Law*. Cambridge: Cambridge University Press, 2013.

Levine-Rasky, Cynthia, Paul St. Clair and Julianna Beaudoin. "The Roma and Canadian Refugee Policy: A Case of New Racism." *Patterns of Prejudice* 47, no. 3 (2013)

Maytree. *Shaping The Future: Canada's Rapidly Changing Immigration Policies*, 2012. Accessed August 30, 2014. http://maytree.com/policy-papers/shaping-the-future-canadas-rapidly-changing-immigration-policies.html

Mazereeuw, Peter. "Refugee Claims Drop By Half In Canada, Rise In US, Says UN" *Embassy*, 2014. Accessed August 19, 2014. http://www.embassynews.ca/news/2014/04/01/refugee-claims-drop-by-half-in-canada-rise-in-us-says-un/45359 .

Molnar Diop, Petra. "The "Bogus" Refugee: Roma Asylum Claimants and Discourses of Fraud in Canada's Bill C-31.*" Refuge* Vol 30, no.1 (2014).

Shachar, Ayelet. "Shifting Border Of Immigration Regulation." *Michigan Journal of International Law* (2007): 809-839.

Showler, Peter. Author. Skype, July 10, 2014.

Soennecken, Dagmar. 'Shifting Up And Back-The European Turn In Canadian Refugee Policy'. *Comparative Migration Studies* 2, no. 1 (2014): 101--122.

"The CETA Timeline." *Embassy.* October 31, 2012. Accessed August 26, 2014. http://www.embassynews.ca/news/2012/10/30/the-ceta-timeline/42752

UNHCR. *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice.* UNHCR: UN Refugee Agency, March 2010.

UNHCR. *UNHCR Asylum Trends 2013*. UNHCR: UN Refugee Agency, 2014.

Vidra, Zsuzsanna. *Roma Migration To And From Europe: The Czech, Hungarian, And Slovak Case*. 1st ed. Budapest: Center for Policy Studies Central European University, 2013.

Wilson, Paul. Author. Skype, July 8, 2014

* The author would like to acknowledge a few individuals: thanks to Peter Showler and Paul Wilson for their insight into Canadian immigration law and politics, to Dr.Eiko Thielemann and Dr.Patrick McGovern for their guidance, and to Christine and William Ball, Janet Ham, and Allana Kennedy for their thoughtful comments and support.

The perils and possibilities of citizenship transformation: health-based claims and the Canadian Interim Federal Health Plan reform debate

LUCIA FRECHA*

Abstract:
Seyla Benhabib and Aiwha Ong point to an increasing disaggregation and re-articulation of traditional notions of citizenship which have the potential to produce new spaces and opportunities for social change. Taking their work as a starting point, I first explain citizenship transformation theory, and then explore the way in which this theory is practically relevant in the current Canadian citizenship context. In particular, I draw on the notions of Benhabib and Ong's *citizenship transformation* and Petryna, Rose and Novas' *biological citizenship* to analyse the use of health-based claims for state membership and resources. I apply these notions to the debate over the 2012 Interim Federal Health Plan (IFHP) cuts for refugees and refugee-claimants in Canada, where health-based claims for resources can be said to have generated responses from the government (which initiated the cuts) and refugee advocates and health-care providers (who largely opposed these cuts).

I argue that most opinions expressed during the IFHP reform debate, despite having different underlying intentions, are disconnected from the realities of many refugees and refugee-claimants, and perpetuate long-standing, oppressive ideologies linked to Canadian identity narratives. Investigating citizenship transformation and biological citizenship theory in this context highlights the ways these processes might also reproduce existing citizenship models, and/or create new avenues for oppression and social exclusion. These differing Canadian views do not necessarily destabilize citizenship for refugees and refugee-claimants as in some of Benhabib's and Ong's examples. They do, however, present an opportunity to re-examine contemporary Canadian identities of social membership and to consider the reasons that including refugees and asylum seekers in the discourse and deliberations that affect them is so important. This can be considered a kind of citizenship transformation in itself.

Key words: citizenship, refugee, immigration, health claims, Canada, IFHP

**Lucia Frecha is an MA Candidate in Public Issues Anthropology with the Department of Sociology and Anthropology at the University of Guelph.*

Introduction

As a consequence of the increasing and changing flows of capital, information, technology, and people across the globe, scholars have begun to explore changes in traditional notions of citizenship. Some have considered alternatives like moral cosmopolitanism[1] and post-national citizenship[2], while others have deconstructed citizenship into political, social, and individual dimensions in order to understand how it may be re-negotiated.[3,4,5]

Benhabib and Ong suggest that citizenship, as a concept and as a practice, is transforming. They refer to citizenship transformations as changes in the relationship between the various elements that the West traditionally associates with the composition of *de jure* citizenship, or rights and entitlements tied to the state.[6,7] As a result of massive global flows, they claim, these elements are becoming increasingly disassociated and re-articulated in ways that transcend state borders and sovereignty. This re-articulation or re-association can produce new spaces and opportunities for social and political change on a local, national, and global scale.

One of the ways that citizenship transformation is changing, they note, is through health-based claims to membership in the nation-state, and to state resources. Such claims are making increasingly important contributions to citizenship transformations around the world, and can be theorized as examples of *biological citizenship*, described in detail later in this paper. While there is great potential in a theory that helps us to think about the ways in which citizenship may be disaggregated and re-articulated in order to generate opportunities for political and social change, it is essential to consider how these processes might also reproduce existing citizenship models, and/or create new avenues for oppression and social exclusion.

In Canada, health-based claims to state resources are particularly relevant in the debate over the 2012 cuts to the Interim Federal Health Plan (IFHP). Here, the issue of access to state health resources underlie the positions of all those that are involved in the debate. However, the potential for refugee and refugee-claimants' claims to health-based resources to inspire citizenship transformation that creates solidarity, empowers access, or more broadly challenges citizenship models seems to be lost among the actions and reactions around the IFHP cuts. On one side, the Federal Government has used refugees' bodies and the health care allocations

[1]Joseph Carens, *Theorizing Citizenship* (Albany: State University of New York Press, 1995).
[2]YaseminSoysal,*Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press, 1994).
[3]SeylaBenhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Oxford: Princeton University Press, 2002).
[4] Adriana Petryna, *Life Exposed: Biological citizens after Chernobyl* (Princeton, N.J.: Princeton University Press, 2002).
[5]Aihwa Ong, "Mutations in Citizenship," *Theory, Culture & Society*, 23(2-3) (2006): 499-531.
[6]Benhabib, *The Claims of Culture,* 179.
[7]Ong, "Mutations in Citizenship," 500.

made to them (embedded in changes to the IFHP) to delineate the boundaries of the nation-state and to limit those that might partake of its resources. Those who oppose the cuts, on the other, point to refugees' health-related vulnerabilities in order to help promote the reversal of this reform. Immigrants, refugees, and refugee-claimants[8] have joined in the efforts of the latter groups, but their involvement seems to have received only limited attention.

While I agree with Benhabib and Ong regarding the potential of health-based claims to produce citizenship transformations, I argue that in this particular context most of the opinions offered on reform in fact perpetuate oppressive ideologies linked to long-standing Canadian identity narratives, and are therefore problematic. Still, I suggest that the IFHP debate provides opportunities to challenge these narratives and to include refugees and refugee-claimants within the discourse and deliberations that affect them.

Citizenship Transformation and Biological Citizenship Theory

Benhabib and Ong offer a useful theoretical framework for understanding how citizenship transformations based on health-based claims can emerge. The notion of "disaggregated citizenship" refers to the way in which rights and entitlements to the benefits of citizenship are becoming increasingly dependent on conditions other than citizenship status itself.[9,10]

Contemporary citizenship in the West is conventionally thought of as "membership in a bounded political community"[11], but the authors posit that massive flows of people, technology and information across the globe, challenge this bounded model. As a result, they present citizenship as something that can be disaggregated into three components: collective identity, privileges of political membership, and social rights and benefits.[12] For example, an individual might identify as a national of one country by birth, and enjoy social benefits (e.g. health care) in a host country, but be unable to vote or run for office in that host country.[13,14] Disaggregated citizenship allows individuals to "develop and sustain multiple allegiances across nation-state boundaries" and to connect with each other despite differences in language, ethnicity, religion, and nationality.[15]These re-articulations are not bounded by conventional geography.[16] Instead,

[8]A refugee-claimant or asylum seeker is a person who has fled their country and requests protection in another country (Canadian Council for Refugees, 2010). I will use the term refugee-claimant rather than asylum seeker throughout this paper, but their conceptual meaning is the same.
[9]Seyla Benhabib, "Transformations of Citizenship: The Case of Contemporary Europe*," *Government and Opposition*, 37(4) (2002), 453.
[10]Benhabib, *The Claims of Culture*, 179.
[11] *Ibid*.
[12] *Ibid*.
[13]Benhabib, *The Claims of Culture*, 179-180.
[14] "Globalization changing nature of citizenship, says scholar," accessed Feb 12, 2014.
[15]Benhabib, "Transformations of Citizenship," 462.

they occur in "global assemblages," or new zones of political mobilization and political entitlement.[17]

Individuals and groups have begun to mobilize around shared experiences of health and illness, and this trend is also well-captured by the concept of biological citizenship.[18,19] Petryna, Rose and Novas define this as the process by which shared experiences of suffering or, more generally, biological existence as human beings, become the basis for social membership and citizenship claims to state resources. In post-Chernobyl Ukraine, for example, when state resources were particularly scarce, those who had been visibly affected by the nuclear explosion were able to secure biomedical and welfare resources based on their shared identity as sufferers.[20] In France, undocumented migrants who can prove that they are seriously ill and cannot access appropriate treatment in their home countries may qualify for residency papers under the "illness clause,"[21] an immigration policy exception that authorizes immigrants with life-threatening pathologies to reside in France while they seek appropriate treatment.[22] In Southeast Asian countries, where economies are largely reliant on low-cost foreign labor, migrants can access immigration permits and protection from abusive employers by leveraging their identities as healthy and able-bodied workers.[23]

When citizenship is rearticulated in terms of biology, health and health care, the zones of political mobilization and entitlement can be national, transnational or international. These "global assemblages" can emerge in city streets, places of employment, and health care institutions.[24] Citizenship transformation theories that draw on shared human experiences of health and illness are appealing because they allow us to think about how citizenship can be expanded, and how we might move towards citizenship models that treat all people with the "dignity of universal personality".[25] Under such models, migrants would be treated not as criminals but as human beings in search of greater freedom and better living conditions.[26]

While there is great potential in a theory that helps us to think of the ways in which citizenship may be disaggregated and re-articulated in order to generate opportunities for political and social change, it is essential to consider, as Benhanbib and Ong do, how these

---

[16]Ong, "Mutations in Citizenship," 500.
[17]Ong, "Mutations in Citizenship," 499.
[18]Petryna, *Life Exposed.*
[19] Nikolas Rose and Carlos Novas, "Biological citizenship," in *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems*, eds. Aihwa Ong and Stephen J. Collier, (Oxford: Blackwell Publishing, 2005), Pp. 439-463.
[20]Petryna, *Life Exposed.*
[21]A 1998 provision of France's Conditions of Entry and Residence of Foreigners.
[22]Ticktin, *Casualties of Care*, 89.
[23]Ong, "Mutations in Citizenship," 504.
[24] Ong, "Mutations in Citizenship," 502-504.
[25] Benhabib, "Transformations of Citizenship," 464.
[26] *Ibid*.

processes occur in particular contexts and whether biological citizenship genuinely transforms contemporary Western models of citizenship.[27,28] Are the new biosocial 'citizen' identities that result limited because they are bounded by biology? If we use specific biological criteria to allot health care resources, then who might be excluded? In order to respond to these questions, the following sections will explore the relationship between health-based claims to health care resources and the Canadian response, highlighted in an analysis of the debate over IFHP cuts.

The Canadian Context and the IFHP Debate

Over the last two years, Canadian immigration policy reforms have placed immigrants and refugees in increasingly vulnerable positions.[29] Recent policy changes include a focus on temporary (versus permanent) migration[30], an emphasis on economic priorities over improvements to the family reunification program and refugee protection, greater barriers to obtaining immigration status and citizenship, and a more restrictive refugee determination system.[31] The latter change, in particular, has stirred widespread debate.

A new refugee determination system came into effect in December 2012 when Bill C-31, known as the *Protecting Canada's Immigration System Act*, was incorporated into Canada's *Immigration and Refugee Protection Act, SC 2001, c. 27*, (IRPA). This new system was introduced by the Federal Government and Citizenship and Immigration Canada under the pretense of improved efficiency and fairness in the refugee determination process. The key changes introduced under the bill were a shorter timeline for processing applications and a two-tier determination system which separates refugee-claimants from designated "safe" countries (designated countries of origin, or DCOs[32]) from those that come from non-DCO countries. In addition to these legislative reforms, certain categories of claimants and refugees had their access to health care reduced through cuts to the Interim Federal Health Plan (IFHP).[33]

---

[27] *Ibid*, 461.
[28] Ong, "Mutations in Citizenship," 503-504.
[29]"2013 in Review: Refugees and immigrants in Canada," accessed March 10, 2014.
[30]The Temporary Foreign Worker Program (TFWP) "allows Canadian employers to hire foreign nationals to fill temporary labour and skill shortages when qualified Canadian citizens or permanent residents are not available" (Citizenship and Immigration Canada [CIC], 2015a). It is very difficult for low-skilled Temporary Foreign Workers to gain Permanent Residence because they can only stay in Canada for four years. Beyond that, they must return home and wait another four years to return to Canada. Notably, the number of Temporary Foreign workers in Canada has tripled since 2000 (Bragg, 2013).
[31]"2013 in Review: Refugees and immigrants in Canada."
[32]DCOs are defined by Citizenship and Immigration Canada (2015f) as "countries that do not normally produce refugees, but do respect human rights and offer state protection". DCOs are designated based on qualitative and quantitative data about asylum claims made in Canada by individuals from each country. As such, DCO designations made by Citizenship and Immigration Canada are particular to the Canadian context; however, 'safe country' lists are also used as part of immigration policy elsewhere.
[33]*Ibid*.

The IFHP is a temporary health insurance program available to refugees, protected persons,[34] and refugee-claimants in Canada who are not otherwise covered by a provincial, territorial, or private health insurance plan.[35] Prior to the reform, the IFHP provided health care coverage similar to that provided by provincial and territorial governments for Canadians receiving social assistance.[36,37]With these new reforms, IFHP coverage was reduced for all refugee-claimants, and certain subgroups became ineligible for any care.[38,39] One of the most significant changes is in coverage of "supplemental benefits," such as vision, dental and counseling services. These services are now only covered for subgroups that qualify for "expanded health coverage," such as Government-assisted refugees (GARs)[40] or victims of trafficking who have been granted temporary residence permits.[41,42]Refugee-claimants from non-DCOs receive "health care coverage," including hospital, physician, and ambulance services, but those from DCOs, along with rejected refugee-claimants, are only allotted these services if their health condition is deemed to pose a public health threat.[43] The category "health care coverage" has thus become more ambiguous, and only applies when these services are deemed to be of an "urgent or essential nature."[44]

The impact of Bill C-31 is manifold. The reduction of hearing preparation timelines can create greater stress for claimants because it gives them less time to gather appropriate documentation and prepare for a hearing.[45] Claimants from DCOs now have 15 days from the date they enter Canada to file their asylum claim and provide all supporting documentation, which in some cases requires translation.[46]Distinguishing between DCO and non-DCO applicants contributes to generalization within the refugee determination process, obscuring or ignoring the particular circumstances of each applicant, such as age, geographic location, sexual orientation, or ethnic background.[47] This is problematic, for example, for individuals of Roma

[34]According to the *Immigration and Refugee Protection Act (SC 2001, c.27),* a person who has been determined to be either (a) a Convention Refugee as per section 96 of the IRPA or (b) a person in need of protection (including, for example, a person who is in danger of being tortured if deported from Canada), as per section 97 of the IRPA
[35]"Health care – Refugees," accessed January 20, 2015, http://www.cic.gc.ca/english/refugees/outside/arriving-healthcare.asp .
[36]These benefits included coverage for primary care, prescription drugs, and dental and vision care (Barnes, 2012).
[37]"The Real Cost of Cutting Refugee Health Benefits," accessed February 10, 2014.
[38] *Ibid*.
[39]"Refugee health care: Impacts of recent cuts," accessed November 20, 2014.
[40]According to Citizenship and Immigration Canada, Convention Refugees abroad whose initial resettlement in Canada is entirely supported by the Government of Canada or Quebec (CIC, 2015d).
[41]"Order Respecting the Interim Federal Health Program (SI/2012-26)," accessed January 24, 2015.
[42] "Changes to the Interim Federal Health Program: Position Statement," accessed January 24, 2015.
[43]"Interim Federal Health Program: Summary of benefits," accessed January 21, 2015.
[44] "Changes to the Interim Federal Health Program: Position Statement," accessed May 2015. "Order Respecting the Interim Federal Health Program" (SI/2012-26), accessed May 2015.
[45]"2013 in Review: Refugees and immigrants in Canada"
[46]Petra Molnar Diop, "The 'bogus' refugee: Roma asylum claimants and discourses of fraud in Canada's Bill C-31," *Refuge*, 31:4 (2014), 72.
[47]*Ibid*, 73.

communities, who are being persecuted or socially and politically excluded even within countries deemed to be DCOs.[48,49]

The IFHP cuts to healthcare, in particular, have been recently called "cruel and unusual punishment" and judged to be inconsistent with the Canadian Charter of Rights and Freedoms by the Federal Court of Canada (*Cdn Doctors v. AGC* 2014 FC 651). The Federal Court gave the government four months to revise the changes made to the IFHP before it would strike them down. The Government appealed this ruling to the Federal Court of Appeal on the last available date, and the outcome of this appeal is still in process. While the Federal Court's finding was a positive development for those that opposed the health-care cuts, both the Federal Court's ruling and the government's appeal have created further uncertainty around what types of coverage are and should be available for refugees and refugee-claimants.[50,51]

The Federal Government's Position

The Federal Government and Citizenship and Immigration Canada[52]clearly recognize "too many people" (including those who are deemed undeserving) making claims to the state's health care resources as problematic, and a threat to Canada's immigration system and to Canadian citizenship.[53] As a result, they have, with the IFHP cuts, narrowed the groups of people who can make such claims based on biological citizenship. In order to justify Bill C-31 and the subsequent cuts, they have relied on a discourse of efficiency and fairness. Shortly after the bill was introduced, Jason Kenney, then Minister of Citizenship, Immigration, and Multiculturalism, addressed the House of Commons. He explained that Canada's "generous asylum system has been abused by too many people making bogus refugee claims".[54] The reforms to the asylum system, he noted, would serve to fix a "broken" immigration system and to send an important message: "if you do not need Canada's protection…you will not be allowed to remain in Canada for years using endless appeals at the expense of Canadian taxpayers".[55] Prime Minister Stephen Harper further defended the reforms by stating that Canada's immigration system was subject to abuse under the existing policies and that this is "not acceptable to Canadians".[56]

[48]"Better protection against discrimination for Roma and victims of caste systems," accessed January 30, 2015.
[49]"Myths and facts," accessed November 20, 2013.
[50] "Press Release: Doctors and Lawyers Challenge Federal Health Cuts to Refugees," accessed April 2, 2015.
[51] "Canadian Doctors for Refugee Care," accessed March 10, 2014.
[52]Citizenship and Immigration Canada, also known as the Department of Citizenship and Immigration, is a division of the Government of Canada, responsible for: facilitating the arrival of immigrants, providing protection to refugees, offering programming to help newcomers settle, granting citizenship, issuing travel documents, and promoting multiculturalism (Citizenship and Immigration Canada, 2015e).
[53] "Speaking notes for the Honourable Jason Kenney P.C., M.P. Minister of Citizenship, Immigration, and Multiculturalism," accessed March 14, 2014.
[54]*Ibid.*
[55] *Ibid.*
[56] "Tories aim to fix 'broken' immigration system," accessed January 15, 2015.

Similar rationales were also offered when the IFHP cuts were officially announced in a press release by the Canadian government on April 25, 2012. The press release explained that the objectives of the cuts were to ensure that refugee-claimants did not receive better health services than Canadians, and to help contain health care costs.[57] In a more recent news conference, Immigration Minister Chris Alexander responded to the Federal Court's ruling that the IFHP cuts constituted "cruel and unusual punishment" by asserting that the government "vigorously defends the interests of taxpayers" and seeks to protect "genuine refugees".[58]

Response to Bill C-31 and the IFHP Cuts

A wide range of groups who oppose the IFHP cuts have been quick to respond to the Federal Government's claims regarding the inefficiencies of the immigration system and the notion of "bogus" refugees. In the House of Commons, New Democratic Party (NDP) immigration critic Don Davies called Bill C-31 "a serious step backward"[59] and Liberal immigration critic Kevin Lamoureux said the reform would "punish the most vulnerable" and "has no place in Canadian society".[60]New Democrats also expressed concern over the fact that the bill places "too much power in the hands of the Minister" to designate DCOs; and to thereby singlehandedly determine who does or does not have access to the IFHP.[61,62]Many national organizations, such as the Canadian Council for Refugees, the Canadian Civil Liberties Association, Amnesty International, and the Canadian Association for Refugee Lawyers, publicly denounced the bill.[63,] Media headlines across the country also reflected negative responses to the changes to be borne under Bill C-31.[64,65,66]

Health care professionals and health care organizations have taken a prominent role in the public response to the IFHP cuts. In May of 2012, organizations including the Canadian Medical, Dental and Pharmacists Associations[67] sent an open letter to Minister Jason Kenney to express their concern over the potential health impacts of the cuts, and this letter is representative of the concerns of many who oppose the bill. The letter cited three main reasons for the need to revise or rescind the policy reform: to ensure timely treatment and disease management and thereby

[57]"News Release. Reform of the Interim Federal Health Program ensures fairness, protects public health and safety," accessed March 14, 2014.
[58] "Federal government to appeal ruling reversing 'cruel' cuts to refugee health," accessed January 15, 2015.
[59] *Ibid*.
[60] "Stop Bill C-31, the Anti-refugee Bill," accessed January 15, 2015.
[61] "Refugee reforms include fingerprints, no appeals for some," accessed January 15, 2015.
[62] "Tories unveil bill to thwart 'bogus' refugees," accessed January 15, 2015.
[63] "Protect Refugees from Bill C-31: Joint statement," accessed November 20, 2013.
[64] "Les Parasites," accessed, January 15, 2015.
[65] "Refugee system faces 'unprecedented dismantling'," accessed January 15, 2015.
[66] *Supra*, "Tories unveil bill to thwart 'bogus' refugees"
[67]Other signatories included the Canadian Association of Social Workers, the Canadian Association of Optometrists, the Canadian Dental Association, the Canadian Pharmacists Association, the College of Family Physicians of Canada, the Royal College of Physicians and Surgeons of Canada, the Canadian Medical Association, and the Canadian Nurses Association.

avoid future complications and increased health care costs, to protect the health and well-being of Canadians and Canada's vulnerable populations, and to uphold Canadian values of compassion and inclusiveness.[68] The authors claim that limiting and/or cancelling health benefits for refugees and refugee-claimants will not decrease health care costs, and will place the burden of care on provincial and community-level social programs. Drawing on their medical expertise, the participant organizations also claim that undiagnosed and untreated health problems like chronic and communicable diseases may lead to more severe and costly health complications, overburdened emergency services, and potential public health threats for all Canadians. Finally, they ask: "Are we as a country willing to risk the health of a pregnant mother who is receiving required medications before June 30 by telling her she is no longer eligible after June 30?".[69] Health care professionals have also led public protests, spoken with the media and written op-ed pieces, often citing the imminent health care needs and particular vulnerability of specific groups of refugees and refugee-claimants. They have focused on pregnant women, children, people with diabetes, cancer, or HIV/AIDS, and victims of abuse.[70,71,72,73,74]

Immigrants, refugees, and refugee-claimants have joined in these efforts, but have received less media attention than health care professionals. Many have told their health care stories in order to illustrate the negative impact of the reformed IFHP (for instance, *Cdn Doctors v AGC* 2014 FC 651). These stories are often accompanied by images of visibly sick or disabled individuals.[75,76,77]Different from individuals and groups in Chernobyl, France, and Southeast Asia, who have been able to claim state resources based on shared 'biological identities,' the potential for immigrants, refugees, and refugee-claimants in Canada to do the same seems to have been overtaken by back-and-forth actions and reactions of the Federal Government, and migrant and refugee advocates around the IFHP.

Canadian Identity Narratives and the Limitations of Health-based Claims in the IFHP Debate

The Canadian master narrative is one that is founded on ideas of pluralism and tolerance.[78,79] In this narrative, Canadians are generally presented as "responsible citizens, compassionate,

[68] "Letter to Jason Kenney," accessed November 21, 2013.
[69] *Ibid*.
[70] "Refugee health cuts 'clarified,' not reversed, Kenney says," accessed January 20, 2015.
[71] *Supra*, "Canadian Doctors for Refugee Care"
[72] *Supra*, "Federal government to appeal ruling reversing 'cruel' cuts to refugee health"
[73] "Canadian doctors stage 'day of action' to protest refugee health care cuts," accessed January 15, 2015.
[74] Paul Caulford and Jennifer D'Andrade, "Health care for Canada's medically uninsured immigrants and refugees: Who's problem is it?" *Can Fam Physician*, 58 (2012), 725-727.
[75] "Refugee health care: Impacts of recent cuts"
[76] "Woman fears no coverage for breast cancer treatment," accessed January 15, 2015.
[77] *Supra*, "Canadian Doctors for Refugee Care"
[78] Eva Mackey, *The House of Difference: Cultural Politics and National Identity in Canada*, (Toronto: University of Toronto Press, 2002).

caring, and committed to diversity and multiculturalism".[80] The 'other,' which in the Canadian context includes not only immigrants but the territory's aboriginal people, is imagined as "virulent, chaotic, criminal, and sometimes even deadly".[81] Subject formation in Canadian society, according to Thobani, is "triangulated": nationals and citizens represent the apex, immigrants receive only conditional inclusion, as abject recipients of Canadians' benevolence, and Aboriginals are "marked for their loss of sovereignty".[82]Such a history provides a wider context in which to view the role of health-based claims and the possibilities for citizenship transformation in Canada.

This master narrative can be traced as far back as the Royal Proclamation of 1763, when British and French settlers began to cast Aboriginal populations as primal and lawless in order to justify their colonization efforts.[83] In doing so, they also promoted the "Benevolent Mountie" myth; the idea that Canada is a more compassionate and benevolent state than others, such as the United States.[84] Mackey suggests that the Benevolent Mountie myth constitutes the foundation of the modern Canadian identity. The myth has become embedded in the symbolic *Immigration Act*(1976-1977) and *Multiculturalism Act* (1988), which elevated Canada's status on the global scale, positioning it as one of the most generous and compassionate states in the world.[85] At the same time, Mackey claims, these policies drew attention away from English-French Canadian disputes, the continued marginalization of Aboriginal peoples, and the crystallization of immigrants and refugees as "a cultural stranger to the national body".[86]

The result of this long-term mythmaking comes to bear when we analyse the actions and responses of the Canadian government and the Canadian people vis-à-vis refugees and refugee-claimants in the IFHP debate. The intentions of those supporting IFHP reforms (cuts) and those against them differ, of course, in that the state has constructed these new barriers, and advocates and health-care providers are responding negatively to the barriers. While their intentions are clearly different, however, they share the attribute of largely speaking on behalf of those who have made health-based claims to state resources, and do so in language that adopts a similar Canadian narrative. Despite their opposing views, therefore, I argue that the reactions to health-based claims described above may be seen as two sides of the same coin. Both are linked to similar Canadian identity narratives and both may prevent the progressive types of citizenship transformation that Benhabib and Ong describe. As noted earlier, the potential for citizenship transformation lies in the ability for migrants, including refugees and asylum seekers, to claim to

[79]SuneraThobani, *Exalted Subjects: Studies in the Making of Race and Nation in Canada*. (Toronto: University of Toronto Press, 2007).
[80]*Ibid*, 7.
[81] *Ibid*.
[82]*Ibid*, 15.
[83]*Ibid*, 12.
[84] Mackey, *The House of Difference*, 15.
[85]Thobani, *Exalted Subjects*, 97.
[86] Mackey, *The House of Difference*, 23.

state resources (such as healthcare) outside of a western citizenship paradigm. Investigating the theory in this context, however, highlights the potential of state response, and even the response of those who advocate for refugees and migrants, to be consumed with finding and reacting to new legal barriers to resources, and to rely on familiar depictions of the 'other'.

The Federal Government has effectively separated the bodies that are more and less worthy of state assistance by introducing tiers to a health insurance scheme that had previously been available to all refugees and refugee-claimants. The language of "expanded health coverage" versus "health care coverage" serves to delineate the groups that the government perceives to be more or less vulnerable, and therefore more or less genuine and worthy of care. Refugee-claimants from DCOs, those whose asylum claims have been rejected, and those who are waiting to appeal rejected claims are categorized as the least worthy, deserving of care only in dire circumstances, and otherwise a geographic rather than health-based determination. The rhetoric of the 'bogus' refugee, the refugee claimant who the government determines is not a refugee and does not deserve state health-care resources, draws further attention to the 'least worthy' groups, and has the potential to fix a negative, generalized image of refugees and refugee-claimants in the public imagination.

Many of those who oppose the IFHP cuts, however, also draw on a discourse of vulnerability and focus on the most vulnerable bodies to make their calls for reversal. Healthcare professionals and organizations have made multiple references to refugees and refugee-claimants as the most vulnerable in Canadian society. Moreover, many of their responses, largely made on behalf of those subject to the reforms, focus on people who are either generally considered to have the most serious health conditions (cancer, HIV/AIDS, diabetes) or to be the most defenceless (pregnant women, children, victims of abuse). The prominence of health care professionals as advocates, combined with the personal stories and images of refugee's negative health care experiences in the media, elicit a powerful/powerless binary and helps to fix a pitiable image of refugees and refugee-claimants in the public imagination.

Both calls for reform and calls against reform combine an element of vulnerability vis-à-vis refugees and refugee-claimants, and compound this with an element of benevolence, either with respect to Canadian citizens or Canadian refugee-claimants. Both narratives "exalt"[87] Canadian nationals as Benevolent Mounties, whether they wish to assist more or fewer migrants, and, at least in these responses, appear to regard refugees and refugee-claimants as a well-defined other. For the Government, refugees and refugee-claimants appear to be either 'genuine' or 'bogus' others, as defined by health care allocation in the IFHP. For immigrant and refugee advocates, they seem to be 'pitiable' others, as warranted by their perceived vulnerabilities, serious health conditions, and defencelessness. Both viewpoints may result in drawing attention away from the individual realities of migrants, and step away from the conversation around the

[87]Thobani, *Exalted Subjects.*

potential for citizenship transformation. In the process, they also obscure Canada's history of violence, dispossession, marginalization, and discrimination against others. The debate fails to fully engage with the forms of structural injustice that persist, and in doing so, provide an example of the difficulties that concepts of biological citizenship and citizenship transformation face.

Conclusion

Rather than constituting the basis for the possibility of citizenship transformation, health-based claims for services in Canada, as emphasized within the IFHP debate, seem to reproduce Canadian identity narratives and focus conversation on vulnerabilities instead of new ways of considering citizenship via biological or health-based lines.

This reality has political and other implications for those who support the cuts, those who oppose them, and those most directly affected by them. If the IFHP cuts are sustained, the "bogus" refugee rhetoric and the systematic marginalization of refugees and refugee-claimants by the Federal Government will likely persist. However, if the cuts are reversed based on an imagined, shared identity of refugees as biologically vulnerable others, we may see what Ticktin calls the "antipolitics of care".[88] While emphasizing the importance of health-based claims to refute the IFHP cuts may be a well-intentioned political strategy, it does not fundamentally challenge long-standing power relations and conceptions of refugees as others.

It is notable that, as a result of the joint efforts of health care professionals, immigrants, refugees, and other advocates against the IFHP cuts, various provincial governments have agreed to help reconcile gaps in care, and the Federal Court has requested that the cuts be revised (*Cdn Doctors v AGC* 2014 FC 651). This is an indication of the opportunities within the IFHP debate for re-examining the institutions, ideas, and assumptions that constitute contemporary Canadian identity narratives and the limited partnerships that sustain them. In so doing, it may be possible to carve out a space for refugees and refugee-claimants to participate equally in the discourse and deliberations that affect them. Instead of engaging in the limitations of the binary bogus/vulnerable debate, it may be possible to address the disconnect between those who are making claims for health care and other services and their conceptualization by those who seek to represent them.

[88]Ticktin, *Casualties of Care*, 4.

REFERENCES

Baluja, T. (16 February 2012). Tories unveil bill to thwart 'bogus' refugees. The Globe and Mail. Available at: http://www.theglobeandmail.com/news/politics/tories-unveil-bill-to-thwart-bogus-refugees/article2340521/?from=sec431 . Accessed January 15, 2015.

Barnes, S. (2012). The real cost of cutting refugee health benefits. Available at: http://www.wellesleyinstitute.com/wp-content/uploads/2012/05/The-Real-Cost-of-Cutting-Refugee-Health-Benefits.pdf . Accessed February 10, 2014.

Benhabib, S. (2002a). *The Claims of Culture: Equality and Diversity in the Global Era*. Oxford: Princeton University Press.

Benhabib, S. (2002b). Transformations of Citizenship: The Case of Contemporary Europe*. *Government and Opposition*, 37(4): 439-465.

Bragg, B. (2013). A Guide to Canada's Changing Immigration Policy. Available at: http://www.ecccalgary.com/wp-content/uploads/Immigration_Policy_Guide_06-13.pdf . Accessed April 2, 2015.

Canadian Association for Refugee Lawyers (CARL). (2015). Press Release: Doctors And Lawyers Challenge Federal Health Cuts To Refugees. http://www.carl-acaadr.ca/our-work/issues/IFHP#Press Release. Accessed April 2, 2015.

Canadian Council for Refugees. (2010). Refugees and Immigrants: A glossary. Available at: http://ccrweb.ca/en/glossary Accessed April 19, 2015.

Canadian Council for Refugees.(2012a). Myths and facts. Available at: http://ccrweb.ca/sites/ccrweb.ca/files/mythsandfacts2012c31en.pdf . Accessed November 20, 2013.

Canadian Council for Refugees. (2012b). Protect Refugees from Bill C-31: Joint statement. Available at: http://ccrweb.ca/en/protect-refugees-c31-statement . Accessed November 20, 2013.

Canadian Council for Refugees. (2013). Refugee health care: Impacts of recent cuts. Available at: http://ccrweb.ca/sites/ccrweb.ca/files/ifhreporten.pdf . Accessed November 20, 2013.

Canadian Council for Refugees. (2014a). 2013 in Review: Refugees and immigrants in Canada.. Available at: https://ccrweb.ca/en/2013_review . Accessed March 10, 2014.

Canadian Council for Refugees.(2014b). Refugee Health Care.Accessed March 10, 2014. https://ccrweb.ca/en/ifh .

Canadian Doctors for Refugee Care. 2014. Home. Available at: http://www.doctorsforrefugeecare.ca/. Accessed March 10, 2014

Canadian Doctors for Refugee Care, The Canadian Association for Refugee Lawyers, Daniel Garcia Rodriques, HanifAyubi and Justice for Children and Youth v. Attorney General of Canada and Minister of Citizenship and Immigration (Cdn Doctors v AGC). 2014 FC 651. Available at: http://cas-ncr-nter03.cas-satj.gc.ca/rss/T-356-13%20Cdn%20Doctors%20v%20AGC%20Judgment%20and%20Reasons.pdf . Accessed January 30, 2015.

Canadian Healthcare Association. (2012). Changes to the Interim Federal Health Program: Position Statement. Available at: http://www.healthcarecan.ca/wp-content/uploads/2012/11/IFHP-reform-policy-statement-November-2012.pdf . Accessed January 24, 2015.

Canadian Pharmacists Association, Letter to Jason Kenney. (2012). Available at: http://www.pharmacists.ca/cpha-ca/assets/File/cpha-on-the-issues/SuppBenefitsKenneyEN.pdf . Accessed November 21, 2013.

Carens, J. (1995). Aliens and Citizens: The Case for Open Borders. In *Theorizing Citizenship.* Ronald Beiner (ed.). Albany: State University of New York Press, pp. 229–55.

Caulford, P and D'Andrade, J. (2012). Health care for Canada's medically uninsured immigrants and refugees: Who's problem is it? *Can Fam Physician*, 58:725-727.

CTVNews.ca. (16 February 2012a). Tories aim to fix 'broken' immigration system. Available at: http://www.ctvnews.ca/tories-aim-to-fix-broken-immigration-system-1.769664 . Accessed January 15, 2015.

CTVNews.ca. (16 February 2012b). Refugee system faces 'unprecedented dismantling'. Available at: http://www.ctvnews.ca/refugee-system-faces-unprecedented-dismantling-1.769837 . Accessed January 15, 2015.

CTVNews.ca. (17 June 2013). Canadian doctors stage 'day of action' to protest refugee health care cuts. Available at: http://www.ctvnews.ca/health/health-headlines/canadian-doctors-stage-day-of-action-to-protest-refugee-health-care-cuts-1.1328775#ixzz3QlkNvZw0 . Accessed January 15, 2015.

CTVNews.ca. (11 December 2014). Woman fears no coverage for breast cancer treatment Available at: http://edmonton.ctvnews.ca/woman-fears-no-coverage-for-breast-cancer-treatment-1.2144039#ixzz3QliSQr1W . Accessed January 15, 2015.

Citizenship and Immigration Canada (CIC).(2015a). Health care – Refugees. Available at: http://www.cic.gc.ca/english/refugees/outside/arriving-healthcare.asp . Accessed January 20, 2015.

Citizenship and Immigration Canada (CIC).(2015b). Government-assisted refugee program. Available at: http://www.cic.gc.ca/english/refugees/outside/resettle-gov.asp . Accessed January 20, 2015.

Citizenship and Immigration Canada (CIC). (2015c). Interim Federal Health Program: Summary of benefits. Available at: http://www.cic.gc.ca/english/refugees/outside/summary-ifhp.asp . Accessed January 21, 2015.

Citizenship and Immigration Canada (CIC).(2015d). Fact Sheet – Temporary Foreign Workers Program. Available at http://www.cic.gc.ca/english/resources/publications/employers/temp-foreign-worker program.asp. Accessed April 2, 2015.

Citizenship and Immigration Canada (CIC).(2015e). Citizenship and Immigration Canada. Available at: http://www.cic.gc.ca/ENGLISH/department/index.asp . Accessed April 19, 2015.

Citizenship and Immigration Canada (CIC).(2015f). Designated Countries of Origin. Available at: http://www.cic.gc.ca/english/refugees/reform-safe.asp . Accessed April 19, 2015.

Elkouri, R. (20 February, 2012). Les Parasites. La Presse. Available at: http://www.lapresse.ca/debats/chroniques/rima-elkouri/201202/18/01-4497403-les-parasites .php. Accessed, January 15, 2015.

Elliot, L and Payton, L. (15 February, 2012). Refugee reforms include fingerprints, no appeals for some. Available at: http://www.cbc.ca/news/politics/refugee-reforms-include-fingerprints-no-apeals-for-some-1.1191505 . Acessed January 5, 2015.

Fassin, D. (2001). The Biopolitics of Otherness: Undocumented Foreigners and Racial Discrimination in French Public Debate. *Anthropology Today*, 17(1):3-7.

Fitzpatrick, M. (July 3 2012). Refugee health cuts 'clarified,' not reversed, Kenney says. CBC News. Available at: http://www.cbc.ca/news/politics/refugee-health-cuts-clarified-not-reversed-kenney-says-1.1133956 . Accessed January 20, 2015.

Government of Canada.Citizenship and Immigration Canada (CIC). (2012a). Speaking notes for the Honourable Jason Kenney P.C., M.P. Minister of Citizenship, Immigration, and Multiculturalism. Available at: http://www.cic.gc.ca/english/department/media/speeches/2012/2012-02-16.asp . Accessed March 15, 2014.

Government of Canada, Citizenship and Immigration Canada (CIC).(2012b). News Release. Reform of the Interim Federal Health Program ensures fairness, protects public health and safety. Available at http://www.cic.gc.ca/english/department/media/releases/2012/2012-04- 25.asp

Government of Canada, Department of Justice.(2012). Order Respecting the Interim Federal Health Program (SI/2012-26).Available at http://lawslois.justice.gc.ca/eng/regulations/SI-2012-26/FullText.html .Accessed January 24, 2015.

Government of Canada, Department of Justice. (2012). Order Amending the Order Respecting the Interim Federal Health Program (SI/2012-49). Canada Gazette, June 28. Available at: http://canadagazette.gc.ca/rp-pr/p2/2012/2012-07-18/html/si-tr49-eng.html . Accessed January 30, 2015.

*Immigration and Refugee Protection Act.*2001, c.27. Available at: http://laws-lois.justice.gc.ca/eng/acts/I-2.5/ . Accessed February 14, 2014.

Mackey, E. (2002). *The House of Difference: Cultural Politics and National Identity in Canada*. Toronto: University of Toronto Press.

Molnar Diop, P. (2014). The "bogus" refugee: Roma asylum claimants and discourses of fraud in Canada's Bill C-31. *Refuge*, 31(4):67-80.

Office of the High Commissioner for Human Rights.(2011). Better protection against discrimination for Roma and victims of caste systems. Available at: http://www.ohchr.org/EN/NewsEvents/Pages/BetterprotectionforRomaandvictimsofcastesystems.aspx . Accessed January 30, 2015.

Ong, A. (2006). "Mutations in Citizenship."*Theory, Culture & Society*, 23(2-3): 499-531.

Payton, L. (4 July, 2014). Federal government to appeal ruling reversing 'cruel' cuts to refugee health. CBC News. Available at: http://www.cbc.ca/news/politics/federal-government-to-appeal-ruling-reversing-cruel-cuts-to-refugee-health-1.2696311 . Accessed January 15, 2015.

*Protecting Canada's Immigration System Act.*2001, c. 27. Available at: http://laws-lois.justice.gc.ca/eng/annualstatutes/2012_17/page-1.html . Accessed January 30, 2015.

Petryna, A. (2002). *Life exposed: Biological citizens after Chernobyl*. Princeton, N.J.: Princeton University Press.

Rose, N. and Novas, C. (2005)."Biological citizenship".*In Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems*. Aihwa Ong and Stephen J. Collier, eds. Pp. 439-463. Oxford: Blackwell Publishing.

Soysal, Y. (1994). *Limits of Citizenship: Migrants and Postnational Membership in Europe*. Chicago: University of Chicago Press.

The Federal Liberal Agency of Canada, the Liberal Party of Canada.Stop Bill C-31, the Anti-refugee Bill. Available at: http://petition.liberal.ca/stop-bill-c31-antirefugee-bill/ . Accessed January 15, 2015.

Thobani, S. (2007).*Exalted subjects: Studies in the Making of Race and Nation in Canada*. Toronto: University of Toronto Press.

Ticktin, M. (2011).*Casualties of Care: Immigration and the Politics of Humanitarianism in France*. Berkeley: University of California Press, Ltd.

Continental Drift: Realigning the Humanitarian Purpose and Practical Reality of International Refugee Law in Western States

BEN MILLS*

Abstract:
The humanitarian principle underpinning international refugee law is that those fleeing harm in their own state are entitled to protection elsewhere. However, the 1951 Convention Relating to the Status of Refugees restricted the legal scope of this principle, and while the 1967 Protocol Relating to the Status of Refugees attempted to bypass some of those restrictions, a chasm between this underlying principle and the scope of international law remains. Furthermore, the practical applications of both instruments in Western states serve to further distance state policy and action from the principle of providing asylum for those desperately seeking it. This article argues that this ever-widening void between the protection of vulnerable people on humanitarian grounds and the reality of refugee law and practice has become unsustainably and harmfully wide in Western states. It will argue that this rift must be corrected, and that the only feasible method to do so is to realign law to reflect current practice. While this approach is certainly morally contentious, it may be the only viable way to preserve the few remaining protections, whilst at the same time making Western states and their populations starkly aware of the unforgiving political lottery which characterizes international refugee protection and which they implicitly endorse.

**Ben Mills is a human rights advocate and educator. He completed his Master's degree at Birkbeck, University of London and has published a number of articles in both academic journals and popular media. His research interests include human rights education, group rights, and refugee protection. He currently works in international development and is based in Wellington, New Zealand.*

Introduction

"The law on free movement rights is a classic illustration of the gulf between the 'is' and the 'ought'. What 'ought' to be is very different from what 'is' the case."[1]

In 1950 twenty-six states recognized the need to protect those who were displaced at the end of WWII by ratifying the United Nations Convention Relating to the Status of Refugees ("the Convention") in 1951. Today, there are 45.2 million forcibly displaced people worldwide[2] and 148 out of a total of 192 United Nations member states have ratified either the Convention or the 1967 Protocol Relating to the Status of Refugees ("the Protocol").[3] Yet, four in five of those who are forcibly displaced are not protected by either instrument;[4] eleven in twelve of those who are covered do not apply for protection;[5] two in three of those who do apply are rejected;[6] and many of those who are approved are not afforded full protection in Western states. As a result, less than half of one percent of all forcibly displaced people—half of which are under the age of eighteen[7]—receive the protection they need.

A query addressed by a number of scholars, but which remains the political elephant in the room for a number of governments, the UN, and international organizations is the question of the continuing value of the Convention and Protocol. This article adds to those voices, specifically in relation to the application of the Convention and Protocol in Western states. It argues that the evolution of both the legal provisions and the current practical reality of these instruments has rendered the international refugee protection system absurd and detrimental for those fleeing harm, for Western and non-Western states, and for global society alike.

The only feasible way to restore meaning and to preserve the limited protection which currently exists is to realign the legal provisions of international refugee law to existing practice

[1] Juss, S.S. International Migration and Global Justice. (Aldershot, United Kingdom: Ashgate, Juss, S.S. 2006) at 5.
[2] UNHCR. "Facts and Figures about Refugees". 27 November 2013.
[3] UNHCR. "States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol". 27 November 2013. Available online: <http://www.unhcr.org/3b73b0d63.html>; UN Treaty Collection. "Chapter V: Refugees and Stateless Persons: 2. Convention relating to the Status of Refugees." 27 November 2013. Available online: <http://treaties.un.org/Pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en>; UN Treaty Collection. "Chapter V: Refugees and Stateless Persons: 5. Protocol relating to the Status of Refugees". 27 November 2013. Available online: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&lang=en>
[4] *Supra* Note 2.
[5] *Ibid.*
[6] UNHCR. "Displacement: The New 21st Century Challenge". UNHCR Global Trends 2012. 27 November 2013, at 28. Available online: <http://www.unhcr.org.uk/fileadmin/user_upload/pdf/UNHCR_Global_Trends_2012.pdf>
[7] *Supra* Note 2.

in Western states. This would involve explicitly recognizing the absence of a right to asylum, introducing a structured lottery for those seeking asylum, and establishing quotas for the number of refugees accepted by Western states. This approach will reduce overall harm by improving certainty in refugee determinations, increasing the transparency and sustainability of the international refugee protection system, and acting as a wake-up call to Western states and their populations which increasingly exhibit more restrictive and xenophobic attitudes to the granting of refugee status.

This article will first examine the extent to which the outcome of the Convention negotiations in 1951 matched their underlying humanitarian impetus. It will then discuss the reasoning behind the 1967 Protocol, and the extent to which its provisions narrowed the gap between the humanitarian notion of protecting those fleeing harm and the provisions of international refugee law. This article will then discuss how both the Convention and the Protocol are applied by Western states, both in terms of policy and practice. Finally, it will explain why an approach of realigning legal provision to existing practice in Western states is the only viable solution.

The continuing plight of millions of people who seek protection from harm in Western states which have the capacity but which lack the will to provide it constitutes a reprehensible stain on Western claims of supporting human rights protection and democratic principles. If the yawning abyss between the humanitarian purpose and the existing law and practice of international refugee protection is to somehow be narrowed, or even safely traversed, the first objective must surely be to limit any further divergence.

Convention limitations on refugee protection

At the conclusion of World War II the plight of significant numbers of both refugees and stateless persons scattered across Europe led to sustained calls for an international agreement to protect these groups. The 1951 Convention was explicitly and exclusively concerned with protecting those fleeing persecution in Europe, and only then in respect of events occurring before 1 January 1951. These temporal and geographical limitations on the definition of a refugee were sought by a number of states which did not wish to commit themselves to an ongoing refugee "burden."[8]

Refugees fleeing persecution in Korea, China, and India were therefore excluded. Palestinians displaced during the creation of the Israeli state were also explicitly excluded,

[8] See Weis, P. (ed.). The Refugee Convention, 1951: The Travaux Preparatoires Analysed with a Commentary by Dr. Paul Weis. (Cambridge, United Kingdom: Cambridge University Press, 1995) and the Preamble of the Convention paragraph 5.

supposedly because they already received protection from a UN agency, and those European refugees who were deemed to have committed serious crimes or to be security threats were also outside the scope of the Convention's application. Those who were unable to cross an international boundary were also excluded. This last exclusion was profound, and is reflected at least in part in the contemporary landscape: in 2012 the UNHCR cared for 15.5 million internally displaced persons, more than the total number of refugees worldwide.[9]

Indeed, the drafters ignored the fundamental question of access altogether: it was incumbent on those fleeing harm to somehow reach the border of a state potentially willing to provide protection or otherwise be already outside their country of origin. These exclusions were codified in the Convention less than three years after the Universal Declaration of Human Rights ("UDHR") boldly asserted that human rights were for "all human beings", "everyone", and "all", and proclaimed that "no one" shall be subjected to actions contrary to human rights.[10]These limitations were lamented by some states. France in particular, supported by Mexico, sought the inclusion of a right to asylum, an explicit reference to the UDHR, and agreement from the contracting parties that the Convention should eventually apply to all refugees everywhere.[11] These proposals were eventually rejected on the grounds that those who would be excluded were not in need of protection, as the United States in particular articulated:

> "The US delegation had said before, and must say again, that in its opinion all persons in need of protection at the present time were fully covered by the definition provided in Article 1 of the draft Convention."[12]

The limitations on the scope of the Convention were therefore deliberate and considered: although there was debate and disagreement, the contracting parties eventually agreed to exclude reference to the Convention's underlying humanitarian purpose.

In addition to category-based exclusions and access difficulties, those fleeing persecution were not to be considered refugees unless their persecution was in some way discriminatory. Thus general persecution suffered as a result of environmental disasters, state disintegration, or even war itself was not sufficient to justify Convention protection.[13] Similarly, the Convention was not intended to protect those who were fleeing poor living conditions including a lack of food, water, shelter, or even violence. As Goodwin-Gill succinctly summarizes:

---

[9] UNHCR. "Internally Displaced People Figures". 28 November 2013.
[10] UN General Assembly Resolution 217 A(III). 10 December 1948. "Universal Declaration of Human Rights". A/RES/217(III) A, 3rd session, item 58, at Articles 1-15 and 17-29.
[11] *Supra* Note 8, at 13-15.
[12] *Ibid*, at 16 paragraph 5.
[13] Hailbronner, K. "Non-Refoulement and "Humanitarian" Refugees: Customary International Law or Wishful Legal Thinking?" Virginia Journal of International Law. 26(4) (1986), 857-896.

> "The Convention does not deal with the question of admission, and neither does it oblige a State of refuge to accord asylum… The Convention also does not address the question of "causes" of flight, or make provision for prevention; its scope does not include internally displaced persons, and it is not concerned with the better management of international migration."[14]

What the Convention did establish, albeit in extraordinarily narrow terms, was international recognition that *some* of those forced to flee from *certain* harms within their own state are *sometimes* entitled to apply for protection in other states. This legacy constitutes the premise of the international protection system today.

Initial state policy and practice

Despite the substantive caveats limiting Convention application, the Convention's refugee criteria were still too wide-ranging for many Western states. Prior to the 1967 Protocol, the Convention had only 50 States Parties, or 41% of UN membership at the time.[15] It took highly industrialised Japan thirty years and South Korea over forty years to accede to the Convention while South Africa only acceded in 1996. Despite its considerable involvement in the drafting stages, the United States has never acceded to the Convention. Of the 148 current States Parties, 53 have made either declarations or reservations upon accession, some of which are considerable. The United Kingdom, for instance, lodged a declaration of almost 800 words which excused the UK from giving full effect to Article 17 paragraph 2(c) (any restrictions on the right to work of refugees shall not apply to those refugees who have one or more children possessing the nationality of the country of residence); Article 24 paragraphs 1(b) and 2 (refugees to receive the same treatment as nationals in respect of social security and compensation for death); and Article 25 (administrative assistance for refugees). Scholars have noted the objections of many states party to the economic and social provisions of the Convention, specifically the provision of social assistance, housing benefits, and the right to work to refugees.[16] The majority of UN member states were not party to the Convention prior to the 1967 Protocol, and of those who were, most delimited the legal application of the Convention.

[14] Goodwin-Gill, G.S. "Convention Relating to the Status of Refugees; Protocol Relating to the Status of Refugees: Introductory Note". Audiovisual Library of International Law, UN Office of Legal Affairs (2008), page 8. Available online: http://legal.un.org/avl/ha/prsr/prsr.html.
[15] United Nations. "Growth in United Nations Membership, 1945-Present". 28 November 2013. Available online: http://www.un.org/en/members/growth.shtml.
[16] Hathaway, J.C. and Neve, R.A. "Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection". Harvard Human Rights Journal. 10, pp. 115-212 (1997) at 129; *Supra* Note 13, at 5.

For those Western states who did sign, the Convention was almost immediately used to justify the defection of those with no greater claim to persecution other than living in a communist state. Hundreds of thousands of people fleeing communist regimes in Hungary, Czechoslovakia, Cuba, and elsewhere were admitted to European and North American states on the spurious grounds that the chain of events causing their flight originated prior to 1 January 1951. Fitzpatrick notes that this included "many ballet dancers and athletes" who, had the Convention terms been applied more robustly, "would not have been able to transfer their loyalties through the device of political asylum."[17]

While Western Europe was happy to embarrass ideologically polar regimes in the East by adopting extremely liberal interpretations of the Convention and accepting and resettling European 'refugees,'[18] their policy conveniently changed when faced with the Indochina refugee crisis in the 1970s. The response of the same states that had set up the global refugee protection regime some thirty years earlier was to pressure other Southeast Asian states to accept these asylum seekers first.[19] While the United States, for instance, did eventually accept a number of the Indochina refugees, it did so not out of humanitarian concern for those fleeing discriminatory persecution but because of an "element of revenge and loyalty to comrades in arms, as well as a hope of weakening a new government, as part of a policy of isolating the Vietnamese government."[20] Even in Uganda, where Amin's brutal and dictatorial regime was far from concerned about Cold War ideology, fleeing and expelled Ugandan Asians in 1972 sought and were granted asylum primarily in Commonwealth states. Hathaway argues that this was as a result of a post-colonial allegiance to the UK rather than any explicit protection function, and references others who claim that the Asian Ugandans provided asylum by Canada could have been admitted under existing immigration provisions.[21]

Hypocrisy characterised initial policy as much as ideology. In lieu of Western states' willingness to extend Convention protections to those fleeing oppression in China, Algeria, or Angola, the UN General Assembly almost immediately authorised the United Nations High Commissioner for Refugees "in respect of refugees who do not come within the competence of the United Nations, to use his good offices in the transmission of contributions designed to

[17] Fitzpatrick, J. "Revitalizing the 1951 Refugee Convention". Harvard Human Rights Journal. 9, pp. 229-254 (1996), at 238.
[18] Loescher, G. Beyond Charity: International Cooperation and the Global Refugee Crisis. (New York, United States: Oxford University Press, 1993), at 21 and 59.
[19] Keely, C.B. "The International Refugee Regime(s): The End of the Cold War Matters". International Migration Review. 35(1), pp. 303-314 (2001) at 304-305.
[20] *Ibid*, at 309.
[21] Hathaway, J.C. "Selective Concern: An Overview of Refugee Law in Canada". McGill Law Journal 33, pp. 676-715 (1988), at 682.

provide assistance to these refugees."[22] Western states were content to effectively contract out the protection of less politically attractive refugees to the UNHCR, without significantly increasing its funding, while at the same time invoking the provisions of the Convention for ideological purposes when it was politically convenient to do so.[23] This General Assembly resolution and others which reaffirmed the UNHCR's expanded remit thereby paradoxically demonstrated both the West's acknowledgement of the need for an increasingly broader scope of protection, and its reluctance to formally codify that recognition in the Convention. From the outset of the Convention's development, Western states used it as a political and ideological tool while shunning its humanitarian rationale.

The impact of the Protocol and subsequent legal provisions on international refugee protection

It is an irony that the same ideological circumstances that resulted in the almost immediate divergence of Western states' policies and practice from the Convention's provisions may have been a catalyst for change. Increasing numbers of refugees fleeing proxy wars in Latin America, Africa, and Asia could no longer be ignored in favour of Eastern bloc deserters. The 1967 Protocol acknowledged the temporal and geographic limitations of the Convention and provided states with an opportunity to disavow themselves of those restrictions. This went some way towards encouraging Western states to realign their policies and practice to the UNHCR's newly widened mandate. Universality was also addressed: the Protocol was an "independent instrument" to which states could accede without needing to first accede to the Convention.[24]

The slight narrowing of the gap between legal provision and protection for all those fleeing harm is also evidenced by the development of additional international and regional instruments. The 1984 Convention Against Torture, building on the Convention's key principle of *non-refoulement*,[25] prohibits the return of anyone to a state where they would be at risk of torture.[26] Thus some of those excluded by the Convention are entitled to protection. The 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa broadened the definition of refugee to include those fleeing for reasons of "external

[22] UN General Assembly Resolution 1388. "Report of the United Nations High Commissioner for Refugees". A/RES/1388(XIV), 14th session, item 38 (1959), at paragraph 2. Available online: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1388(XIV)&Lang=E&Area=RESOLUTION>; UN General Assembly Resolution 1673. "Report of the United Nations High Commissioner for Refugees". A/RES/1673/(XVI), 16th session, item 34 (1961), at paragraph 1. Available online: <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1673(XVI)&Lang=E&Area=RESOLUTION>; *Supra* Note 1, at 241.
[23] *Supra* Note 17, at 5 and 131-133.
[24] *Supra* Note 13, at 7.
[25] *Supra* Note 16, at 236.
[26] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 10 December 1984. Entry into force 26 June 1987. United Nations. UNTS 1465, p. 85, at Article 3.

aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality."[27] Discriminatory persecution was thus no longer required and displaced Palestinians would also qualify. Fifteen years later the Cartagena Declaration on Refugees recognised the need to "consider enlarging the concept of a refugee" and recommended a definition which included "persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."[28] Indiscriminate torture or rape, for example, would now entitle a refugee to protection. Somewhat later—fifty-three years after the 1951 Convention—the European Council agreed to a Directive obligating member states to "grant subsidiary protection status" to those who "if returned to his or her country of origin…would face a real risk of suffering serious harm."[29] Despite its tardiness, its comparative definitional timidity, and the fact that subsidiary protection was often temporary and did not constitute refugee status, the EU Directive nonetheless expanded international protection among EU states. Broadly comparable subsidiary protection regimes have since been established in Australia,[30] Canada[31] and New Zealand.[32]

In addition to international law, key domestic cases have contributed to the gradual expansion of protection by establishing increasingly inclusive precedents. In the UK, *Islam and Shah* held that generally persecuted women constituted a "particular social group" for the purposes of the Convention and Protocol.[33] In Australia, *Chan* established that those claiming protection under the "particular social group" provision only have to show how they are *perceived* as a member of that group, rather than necessarily being an actual member of that group.[34] Juss notes how Western courts in general have applied the refugee definition to

[27] Convention Governing the Specific Aspects of Refugee Problems in Africa. 10 September 1969. Entry into force 20 June 1974. Organisation of African Unity. UNTS 1001, p. 45, at Article 2. It is notable that the Preamble to the OAU Convention subtly but systematically makes a number of criticisms of the Geneva Convention including a perceived lack of applicability to African refugees.
[28] Cartagena Declaration on Refugees. 22 November 1984. Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama. Cartagena, Colombia. Available online: <http://www.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf>.
[29] EU Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. OJ L304/12 (2004), at Chapter VI Article 18. Available online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:en:HTML>
[30] *Supra* Note 32.
[31] Citizenship and Immigration Canada. "Resettlement from Outside Canada". 28 November 2013.
[32] New Zealand assumes subsidiary obligations from both the Convention Against Torture and the International Covenant on Civil and Political Rights. See Immigration New Zealand. "The Refugee and Protection Unit". 28 November 2013.
[33] Islam (A.P.) v. Secretary of State for the Home Department, R v. Immigration Appeal Tribunal and Another, Ex Parte Shah (A.P.) [1999] United Kingdom House of Lords 20; *Supra* Note 17, at 239.
[34] Chan v. Minister for Immigration and Ethnic Affairs [1989] High Court of Australia 62; (1989) 169 CLR 379 F.C. 89/034.

homosexuals, students, and victims of child abuse, trafficking, and forced marriage,[35]and Hathaway further notes how the refugee concept has been enlarged by Western courts to protect trade union members, those convicted of crimes, and those refusing to perform military service.[36] Good refers to Dr. Hugo Storey in particular, a Senior Judge of the UK Upper Tribunal Immigration and Asylum Chamber who removed the particular social group requirements of "cohesiveness, interdependence, organisation or homogeneity" and asserted that a member of a particular social group could be conceived simply by reference to the persecution to which they were subjected.[37] Finally, *HT (Iran) and HJ (Cameroon)* demolished a further bureaucratic barrier by establishing that asylum seekers cannot lawfully be expected to take reasonable steps to avoid persecutory harm or to live "discreetly" so as to avoid it.[38]

Taken together with the Protocol, regional and international instruments and case law illustrate how protection has become more inclusive since the original post-war focus. However, significant barriers to protection linger. The Protocol did not revoke the Convention's discriminatory persecution criterion or its category exclusions; neither the Protocol nor any other international, regional or domestic law has enshrined a right to asylum and global efforts aimed at addressing the underlying causes of refugeedom remain highly limited. These persistent and significant barriers are augmented by contemporary problems—environmental refugees,[39] quasi-refugees,[40] those living in refugee camps,[41] internally displaced persons,[42] and women[43] are among those who continue to struggle for adequate protection while the artificial distinction between political persecution and economic migration continues to be reinforced.[44] Although a few states have programmes for those who require emergency protection and have been unable to leave their country of origin,[45] embassy applications for asylum are not usually accepted,[46] and

[35] *Supra* Note 1, at 190.
[36] Hathaway, J.C. The Law of Refugee Status. (Toronto, Canada: Butterworths, 1996), at 169-185.
[37] Dr. Hugo Storey quoted in Good, A. Anthropology and Expertise in the Asylum Courts. (Abingdon, United Kingdom: Routledge-Cavendish, 2007), at 82-83.
[38] HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department [2010] United Kingdom Supreme Court 31.
[39] *Supra* Note 1, at 168-178.
[40] *Ibid*, at 224.
[41] Mtango, E. "Military and Armed Attacks on Refugee Camps" in Loescher, G., and Monahan, L. (eds.). Refugees and International Relations (Oxford, United Kingdom: Oxford University Press, 1989).
[42] *Supra* Note 1, at 152-160.
[43] Freedman, J. "Women's Right to Asylum: Protecting the Rights of Female Asylum Seekers in Europe?". Human Rights Review. 9(4), pp. 413-433 (2008); Camus-Jaques, G. "Refugee Women: The Forgotten Majority" in Loescher, G., and Monahan, L. (eds.). Refugees and International Relations. (Oxford, United Kingdom: Oxford University Press, 1989).
[44] *Supra* Note 17, at 6 and 17; *Supra* Note 1, at 191.
[45] Australia for instance has protection programmes for those subject to persecution and who have been unable to leave their home country, as well as those who are not refugees but who are "subject to substantial discrimination and human rights abuses in their home country". See Australian Government Department of Immigration and Border Protection. "In-Country Special Humanitarian Visa (Subclass 201)". 28 November 2013.

those being persecuted must still cross a border. Refugees are expected to avoid internal security forces, border guards, and criminal trafficking networks; obtain travel documentation,[47] economic means and opportunity; and endure corruption, emotional pain from leaving loved ones behind, sea unworthiness, and the risk of further discriminatory persecution.

The reality that the vast majority of those in need of protection do not have the means or opportunity for escape and are therefore invisible to the Convention, the Protocol, or any other international, regional or domestic law is yet to be adequately addressed. Nonetheless, an incrementally expanded UNHCR mandate; removal of the Convention's temporal and geographic limitations; and occasional acknowledgement of these outstanding problems by the legal apparatuses of Western states all represent a conceptual inching back towards the Convention's humanitarian origins and increased protection for more people.

Contemporary state policy and practice

Gaining international acceptance for a realignment of legal provision to the protection of all those fleeing harm still proves politically challenging: today only 148 states are States Parties to the Convention.[48] This compares to 154 States Parties to the Convention Against Torture; 176 to the International Convention on the Elimination of All Forms of Racial Discrimination; 187 to the Convention on the Elimination of All Forms of Discrimination Against Women; and 193 to the Convention on the Rights of the Child. Even treaties for the protection of animals have more international support than the Convention.[49]

In Western states which have become signatories, hostile public opinion has been a significant influence on contemporary policy and practice in relation to the protection of those fleeing harm. Sensationalist and populist rhetoric which borders on the xenophobic and is promulgated by political figures from many parties,[50] governments,[51] and popular media[52] fuels

[46] See Noll, G. "Seeking Asylum at Embassies: A Right to Entry under International Law?"International Journal of Refugee Law. 17, pp. 542-573 (2005).
[47] See *Supra* Note 17, at 58, which details the steps taken in former communist states to prevent unauthorized emigration.
[48] See all in *Supra* Note 3.
[49] The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) has 178 states party (see CITES Secretariat. "Member Countries". 28 November 2013. Available online: <http://www.cites.org/eng/disc/parties/index.php>) while the Convention on Biological Diversity has 193 states party (see Secretariat of the Convention on Biological Diversity. "List of Parties". 28 November 2013. Available online: <http://www.cbd.int/convention/parties/list/>).
[50] See, for example, language used by the Liberal Democrats to describe their immigration policy: "Cracking down on abuse" and "We have cracked down on bogus students from abroad abusing the immigration system" (Liberal Democrats. "Immigration". 29 November 2013); language used by Ed Miliband MP: "Britain must always control its borders. It is clearly in the national interest that we do so" (Labour. "Building a Britain that Works Together". 29 November 2013); and language used by Theresa May MP: "…bringing [immigration] under control,"

a perception that immigration is "out of control"; that national interest requires a decrease in immigration; and most dangerously, that 'asylum seeker' is analogous to 'illegal immigrant.'[53] This criminalisation of immigrants has been eloquently lamented by former UN Secretary General Kofi Annan: "Let us remember that a bogus asylum-seeker is not equivalent to a criminal; and that an unsuccessful asylum application is not equivalent to a bogus one."[54]

Rather than attempting to remove the considerable existing barriers to access, states have responded to prevailing public opinion by determinedly erecting even more sophisticated obstacles to protection.[55] Advance visas and carrier penalties immediately inhibit the escape of the vast majority of asylum seekers.[56] Several authors note how the UK introduced entry visas for nationals of Bosnia, Sri Lanka and Zimbabwe at the very time when conflict, and therefore the exodus of refugees, was most extreme.[57] Even if documentation is obtainable, most Western states will refuse asylum seekers if their country is not the first safe country in which the asylum

"Uncontrolled, mass immigration…", and "we're doing everything we can to stop human rights laws getting in the way of immigration controls" (Conservatives. "Speech: Conference 2012: Theresa May". 29 November 2013).

[51] See, for example, the language used in Home Office. "Immigration Bill: Factsheet: Overview of the Bill". 29 November 2013. Available online: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249251/Overview_Immigration_Bill_Factsheet.pdf>: "…cut out abuse where it was rife…"; "As things stand, it is too easy for people to live and work in the UK illegally and take advantage of our public services"; and "The appeals system is like a never-ending game of snakes and ladders, with almost 70,000 appeals heard every year". See also the terminology and language used by the Home Office in referring to "case owners" for asylum applications and "…we are determined to refuse protection to those who do not need it" (Home Office UK Border Agency. "Asylum". 29 November 2013).

[52] See, for example, "flood of migrants" (Telegraph View. "Open Country". The Telegraph, 21 November 2013); "bogus claims", "he [a failed asylum seeker] retained a lawyer from a firm that makes millions out of legal aid cases", "troublingly superficial analysis", "legal ruse", "Clearly, the system is overloaded", and "an open goal for those seeking to extract money from the taxpayer" (Telegraph View. "Britain's decency is being cynically exploited by asylum seekers". The Telegraph, 16 November 2013); and "massive influx"; "chaos", "shambolic", "out of control", "catastrophic failure", "illegal immigrants and foreign criminals", "no-nonsense moves", and "tens of thousands of illegal immigrants and failed asylum seekers" in Arkell, H. "'We don't know who's here and who's not': Former UK Border Agency chief admits immigration to Britain was 'out of control.'" Mail Online, 8 April 2013.

[53] *Supra* Note 46, at 6; *Supra* Note 18, at 199-200; Webber, F. Borderline Justice: The Fight for Refugee and Migrant Rights. (London, United Kingdom: Pluto Press, 2012), at 3-4 and 12-13.

[54] United Nations Information Service. "Press Releases: Secretary-General Calls for Commitment to Tolerance and Empathy in Stockholm Address". 30 January 2001, UNIS/SG/2773. Available online: <http://www.unis.unvienna.org/unis/pressrels/2001/sg2773.html>.

[55] Macklin, A. "Who is the Citizen's Other? Considering the Heft of Citizenship". Theoretical Inquiries in Law. 8, pp. 475-508 (2007), at 357; *Supra* Note 16, at 120.

[56] Zolberg, A.R., Suhrke, A., and Aguayo, S (eds.). Escape from Violence: Conflict and the Refugee Crisis in the Developing World. (New York, United States: Oxford University Press, 1989), at 280; Casey, T. "Europe 1992: Closing the Doors". Studies: An Irish Quarterly Review, 80(317), pp. 48-55 (1991), at 50; Feller, E. "Carrier Sanctions and International Law". International Journal of Refugee Law. 1(1), pp. 48-66 (1989); Hathaway and Neve in *Supra* Note 16, at 120.

[57] Zolberg, Suhrke and Agusyo in *Supra* Note 56, at 280; Casey in *Supra* Note 56, at 49-50; *Supra* Note 16, at 120 and 135.

seeker had the opportunity to make a claim.[58] Given the lack of direct flights from many asylum seeker countries of origin, and political geography in general, this policy effectively prevents many asylum seekers from ever reaching Canada, Australia, New Zealand, or many smaller European states. Access problems are further compounded by politically-motivated policy initiatives including the tightening of immigration laws; the removal of appeal processes and the introduction of accelerated processing;[59] and the newly proposed policy of deport first, appeal later.[60] These initiatives mean that the normal appeals system, judicial review proceedings, or even existing standards of natural justice and due process are not always available for those who are turned away.

After arrival in a Western state those seeking asylum encounter yet more barriers to refugee status. In the UK, for instance, asylum seekers are subject to onerous administrative requirements[61] and can wait years for a determination to be made.[62] Determination guidance issued by the UNHCR is spurned or ignored in favour of more restrictive national guidance, and many asylum seeker claims are simply disbelieved.[63] Contradictory requirements make gaining credibility nearly impossible[64] while cultural differences, such as the hesitance of many Muslim women to describe details of sexual abuse, prevent many immigration officers from understanding asylum applicants' entire story.[65] Regrettably, prejudice and racism still influence many decisions.[66] Meanwhile, asylum applicants can be indefinitely detained[67] or denied access to social services and benefits.[68] In addition to all of this, immigration agencies are notoriously opaque in terms of their bureaucratic processes and publishing of information and statistics, even

[58] Byrne, R. and Shacknove, A. "The Safe Country Notion in European Asylum Law". Harvard Human Rights Journal. 9, pp. 185-228 (1996), at 96; Casey in *Supra* Note 56.
[59] *Supra* Note 46, at 105.
[60] See Chorley, M., Slack, J. and Chapman, J. "'Immigration system is like a never-ending game of snakes and ladders': Theresa May vows to kick out illegal immigrants BEFORE they get chance to appeal". Mail Online, 30 September 2013; Travis, A. "Tory illegal immigration bill to curb right of appeal against deportation". The Guardian, 30 September 2013; and Conservatives. "Speeches: 2013: Theresa May".
[61] For example, the UK Border Agency requires that those applying for asylum in the UK must make an application in person at an office in Croydon, regardless of their residence location. Prospective asylum seekers are duly informed that "insufficient funds or inconvenience is not an acceptable reason for a person not being able to make a claim in person". Asylum seekers in the UK do not enjoy the right to work and are entitled to "support" of £36.62 per week plus local authority accommodation. Thus travel and accommodation costs associated with attending an appointment in Croydon could constitute as much as 370% of an asylum seeker's total weekly income. See Home Office UK Border Agency. "How to claim asylum". 30 November 2013. and Home Office UK Border Agency. "Current support amounts". 30 November 2013.
[62] *Supra* Note 46, at 103; Webber in *Supra* Note 53, at 55-58.
[63] *Supra* Note 46; Webber in *Supra* Note 53; Freedman in *Supra* Note 29, at 422-423.
[64] Webber in *Supra* Note 53, at 20 and 42-43.
[65] *Supra* Note 46.
[66] Webber in *Supra* Note 53, at 38 and 50-52.
[67] Refugee Council of Australia. May 2012. "Mandatory detention". Available online: <http://www.refugeecouncil.org.au/f/as-det.php>; Webber in *Supra* Note 53, at 132.
[68] Hathaway and Neve in *Supra* Note 16, at 129-130.

in the face of clear statutory requirements, making holding agencies democratically accountable for their actions problematic at best.[69]

In addition, legal recourse may offer little remedy as judicial decision-making has been slow to recognise the graveness of the harm from which many asylum seekers have fled. In the UK, judges and tribunal members have held that at times even rape[70] and torture[71] by state actors do not necessarily constitute persecution, and that homosexuals should be expected to "reasonably tolerate" a certain element of "discretion" in order to avoid punitive measures.[72] Conversely, on those occasions when the judiciary has ruled that the scope of the 'particular social group' defined within the Convention should be extended, the executive has demonstrated its resistance by pursuing appeals.[73] Webber also notes how the systematic increase in asylum case appeals by the UK Crown is a relatively recent development.[74]

Indeed, despite the slow and gradual narrowing of the rift between existing legal provision and the protection of all those fleeing harm, these legal provisions have ultimately had a highly limited impact on the number of refugees accepted into Western states. While per capita refugees in Canada, Australia and New Zealand initially spiked immediately after accession to the Protocol in 1969, 1973 and 1973, respectively, a sharp decline followed soon after. The current per capita refugee population in both the UK and New Zealand is almost back to pre-Protocol levels, while Australia's current per capita refugee population is almost half that of the 1960s.[75] Furthermore, while Western states have accepted other individuals under various forms of subsidiary protection, this protection significantly differs from refugee status due to its inherently temporary nature—individuals can be returned to their country of origin when the conditions giving rise to the subsidiary protection are perceived to have subsided.[76] Grants of

[69] Freedom of Information Act requests or their equivalents seeking basic statistics were made to immigration authorities in Australia, Canada, New Zealand, and the United Kingdom on 23 October 2013 to support this article. Authorities in Australia refused to recognise the validity of the request. An internal review was unsuccessful and an appeal to the Office of the Australian Information Commissioner, which is about to be referred to the Australian Administrative Appeals Tribunal, is pending as at February 2015. Despite repeated communications, authorities in Canada failed to respond by the time of submission, three weeks after the expiry of the relevant statutory deadline. Authorities in New Zealand and the UK responded quickly, but only provided some details relating to a limited time period and refused the remainder of the request on the grounds of substantial collation expense. No authority was able to provide all the requested information within the statutory time limit, even in relation to the last calendar or financial year.
[70] *Supra* Note 46, at 3-4. See also Freedman in *Supra* Note 29, at 417-8.
[71] *Supra* Note 46, at 3.
[72] J v. Secretary of State for the Home Department [2006] England and Wales Court of Appeal (EWCA) Civ 1238. See also Webber in *Supra* Note 53, at 82.
[73] Webber in *Supra* Note 53, at 83-84.
[74] *Ibid*, at 38.
[75] Data from UNHCR. "UNHCR Statistical Online Population Database". Data extracted 29 November 2013. Per capita data calculated using historical population figures from Geohive. "World 1950-2050 (all countries): Historic, current and future population". 29 November 2013. See also *Supra* Note 18, at 125.
[76] *Supra* Note 1, at 233-235.

subsidiary protection are just as politically susceptible to hemorrhaging public support as grants of refugee status under the Convention or Protocol. Subsidiary protection may in fact be enabling Western states to further obfuscate their moral obligation to afford protection to those in need of it, rather than to achieve it. While legal advances have been made in contemporary times, the practical reality of these advances has failed to improve protection for those fleeing harm.

Realigning legal provisions to current practice

In summary, the provisions of the Convention have never wholly nor explicitly reflected its broad humanitarian purpose. Western states used the Convention for their own politically selective and ideological purposes. The Protocol did, in part, attempt to address these problems, but both Convention and Protocol continue to be inhibited by problems of access, implementation, and a lack of focus on preventing the causes of refugees in the first place. Furthermore, international refugee protection law has been routinely sidestepped, disingenuously invoked, and railroaded by increasingly contorted state policies and practice. Fitzpatrick argues that "a crisis exists not because the Convention fails to meet the needs of asylum-seekers, but because it meets them so well as to impose burdens that are no longer politically tolerable to the States parties involved."[77]

One may question the value of an international protection system which is so easily subordinated to contemporary political palatability. Protection obligations which can be easily sidestepped surely cannot be said to be obligations at all. As a consequence, any perceived moral abyss associated with the abandonment of the current system of protection arguably already exists. Since providing protection to everyone who requires it is politically intolerable to Western states, the underlying premise of realignment is the acceptance that some refugees will not receive protection. As a result, an equitable system is needed to decide which asylum seekers are to receive protection and which are not.

Realigning legal provisions to current practice in Western states involves replacing the Convention and the Protocol with a new, declarative legal document. That declaration would reflect the current reality of refugee practice in Western states by redefining a refugee as anyone who, in the opinion of the host state, merited the title; formally declaring that no other state is obliged to protect anyone fleeing harm from their own state; asserting that a host state is under no obligation to provide any form of assistance accorded to its own nationals to refugees residing in its territory; implementing an international lottery system for those seeking asylum; and establishing quotas for the number of refugees accepted by Western states. In addition, states would be encouraged to give priority to women, children, the elderly, those with critical health problems, those fleeing imminent danger, and those with relatively close family already residing

[77] *Supra* Note 17, at 231.

in that state, although these suggested priorities would not be mandatory. None of these proposals accord refugees with protection which is substantively less than that which they are currently accorded in Western states.

Revising the definition of a refugee would end the automatic exclusion of millions of internally displaced persons and others from the international refugee protection framework. A declaration that host states are not obliged to either grant asylum or provide any form of assistance to resident refugees would clarify and expose the socioeconomic situation of many refugees for public scrutiny, and therefore increase political accountability in those states. An international lottery system would not be wholly dissimilar to the current practical reality of asylum-granting in Western states and would ensure equal opportunity for all. A lottery system would also allow for the dismantling of barriers such as accelerated processing and limited appeals, and could overcome access problems by being available to those still residing in their country of origin or those who had yet to reach the border of a Western state. A quota would be based on a formula connected to those criteria identified by the UNHCR as "indicators of host country capacity and contributions", namely the number of refugees to each Gross Domestic Product dollar (by Purchasing Power Parity), the refugee population per 1,000 in habitants, and refugee density per 1,000 square kilometres.[78] Precedent for an internationally recognised arbitrary target exists in the form of the spending commitment of 0.7% of Gross National Income on Overseas Development Assistance (ODA).

This approach will achieve greater long term protection for those fleeing harm: First, an international declaration codifying existing practice would provide much-needed transparency to the international refugee protection system. The provisions of the Convention and Protocol currently offer little, if any, insight into practical reality for many refugees and displaced persons. While this cannot be said to be the purpose of international treaties, and while there will always be some discrepancy between legal provisions and practical realities, there is too much distance between the current provisions and the current reality.

Second, a lottery system would relieve the political pressure on Western states and their bureaucracies to refuse asylum seekers at the point of entry since states would be able to exercise control over how many asylum seekers would be accepted in advance. Formal refugee determinations in their current form would therefore be redundant.

Third, a quota would preserve, and potentially increase, the current number of asylum seekers being accepted by Western states. Although the majority of Western states do not meet

[78] UNHCR. "Asylum trends: Latest monthly data (Excel tables, zipped format)". 6 February 2015. UNHCR.

the 0.7% ODA target, the trend among Western states has been to increase rather than decrease their spending on ODA.[79]

Finally, realigning legal provision to existing practice will serve as a much-needed wake-up call to Western states and their populations. Negative public perception of immigrants generally, and misconceptions of refugees and asylum seekers in particular, greatly influences the political palatability of granting asylum to those seeking it.[80] Although Western states argue that their current policies and practices are legitimate interpretations of their international and domestic legal obligations, and that "genuine" claimants are not turned away, a number of observers note that this is not the case.[81] A stark declaration of the protection, or lack thereof, accorded by Western states to the millions of people seeking it will force Western populations to reconsider their views.

If Western states maintain their collective political and moral apathy, or if they collectively harden their attitudes towards those fleeing harm, then at least Western states' policies and practices will be much more indicative of their populations' ill-informed views on the subject of immigration. If, on the other hand, Western states and their populations stir from their moral hibernation, then there is a glimmer of possibility that Western states' policies and practices in offering protection to those who need it might extend beyond lotteries, quotas, electric fences, and criminalisation. Fixing the currently disastrous international protection system calls for radical solutions. Before they can be found, a basic awareness of the problem among Western populations is a good place to start.

Conclusion

The Convention and the Protocol have been used as political elastic; their provisions have been expanded and contracted when politically convenient. An international treaty system which

[79] OECD Newsroom. "Aid to developing countries rebounds in 2013 to reach an all-time high". 8 April 2014. OECD.

[80] See Le May, R. "What does the Australian public really think about asylum seekers?" 30 July 2012. The Conversation, Australian Associated Press; Jones, J. "Immigration: Britons Want 'Drastic Action'". Sky News, 14 October 2013; Watt, N. "People worry about immigration if they have little contact with migrants". The Guardian, 14 October 2013; Express. "'Britain is overcrowded and we want Government to cut immigration,' says public majority". 14 October 2013; Ipsos MORI. "Attitudes towards Asylum Seekers for 'Refugee Week'". 17 June 2002. Fieldwork 18-22 April 2002 and 2-7 May 2002; and Gill, M. and Crawley, H. "Asylum in the UK: An IPPR Fact File". (London, United Kingdom: Institute for Public Policy Research, 2003). For a discussion on the willingness of Western governments to establish a new international protection regime, see Coles, G. "Approaching the Refugee Problem Today" in Loescher, G., and Monahan, L. (eds.). Refugees and International Relations. (Oxford, United Kingdom: Oxford University Press, 1989), at 383.

[81] See Home Office UK Border Agency in *Supra* Note 51. For evidence of genuine asylum seekers are turned away, see *Supra* Note 46 and Webber in *Supra* Note 51. For a discussion of how Western state practice is interpreted as being representative of law, see El-Enany, N. "On Pragmatism and Legal Idolatry: "Fortress Europe" and the Desertion of the Refugee". Forthcoming (2013), at 6.

is underpinned by a need to protect those fleeing the most extreme harm globally but which is so easily and broadly subject to politically manipulation is not morally meaningful. This article has highlighted the separation between the humanitarian purpose of the Convention and Protocol and their legal provisions and practical reality, both historically and contemporarily. It has argued that realignment of the legal provisions to existing practice in Western states is the only feasible way to begin reducing the considerable harm caused by the status quo. This approach will improve certainty in refugee determinations, increase the transparency of the international refugee protection system, and highlight the true plight of those displaced to Western states.

Western states first drafted a Convention to protect refugees after WWII, but today it is Southern states that shoulder the vast proportion of that responsibility. If Western states were as accommodating as Malawi, for instance, the EU alone could accommodate the total number of forcibly displaced people worldwide with some five million people to spare.[82] Such generosity is not even required, however; if Western states admitted the number of refugees equivalent to just one percent of their population they could easily accommodate the current worldwide refugee population.[83] Yet increasing global inequality matches increasing Western hostility to immigrants; as the continents drift further apart, more fences are erected.

This cold reality suggests that it is no more likely that a realignment of international law to practical reality can fix a broken international protection system than two tethered posts can counteract continental drift. Only a fundamental and critical shift in global tectonics can reverse such a process, just as only a shift of similar magnitude in Western public opinion can start to address global humanitarianism and its connected issues of global inequality and injustice. Western states' collective acceptance of the moral illegitimacy of the current system of international protection may be the gravitational trigger that is so desperately required.

[82] Loescher notes that in Malawi one in every ten persons is a refugee (*Ibid*, at 8). The population of the EU is 503 million (European Union. "Facts and figures: Living in the EU". 1 December 2013) and the total number of displaced persons worldwide is just over 45 million (*Supra* Note 2).
[83] For populations of Australia, Canada, Japan, Russia, South Korea, Turkey, and the United States see The World Bank. "Population (Total)". 1 December 2013. See also European Union in *Supra* Note 82 and *Supra* Note 2.

Statelessness Protections as a Remedy for Protection Gaps in Jordan and India

MIRIAM ACED*
ANWESHA GHOSH**

Abstract:
Migration and asylum have taken on a new character and more communities are finding themselves legally *in limbo*. Taking the examples of Gazans in Jordan and Hindu and Sikh Afghans in India, the authors demonstrate that expanding the UN statelessness regime to cover not only *de jure* statelessness but also *de facto* statelessness (when one possesses a nationality, but lacks an *effective nationality*) would serve as a solution to the plight of communities who have been residing in host states for a generation or more. Further, they argue that the exclusionary exceptions found in the Stateless Convention (as well as the 1951 Refugee Convention) severely compromise the goal of the Stateless Convention's drafters. The authors assert that human rights principles and established international norms on protection should override these protection exceptions.

Key Words: Stateless, refugee, Afghans, Palestinians, India, Jordan, international law, effective nationality, religious minorities

***** *Miriam Aced is a PhD candidate in International Conflict Management as well as a Research Associate to the Franz Haniel Chair at the Willy Brandt School of Public Policy at the University of Erfurt, Germany. Her doctoral research concerns the labelling of Palestinians in the Middle East and organisational change within UNRWA. She holds an LLM degree in International Law with International Relations from the University of Kent and an MA degree in International Business and French from Heriot-Watt University. She is also active in several networks and activist groups relating to critical border and migration studies, anti-Muslim racism and feminism.*

*** Anwesha Ghosh is undertaking doctoral research at the Willy Brandt School of Public Policy, University of Erfurt under the DAAD International Conflict Management Programme. Her current research analyses how the lack of national asylum legislation in India has affected conflict displaced Afghans. She received her M.Phil from the Institute of Foreign Policy Studies, Kolkata and holds a double Masters in Modern History and Development Studies from the University of Calcutta and the University of Rome La Sapienza, respectively. Her book, A Leap Forward: Capacity Building, Education and India-Afghanistan Cooperation, was published in 2014.*

Introduction

More than sixty years ago, the Convention Relating to the Status of Refugees ("1951 Refugee Convention") was ratified, defining the refugee and setting out rights and protections for such persons. To date, the 1951 Refugee Convention has 145 State Parties. It underwent one amendment through the 1967 Protocol Relating to the Status of Refugees ("1967 Protocol"), which "removed geographical and temporal limits of the 1951 Refugee Convention," rendering its coverage global.[1] Due to the particular environment and time in which the 1951 Refugee Convention was drafted–in the aftermath of World War II–several other more fitting regional instruments were later drafted in order to complement the 1951 Refugee Convention, such as the Convention Governing the Specific Aspects of Refugee Problems in Africa (Organization of African Unity) and the Cartagena Declaration on Refugees. In addition, the UN Relief and Works Agency for Palestine Refugees (UNRWA) was created in the Near East a few days after the UNHCR, with a specific mandate focused upon Palestinians.

Despite the existence of numerous international and regional treaties relating to asylum and refugees, there are still many unprotected persons who fall through the legal gaps of established refugee treaties. Many situations exist in which groups of individuals (or their descendants) have fled their conflict-ridden home countries but cannot prove they are refugees under Article 1 of the 1951 Refugee Convention.[2] This has led to an increase in creating alternatives to refugee status that may provide protection, such as extended temporary asylum or subsidiary protection in the European Union.[3] Those persons not protected under an alternative refugee label that are unable to return to their home country due to either a fear of being persecuted or because they will not be admitted back–as is the case with Palestinians wishing to return to or enter the area formerly known as British Mandate Palestine–find themselves legally *in limbo*. As a result, they often live in precarious situations in which access to fundamental human rights is denied.

---

[1] United Nations High Commissioner for Refugees (UNHCR), *Convention and Protocol Relating to the Status of Refugees*, December 2010, available at http://www.unhcr.org/3b66c2aa10.html [accessed 6 February 2015].
To date, the 1967 Protocol has 146 State Parties.

[2] This means they cannot prove that they have fled: "owing to [a] well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion', that they are 'outside the country of [their] nationality' and that they are 'unable or, owing to such fear, [are] unwilling to avail [themselves] of the protection of that country; or [those] who, not having a nationality and being outside the country of former habitual residence as a result of such events, [are] unable or, owing to such fear, [are] unwilling to return to it." UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.refworld.org/docid/3be01b964.html .

[3] For a detailed analysis of alternative refugee labels, see: Roger Zetter, 'More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization', *Journal of Refugee Studies* 20 (2007); Barry N. Stein, 'The Nature of the Refugee Problem', in *Human Rights and the Protection of Refugees under International Law*, ed Alan E. Nash (Halifax: The Institute for Research and Public Policy, 1998), 50.

We argue that the right to a nationality that results in protection (an *effective nationality*[4]) is an international custom, codified in a host of human rights accords. In this paper we further argue that individuals not in possession of an effective nationality should be considered stateless and receive the accompanying protection and relief generally provided to stateless persons. The international statelessness regime, much like the refugee regime, however, excludes certain communities. The importance of the right to an effective nationality should override the exclusionary convention exceptions that exist in the aforementioned international and regional treaties, namely the 1951 Refugee Convention and the Stateless Convention. Denying people access to this right leaves unacceptable protections gaps for both *de jure* and *de facto* statelessness that are a perversion of the intentions of international human rights principles.

In building these arguments, we will first explore the laws on both *de jure* and *de facto* statelessness, as well as their relationship with refugee law. Following this, we will analyse the merit of according equal protection to *de facto* stateless persons as that which is provided to *de jure* stateless persons. Finally, we will bring forth two examples of 'in-between' communities, one which we argue should be able to claim protection as persons of *de jure* statelessness (non-refugee Gazan[5] Palestinians in Jordan), and one which we argue should be able claim protection as persons of *de facto* statelessness (Afghan Hindus and Sikhs in India). We have used a number of primary[6] and secondary[7] sources, both of which guided our legal analysis of the comparison of protection gaps in the two countries.

Conceptualising Statelessness under International Law

A nationality, a genuine link between an individual and a state, is one of the most fundamental possessions an individual should have. Individuals are assured an ambit of human

[4] The term "effective nationality" refers to an individual's genuine link with a state, which results in the enjoyment of the rights linked to nationality under international law. Therefore, when an individual possesses a nationality, but does not have a state which protects her or him, the individual is said to have an ineffective nationality. The International Law Commission even went as far as to say that simply remedying one's legal status from not having a nationality to having a nationality, without taking into consideration whether the rights and protection associated with nationality are granted, could result in creating a *de facto* stateless status.
'Report on Nationality, Including Statelessness by Mr. Manley O. Hudson, Special Rapporteur', Viewed 22 April 2015 http://legal.un.org/ilc/documentation/english/a_cn4_50.pdf , 20.

[5] For the purposes of this paper, we will use the term *non-refugee Gazans*. UNRWA refers to the community of Gazans who fled the Gaza Strip as a result of the 1967 Six-Day-War, who were considered refugees prior to the conflict, as "ex-Gazans". The Agency refers to all Palestinians (those in the Gaza Strip and the West Bank) who were not refugees prior to the conflict as "Displaced Persons". Because this paper deals specifically with Gazans who were not refugees prior to the conflict and who fled specifically to Jordan, we feel that Displaced Persons is not specific enough a term for this discussion.

[6] Statistics from UN agencies and human rights organisations, relevant national and international legislation, and interviews (in the case of India).

[7] News articles, reports from human rights organisations, and legal analyses.

rights and protections by virtue of an effective nationality. Without this right to citizenship, individuals are often rendered legally invisible and "lack the mechanisms to access their rights."[8] The right to a nationality is a matter of customary international law and is included in a host of human rights documents and treaties, including the Universal Declaration of Human Rights (art. 15), the International Covenant on Civil and Political Rights (art. 24), the Convention on the Elimination of All Forms of Racial Discrimination (art. 5(d)(iii)), the Convention on the Elimination of All Forms of Discrimination Against Women (art. 9) and the Convention on the Rights of the Child (art. 7), among others.

The idea of protections tied to an effective nationality was first codified at the beginning of the 20th century when the international community took action in relation to stateless individuals and refugees (sometimes one and the same). After the Second World War, two UN instruments dealing directly with statelessness were put into place: the 1954 Convention Relating to the Status of Stateless Persons ("Stateless Convention") and the 1961 Convention on the Reduction of Statelessness ("1961 Convention"). The former was initially meant to be drafted along with the 1951 Refugee Convention as a protocol, but time constraints and the need to draft a convention to deal with the refugee crisis in Europe led the drafters to leave out the protocol and consider it at a later time.[9]

As its titles suggests, the Stateless Convention aims to "regulate and improve the status of stateless persons,"[10] and protects individuals not considered "as a national by any State under the operation of its law,"[11] otherwise known as *de jure* stateless. This means that individuals who have no nationality–no legal tie between themselves and the state–are considered stateless and thus should have special international protection. The remainder of the provisions in the Stateless Convention are very similar to those of the 1951 Refugee Convention. They set forth a host of rights provided to stateless individuals and the obligations the host states have toward these individuals. These rights include, amongst others, the right to be issued identity and travel documents,[12] and the same rights as any other alien (i.e. foreign national) in the territory to (self)

[8] Maryellen Fullerton, 'The Intersection of Statelessness and Refugee Protection in US Asylum Policy', *Journal on Migration and Human Security* 2 (2014): 145.
[9] Carol A. Batchelor, 'Stateless Persons: Some Gaps in International Protection', *International Journal of Refugee* Law 7 (1995): 232-259; 'RSC Wednesday Seminars 2011: International Law and Statelessness in the 21st Century' last modified 30 June 2014, Viewed 2 July 2014, http://podcasts.ox.ac.uk/rsc-wednesday-seminars-2011-international-law-and-statelessness-21st-century .
[10] Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford: Oxford University Press, 1998), 186.
[11] Art. 1, UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: http://www.refworld.org/docid/3ae6b3840.html .
[12] Art. 28, UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: http://www.refworld.org/docid/3ae6b3840.html .

employment[13], the right to elementary education,[14] and the right to labour legislation and social security[15].

The 1961 Convention aims to reduce cases of statelessness. One of its most important provisions is Article 1(1), which stipulates that states party to the Convention must grant nationality to individuals born on the territory (or after the receipt of an application) if they would otherwise become stateless.[16] Article 9 is also important, stating that no Contracting State may "deprive [a] person or group of persons of their nationality on racial, ethnic, religious or political grounds."[17]

The creation of the statelessness regime was coterminous with that of the refugee regime. At the time of the drafting of these protection regimes, the international community believed that it had largely addressed situations in which people had an ineffective nationality, or no protection. They drafted the 1951 Refugee Convention for persons who were refugees and stateless and the Stateless Convention for persons who were stateless, yet not refugees. When an individual is considered both a refugee under Article 1 of the 1951 Refugee Convention and stateless under Article 1 of the 1954 Stateless Convention, their protection will be ensured under the 1951 Refugee Convention.

Although the Stateless Convention definition of a stateless person is internationally recognised and considered as a matter of customary international law by the International Law Commission[18], it is largely an unqualified legal definition. Batchelor writes of the gaps in international protections that:

---

[13] Art. 17 and 18, UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: http://www.refworld.org/docid/3ae6b3840.html .

[14] Art. 22(1), UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: http://www.refworld.org/docid/3ae6b3840.html .

[15] Art. 24, UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: http://www.refworld.org/docid/3ae6b3840.html .

[16] Art. 1(1), UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: http://www.refworld.org/docid/3ae6b39620.html .
Subsection b of article 1(1), which stipulates an application in order to become a national, was a concession to the delegates of the UN Conference on statelessness who came from countries, whose nationality law is based on the *jus sanguinis* principle.
Takkenberg, *The Status of Palestinian Refugees in International Law*, 192.

[17] Art. 9, UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: http://www.refworld.org/docid/3ae6b39620.html .

[18] The International Law Commission is a commission brought to life by the General Assembly in 1947 whose aim is to 'encourage the progressive development of international law and its codification.'
UN General Assembly, *Statute of the International Law Commission*, 21 November 1947, A/RES/174, available at http://legal.un.org/ilc/texts/instruments/english/statute/statute_e.pdf [accessed 10 July 2014].
Customary international law, created through state practice and *opinio juris* ('the practice is followed out of a belief of legal obligation'), is legally binding even to States not Party to treaties and declarations.
Anthea Elizabeth Roberts, 'Traditional and Modern Approaches to Customary International Law', *The American Journal of International Law* 95 (2001) 757.

> "Quality and attributes of citizenship are not included, even implicitly, in the definition. Human rights principles relating to citizenship are not delineated...This definition is not one of quality, simply one of fact."[19]

In addition, there was wide consensus at the time of drafting these legal instruments, particularly at the 1959 UN Conference on the Elimination or Reduction of Future Statelessness, that *de facto* stateless persons were refugees. Batchelor continues:

> "This is patently clear from the statements of several delegates at the 1959 Conference, one of whom indicated he 'did not understand what stateless persons *de facto* were, if they were not refugees'."[20]

In other words, although government representatives thought they had addressed the range of problems arising from an ineffective nationality, they had made a paramount mistake. They did not qualify the definition of a national with its effectiveness, most likely because nationality was traditionally thought of as concomitant with protection from a state.[21] The result was that only *de jure* stateless persons were covered under the Stateless Convention and the 1961 Convention, and "persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country" were not.[22] Thus, individuals who do not categorically fit the definition of a refugee or of a *de jure* stateless person are left in a legal grey zone.

One could argue that notions of statelessness prior to the signing of the 1951 Refugee Convention and subsequent conventions did make allowances for the international protection of *de facto* stateless people because the notion of 'non-protection' from a state was often the catalyst for protection. The UNHCR has encouraged states to protect *de facto* stateless individuals in its recently published Handbook on Protection of Statelessness.[23] In addition, the Final Act of the Stateless Convention makes implicit reference to *de facto* stateless persons. It recommends that if a state recognises that a *de facto* stateless person is within their territory, this state should "consider sympathetically, the possibility of according to that person the treatment

[19] Batchelor, 'Stateless Persons: Some Gaps in International Protection' 232.
[20] *Ibid*., 250.
[21] Cited in UN High Commissioner for Refugees (UNHCR), *UNHCR and De Facto Statelessness*, April 2010, LPPR/2010/01, available at: http://www.refworld.org/docid/4bbf387d2.html [accessed 10 July 2014], 2.
[22] UN High Commissioner for Refugees (UNHCR), *UNHCR and De Facto Statelessness*, April 2010, LPPR/2010/01, available at: http://www.refworld.org/docid/4bbf387d2.html [accessed 10 July 2014], 61. This definition is not internationally recognised as is the definition of a (*de jure)* stateless person.
[23] UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: http://www.refworld.org/docid/53b676aa4.html [accessed 11 July 2014], 44.

which the Convention accords to stateless persons" (thus offering *de jure* stateless protection) [24] Further, the Final Act of the 1961 Convention "[r]ecommends that persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an *effective nationality*" (emphasis added).[25]

In addition to individuals who legally have a nationality but do not enjoy protection from their state, thus having an 'in-between status,' there is another community of people who lack protection–those that fall within the exclusion clause of the Stateless Convention. This applies to:

> "persons who are at present receiving from organs and agencies of the [UN] other than [UNHCR] protection or assistance so long as they are receiving such protection or assistance."[26]

This provision was put into place in order to avoid double protection and assistance and currently relates only to the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

Keeping in mind the rising number of unprotected individuals and communities who do not fit neatly into a legal category for protection, the authors suggest taking a pragmatic approach to international protection. Presenting this approach will involve analysing two communities which are covered by neither the 1951 Refugee Convention nor the Stateless Convention. Non-refugee Gazans in Jordan are experiencing *de jure* statelessness, but fall into the exclusion clause, and Afghan Sikhs and Hindus are experiencing *de facto* statelessness. Both communities lack effective nationalities and the rights and protection accorded to them under the stateless conventions, which would aid integration into their host countries and assist in putting an end to their precarious situation.

Non-refugee Gazan Palestinians in Jordan: *De Jure* Statelessness

Approximately 750,000[27] Palestinians fled the area previously known as Mandate Palestine due to events resulting from the 1948 Arab-Israeli Conflict. Palestinians fled mainly to

[24] *Final Act of the United Nations Conference on the Status of Stateless Persons*, New York, 28 September 1954, United Nations Treaty Series, vol. 360, No. 5158, p. 118, available at: https://treaties.un.org/doc/Publication/UNTS/Volume%20360/v360.pdf .
[25] *Final Act of the United Nations Conference on the Elimination or Reduction of Future Statelessness*, New York, 30 August 1961, United Nations Treaty Series, vol. 989, No. 14458, p. 250, available at: https://treaties.un.org/doc/Publication/UNTS/Volume%20989/v989.pdf .
[26] Art. 1(2)(i), UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: http://www.refworld.org/docid/3ae6b3840.html . Article 1(2)(iii) points to other reasons for being denied protection under this Convention - having committed serious crimes and being guilty of acts contrary to the purposes of the United Nations.
[27] This statistic remains controversial as statistics differ amongst sources. The UN Agency for Palestine Refugees (UNRWA) claims it was serving needs of around 750,000 Palestine refugees when its operations began in 1950.

the Gaza Strip, the West Bank, Jordan, Lebanon and Syria. Until 1967, the Gaza Strip was administered by Egypt and the West Bank by Jordan. Those who fit the refugee definition[28] set forth by UNRWA were registered with the agency and were (and are) able to benefit from its services (mainly education, health, relief and social services). In 1967, the Six-Day War led Israel to occupy the Gaza Strip, the West Bank and the Golan Heights, and Palestinians in those areas were forced to flee (some for the second time).

This paper focuses on a particular minority within this group: ex-Gazan Palestinians who are not considered registered 1948-refugees[29], who fled to Jordan and who are not considered refugees by UNRWA, and who do not have access to citizenship.[30] These non-refugee Gazans

---

UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Palestine Refugees,* available at: http://www.unrwa.org/palestine-refugees [accessed 6 February 2015].
In UNRWA's first Annual Report of the Director in 1951, John B. Blandford, Jr. noted the following in regards to census taking:
it is still not possible to give an absolute figure of the true number of refugees as understood by the working definition of "a person normally resident in Palestine who has lost his home and his livelihood as a result of the hostilities, and who is in need". If the object had been to establish the true number of Palestinians now in other countries, the results of the census would have been more accurate; but the Agency's mandate was expressly limited to those "in need"…UN General Assembly, *Assistance to Palestine Refugees – Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East: 1951,* 28 September 1951, A/1905, available at:
http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/8d26108af518ce7e052565a6006e8948?OpenDocument&Highlight=0,A%2F1905 [accessed 6 February 2015].

[28] According to UNRWA, a 'Palestine Refugee' is a person: "whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict." Descendants of Palestine Refugees through the male line are also eligible for registration as a refugee.
UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Consolidated Eligibility and Registration Instructions (CERI)*, 1 January 2009, available at: http://www.refworld.org/docid/520cc3634.html [accessed 10 July 2014].

[29] There are no official statistics on how many non-1948-refugee Gazans fled to the East Bank in Jordan. Those approximate statistics that we do have only refer to how many non-1948-refugee Palestinians in general fled to Jordan as a result of the 1967 War. Takkenberg estimates the number of people who fled *at that time* to be around 240,000 people and UNRWA figures from *2013* estimate this to be around 75,000 people.
Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford: Oxford University Press, 1998), 17. 'In Figures' last modified January 2013, Viewed 4 July 2014, http://www.unrwa.org/sites/default/files/2013042435340.pdf .

[30] From 1950 to 1988, Palestinians residing in the West Bank were eligible for Jordanian citizenship. This happened due to the uniting of the East and West Bank in 1950 when Jordan took over administration of the West Bank and East Jerusalem. This was codified with the Jordanian 1954 Law, which stipulates who is eligible for Jordanian citizenship. In it, the following reference is made to Palestinians: "The following shall be considered Jordanian nationals…Any person with previous Palestinian nationality except the Jews before the date of May 15th, 1958, residing in the Kingdom during the period from December 20, 1949 and February 16th, 1954. *Law No. 6 of 1954 on Nationality (last amended 1987)*, 1 January 1954, available at: http://www.refworld.org/docid/3ae6b4ea13.html [accessed 10 July 2014]."
However, the Israeli occupation of the West Bank after the 1967 Six Day War lead to the disengagement of Jordan from the West Bank in 1988 and with it, the loss of Jordanian citizenship and citizenship rights of Palestinians residing in the West Bank who had previously had Jordanian citizenship. (It is important to note, that Palestinians with Jordanian nationality living in the East Bank before 1988 retained their citizenship, although many have also been arbitrarily denationalised since). 'Stateless Again: Palestinian-Origin Jordanians Deprived of their Nationality'

are not considered refugees by the international community, but rather "non-registered persons displaced as a result of the 1967 and subsequent hostilities".[31] Although this group does receive some limited services from UNRWA, the General Assembly made it clear in 1967 and subsequent resolutions that the Agency should only "continue to provide humanitarian assistance, *as far as practicable, on an emergency basis, and as a temporary measure*"[32] (emphasis added).

Jordan's Law No. 6 on Nationality[33], as amended in 1987, declares that a person is only afforded nationality if they are born to a Jordanian father, or, in cases where the father is stateless or his nationality is unclear, if born to a Jordanian mother. This leaves the non-refugee Gazan community (and other Palestinians for that matter) in a position of *de jure* statelessness because they are not eligible for Jordanian citizenship. Ex-Gazans also lack access to Egyptian citizenship because the Egyptian Nationality Law, in the period between the 1948 Arab-Israeli Conflict and the 1967 Six-Day War when Egypt administered and controlled the Gaza Strip, did not allow it. The nationality law enacted through the British Mandate of Palestine ceased to exist with the creation of the State of Israel in May 1948.

Non-refugee Gazans residing in Jordan without citizenship are eligible for temporary passports, renewable every one to two years.[34] However, these Jordanian passports only serve as residency permits and travel documents, not as proof of nationality. In addition, the cost of passport renewal for Palestinians is more than double the cost paid by Jordanian nationals,[35] and

---

last modified 2010, Viewed 10 July 2014, http://www.hrw.org/sites/default/files/reports/jordan0210webwcover.pdf . In doing so, the Jordanian government issued 22 Articles of Disengagement Instructions under which article 2 states: 'Every person residing in the West Bank before the date of 31/7/1988 will be considered as Palestinian citizen and not as Jordanian.' The 1954 Nationality Law was never officially amended. Thus, the reference to Palestinians remains, however, due to the Disengagement guidelines, the reference is made null and void.
National Authorities, *Jordan: Disengagement Regulations for the Year 1988*, 28 July 1988, available at: http://www.refworld.org/docid/43cd04b94.html [accessed 10 July 2014].

[31] UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Consolidated Eligibility and Registration Instructions (CERI)*, 1 January 2009, available at: http://www.refworld.org/docid/520cc3634.html [accessed 10 July 2014].

[32] UN General Assembly, *Humanitarian assistance*, 4 July 1967, A/RES/2252, available at: http://www.refworld.org/docid/3b00f05968.html [accessed 10 July 2014]. This refers to the Gazan and other communities.

[33] Article 3 holds that the following individuals (among others) are eligible for Jordanian nationality: (3) Any person whose father holds Jordanian nationality; (4) Any person born in the Hashemite Kingdom of Jordan of a mother holding Jordanian nationality and of a father of unknown nationality or of a Stateless father or whose affiliation is not established. National Authorities, *Jordan: Disengagement Regulations for the Year 1988*, 28 July 1988, available at: http://www.refworld.org/docid/43cd04b94.html [accessed 10 July 2014].

[34] The Jordanian Law No. 24 of 1973 on Residence and Foreigners' Affairs states that residency permits for foreigners are valid for one year, yet many reports claim that in practice, Palestinians are given two-year permits. *Jordan: Law No. 24 of 1973 on Residence and Foreigners' Affairs*, 1 January 1973, available at: http://www.refworld.org/docid/3ae6b4ed4c.html [accessed 10 July 2014].

[35] 'Stateless Again: Palestinian-Origin Jordanians Deprived of their Nationality,' 47.

renewal is subject to approval by the General Intelligence Department (GID).[36] As a consequence, non-refugee Gazans' access to public services, such as free primary[37] and secondary education and affordable healthcare, and access to work in the public and private sectors, is either non-existent or severely diminished. The ability to travel outside of Jordan is difficult for similar reasons; passports are only temporary, they must be renewed at a high cost, and they are issued and renewed at the government's discretion, sometimes only granted on personal grounds, such as marriage to a Jordanian.[38]

Despite their *de jure* stateless status, non-refugee Gazans are excluded from statelessness protection due to the exclusion clause. The drafters of the Stateless Convention envisioned a quick solution to the Israeli-Palestinian conflict and thought the agencies tasked with finding a durable solution to the conflict, and providing relief and social services to refugees, would do the job.[39] As Guy S. Goodwin-Gill explains:

> "None of the participants in the drafting sessions [of the 1951 Convention] then taking place would likely have predicted that 50 years later, Palestinians would still be without a solution, or that their entitlement to protection would continue to be disputed."[40]

Given the coterminous creation of the statelessness and refugee regime, this explanation can be reasonably applied to the Stateless Convention as well.

The agency tasked with protection, the United Nations Conciliation Commission for Palestine (UNCCP), was established in 1948 by the General Assembly to "facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation."[41] This Commission is no longer functioning due to a lack of international will. UNRWA does not have an explicit protection mandate and, as its full name suggests, it was created in order to provide relief to refugees, not to find durable, permanent solutions to protracted displacement situations. Susan Akram and Guy Goodwin-Gill hold that "[t]he narrow assistance provided by UNRWA contrasts markedly with the protection provided under the

[36] *Ibid*., 3.
[37] Although Jordan is Party to the Convention on the Rights of the Child.
[38] Ibrahim Hejoj, 'A Profile of Poverty for Palestinian Refugees in Jordan: the Case of Zarqa and Sukhneh Camps', *Journal of Refugee Studies* 20 (2007) 122.
[39] Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (Oxford: Oxford University Press, 1998), 93.
[40] Guy S. Goodwin-Gill, Preface to *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, by BADIL Resource Center for Palestinian Residency and Refugee Rights (Bethlehem: BADIL, 2005), vi.
[41] UN General Assembly, *194 (III). Palestine - Progress Report of the United Nations Mediator*, 11 December 1948, A/RES/194, available at: http://www.refworld.org/docid/4fe2e5672.html [accessed 10 July 2014].

UNHCR Statute and the 1951 Refugee Convention."[42] Therefore, the concern that Palestinians would be privileged with double protection is not substantiated. The result is the opposite: they are not eligible for any real protection.

Afghans in India: *De Facto* Statelessness

A combination of structural failure and the rise of Islamic fundamentalist ideology in post-Soviet Afghanistan led to a war of ethnic cleansing after the Soviets left the country in 1989. Religious non-Muslim minorities like Sikhs and Hindus were systematically targeted, forcing many of them to flee Afghanistan. Hindus and Sikhs found incentives to seek asylum in India, born of the ethnic and religious similarities to a segment of the Indian population.

India is neither a signatory to the 1951 Refugee Convention nor the 1967 Protocol, and the Indian government does not officially recognise the Afghan community as refugees. In fact, India lacks overarching legislation to deal with matters pertaining to refugees and asylum seekers in general. This leaves the government to deal with refugees on an *ad hoc* basis. Currently, the government recognises only Tibetans and Sri Lankan Tamils as 'refugees' because recognition of these communities is politically convenient.[43] The UNHCR recognises and offers protection to certain communities like the Burmese, Afghan and Somali refugees and asylum seekers in India. It runs various programmes aimed at providing a favourable protection environment, basic needs and services, and also to encourage community participation and self-management in order to find durable solutions to problems.

It is difficult to estimate the exact number of Afghan refugees living in India, as such a count largely requires statistics tied to the recognised 'refugee' definition. According to UNHCR New Delhi, India hosts 10,442 refugees and 1,107 asylum seekers from Afghanistan, mostly concentrated in and around the capital city.[44] Reports suggest that UNHCR assists over 24,000 urban refugees in India in total, rendering Afghans one of the most represented communities

[42] Guy S. Goodwin-Gill and Susan Akram, 'Forward to Amicus Brief on the Status of Palestinian Refugees under International Refugee Law', *The Palestine Yearbook of International Law* 11 (2000-2001): 193.
[43] Parts of the Tibetan community fled from Tibet to India in the late 1950s and early 1960s after the Dalai Lama was forced to flee due to increasing Chinese control and oppression over Tibet and the Tibetans. Tibetans were subsequently granted refugee status by the Indian Government. Although the Indian government has not provided explicit explanations for this, one could attribute the recognition to poor Indian-Chinese relations brought about through the conflict over disputed borders at the time.
The Sri Lankan Tamil community began fleeing generalised violence in Sri Lanka in the 1980s due to civil war between the government and the Liberation Tigers of Tamil Elam. Tamils were also granted refugee status by the Indian Government. One could attribute this to the Indian Government's dependence on public opinion and maintaining public order in southern India (more specifically the State of Tamil Nadu) where a section of Tamil people were sympathetic towards the secessionist movement in Sri Lanka.
[44] Shuchita Mehta (Senior Communication/Public Information Assistant, UNHCR India) in discussion with Anwesha Ghosh, October 2014.

receiving UNHCR support and protection.[45] Those under UNHCR protection have access to ID cards recognising them as refugees.[46] UNHCR statistics and other reports have also continually confirmed that the religious make-up of Afghan refugees in India is predominantly Sikh and Hindu.[47]

Refugee status determination in India is largely carried out by the UNHCR, after which the Indian government may recognise those who have been issued UNHCR Refugee certificates. Given that UNHCR-recognised refugee status is the only legal protection a refugee may have against deportation or arbitrary detention, the scope and reach of the UNHCR to effectively protect people in India has been very limited. A holistic focus on the deficiencies of the existing UN structure is beyond the scope of this paper. However, literature on the subject attributes the UNHCR's inadequate scope to a lack of sufficient funding for their India office, as well as asylum seekers' limited awareness of the resources and existing facilities available to them.[48]

In the case of communities protected under UNHCR's mandate, refugee status determination ("RSD") is largely carried out by the UNHCR. Refugee certificates issued to those recognised as refugees, after RSD procedures, are subsequently recognised by the Indian government.

Despite India's acceptance of the principle of *non-refoulement*, those fleeing persecution within Indian borders continue to be treated like economic migrants, rather than as a special category of persons in need of international protection. Because no asylum law exists, issues related to refugees and asylum seekers can only be found in Act No. 31 of 1946—the Foreigners Act. However, even this document fails to recognise asylum seekers and refugees as a special category of non-citizens who should be governed differently on account of their special circumstances. The Extradition Act of 1962 is supposed to provide some protection to refugees facing extradition but, more often than not, the refugees' removal falls under the category of

[45] Joint IDP Profiling Service (JIPS), *Urban Profiling of Refugee Situation in Delhi: Refugees from Afghanistan, Myanmar and Somalia and their Indian Neighbours: A Comparative Study*, September 2013, available at: http://fic.tufts.edu/assets/original_Urban_Profiling_of_Refugees_Situations_in_Delhi.pdf [accessed on 6 Feb 2015].
[46] UNHCR certificates enable refugees to acquire temporary residence permits from the Indian authorities and therefore, a right to stay in the country. They also entitle certificate holders to a subsistence allowance and certain other basic services, such as healthcare, education and assistance in the naturalisation process. This clearly puts refugees recognised by UNHCR in a much better situation than refugees who are not recognised.
[47] According to UNHCR, in 2005, there were more than 8,000 Afghan refugees in India. Close to 88 per cent of the Afghan refugee population in the country were Hindu or Sikh. In 2007, there were 9,200 Afghan refugees in India; of whom 8,500 were Hindus and Sikhs. Nayana Bose, *Afghan Refugees in search of Indian Identity*, 19 May 2005, available at: http://www.unhcr.org/428c967e4.html [accessed 6 Feb 2015]. Vivian Tan, *Afghan minorities seek home in India*, 13 December 2007, available at: http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=4761579f4&query=new%20delhi [accessed 6 Feb 2015].
[48] UNHCR's limited capacity is documented by the Ara Legal Initiative, an organisation that gives legal assistance to asylum seekers and refugees: 'Refugee Status Determination (RSD)', Viewed 9 July 2014, www.aralegal.in/rsd .

expulsion rather than extradition.[49] In these situations, the only protection imprisoned individuals have against prolonged detention and deportation (in some cases *refoulement*) is the UNHCR, which advocates for the release of individuals who had, prior to their detention, submitted an application for asylum.

We argue that the Afghan Hindu and Sikh communities in India are *de facto* stateless. In theory, they do have a nationality, the Afghan nationality. However, this particular group does not enjoy an effective nationality, or protection, in Afghanistan. Those religious minorities who came to India after 1992 were victims of widespread discrimination and fled after they had lost virtually everything (property, money, businesses).[50] Therefore, for most, returning to Afghanistan is not an option. In India, the path to gaining full protection is only possible through citizenship. Foreigners lack access to basic rights (such as the right to an education, the right to public employment, protection against arrest and detention in certain cases), which Indian citizens are entitled to by virtue of the Indian Constitution.[51]

The lack of an effective Afghan or Indian nationality, coupled with the cultural and ethnic ties that led Afghan Sikhs and Hindus to seek refuge in India, may lead one to assume that naturalisation would be the best solution. However, due to a complicated bureaucratic processes and bottlenecks in the system, the naturalisation solution can only be realised in the long-term.[52] The Citizenship Act of 2005 stipulates that citizenship can only be acquired by those who have ordinarily (legally) been resident in India for twelve years.[53] Establishing lawful residence can prove difficult for persons who entered India irregularly, especially for those who were fleeing

[49] Anne-Sophie Bentz, 'Afghan Refugees in Indo-Afghan Relation'. *Cambridge Review of International Affairs* 2 (2013): 374-391.
[50] Seven out of eight Gurudwaras of historical value in Kabul were demolished; one that survived became the shelter home for 800 Sikhs who failed to escape. Ashish Bose, 'Afghan Refugees in India', *Economic and Political Weekly* 39 (2004) 43.
[51] *Constitution (consolidated up to 2007)* [India], 26 January 1950, available at: http://www.refworld.org/docid/3ae6b5e20.html [accessed 11 July 2014].
[52] Bose, 'Afghan Refugees in India,' 39-43. UNHCR supports an NGO called the Socio-legal Information Centre (SLIC), which helps refugees in processing applications or acquiring Indian citizenship. As of August 15, 2004, the number of Afghan refugees (mostly Sikhs and Hindus) who had shown an 'expression of interest' was 2,730 (cumulative figure), out of which 1,499 forms were 'initiated'. Finally 538 forms were completed and submitted to SLIC, which defended 430 cases. The next stage was the submission of these forms to the sub-district magistrate (SDM) of the Delhi NCT, which in turn has to submit these cases to the Foreigner's Regional Registration Office (FRRO). The FRRO was supposed to send back these forms to the SDM. Only 376 Afghan refugee cases were submitted to the SDM out of which 115 were pending with the SDM and another 88 were with the FRRO. The cases cleared by the FRRO and returned to the SDM, for forwarding to the deputy secretary passport (DS-PP) were 131, while 35 cases were pending with the DS for forwarding to the Ministry of Home Affairs. The FRRO has to take police clearance at various stages. After all these procedures are completed there are six more steps before the refugee can obtain Indian citizenship.
[53] According to the Foreigners' Division of the Ministry of Home Affairs:[a] person must be living throughout the period of twelve months immediately preceding the date of application and for eleven years in the aggregate in the fourteen years preceding the twelve months. 'Foreigners Division. Ministry of Home Affairs. Government of India', Viewed 9 July 2014, available at http://indiancitizenshiponline.nic.in/citizenshipact1.htm .

persecution. Asylum seekers without proper documentation have only one option for proving their residence status; registration and subsequent refugee recognition by the UNHCR (after which the UNHCR can assist them with bureaucratic procedures). Children born in India to foreign parents also have to satisfy the residence timeframe, as Indian nationality law largely follows the *jus sanguinis* (citizenship by right of blood) principle. Thus, one could theoretically be eligible for naturalisation on one's 12th birthday, but birth registration practices in India are generally very low.[54] If a family is not aware of the paramount importance of receiving a birth certificate, or a certificate is not issued for other reasons, access to the Indian nationality might be impossible.

Those unable to gain protection via the UNHCR are extremely vulnerable, as neither the host country nor the international community demonstrate accountability. Due to lack of capacity or willingness, both the home and the host countries have failed in their moral (and arguably legal) obligation to defend the rights of persecuted and oppressed communities, rendering them *de facto* stateless.

Broadening the Statelessness Regime

The goal of this paper has been to point out deficiencies in international laws addressing refugees and stateless persons. These deficiencies result in many communities living in various *in limbo* legal situations, rendering them susceptible to human rights violations. We have presented examples of two communities which have sought asylum in different host countries. Neither of these communities is eligible for protection under the international refugee regime tied to the 1951 Refugee Convention, either because their case falls within the Convention's exclusion clause (Article 1(D)) or because the community does not meet all requirements for eligibility. In addition, neither of these communities has access to protection under the statelessness regime because they either fall within an exclusion clause or because they do possess a nationality, but not an effective nationality.

Many communities around the world have fallen victim to discriminatory national citizenship laws. In some cases, the only way to gain citizenship is through a father who is a national of the host country in question, as is the case with Palestinians in Jordan. In other cases, such as that of individuals who have fled to India due to persecution or generalised violence, one has to legally reside in the host country for more than a decade in order to be eligible for naturalisation.

[54] Aarti Dhar, 'Births and deaths registration still low in India', *The Hindu*, April 18, 2013, viewed on 24 April 2015, http://www.thehindu.com/news/national/births-and-deaths-registration-still-low-in-india/article4630425.ece.

It is difficult to disagree with the notion that the goal of the Stateless Convention was to ensure international protection to otherwise unprotected communities. The right to a nationality and the principle of *non-refoulement* are clearly established international human rights customs that are important for situations in which people flee persecution. There is a growing recognition that both the refugee and stateless regimes do not sufficiently address all people who need protection.[55] We follow the logic that there are certain fundamental human rights which should override provisions like exclusions to the Stateless Convention. When these exclusions keep individuals from gaining access to rights, which are part and parcel of the Stateless Convention's goals, this legal instrument loses its worth.

The widening of the stateless regime could serve as a practical solution to these communities' ineffective nationality. The drafting history of the 1951 Refugee Convention and the Stateless Convention consistently refer to the lack of effective nationality as a reason for affording communities international protection. When following the effective nationality principle, one can only conclude that the two communities presented in this paper–those who possess a nationality but cannot make use of it (*de facto* statelessness) or those that have no legal access to a nationality (*de jure* statelessness)–should also benefit from the protection offered by the Stateless Convention. Not doing so does "a disservice to the drafters, and…seriously compromise[s] the goal of protection."[56]

REFERENCES

Ara Legal Initiative. 'Refugee Status Determination (RSD). Accessed July 9, 2014. http://www.aralegal.in/rsd.

Batchelor, Carol A. 'Stateless Persons: Some Gaps in International Protection', *International Journal of Refugee Law* 7 (1995): 232-259.

Bentz, Anne-Sophie. 'Afghan Refugees in Indo-Afghan Relation'. *Cambridge Review of International Affairs* 2 (2013): 374-391.

Bose, Ashish, 'Afghan Refugees in India', *Economic and Political Weekly* 39 (2004): 4698-4701.

[55] See e.g. Batchelor, 'Stateless Persons: Some Gaps in International Protection'.
[56] Guy Goodwin-Gill said this in a preface to a Handbook on Protection of Palestinian Refugees in relation to the 1951 Refugee Convention. Although his quote relates to the 1951 Refugee Convention, we consider his message about the meaning and effect of exclusionary provisions to be fitting to the Stateless Convention as well. Goodwin-Gill, Preface, vi.

Bose, Nayana, 'Afghan Refugees in search of Indian Identity'. Last modified 19 May 2005. Accessed February 6, 2015. http://www.unhcr.org/428c967e4.html .

Constitution (consolidated up to 2007) [India], 26 January 1950, available at: http://www.refworld.org/docid/3ae6b5e20.html [accessed 10 July 2014].

Dhar, Aarti. 'Births and deaths registration still low in India'. *The Hindu*, April 18, 2013. Viewed on 24 April 2015. http://www.thehindu.com/news/national/births-and-deaths-registration-still-low-in-india/article4630425.ece .

Emery, Margaret and Ruiz Hiram, 'Descent into Disaster? Afghan Refugees', *Middle East Report* 221 (2001): 16-17.

European Commission. 'Annex 1: Improvement of living conditions of vulnerable Palestine refugees in Jerash Camp'. http://ec.europa.eu/europeaid/documents/aap/2013/af_aap-spe_2013_pse.pdf .

Final Act of the United Nations Conference on the Elimination or Reduction of Future Statelessness, New York, 30 August 1961, United Nations Treaty Series, vol. 989, No. 14458, p. 250, available at: https://treaties.un.org/doc/Publication/UNTS/Volume%20989/v989.pdf .

Final Act of the United Nations Conference on the Status of Stateless Persons, New York, 28 September 1954, United Nations Treaty Series, vol. 360, No. 5158, p. 118, available at: https://treaties.un.org/doc/Publication/UNTS/Volume%20360/v360.pdf.

Fullerton, Maryellen. 'The Intersection of Statelessness and Refugee Protection in US Asylum Policy'. *Journal on Migration and Human Security* 2 (2014): 144-164.

Goodwin-Gill, Guy S., and Akram, Susan 'Forward to Amicus Brief on the Status of Palestinian Refugees under International Refugee Law'. *The Palestine Yearbook of International Law* 11 (2000-2001): 185-260.

Goodwin-Gill, Guy S. Preface to *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, by BADIL Resource Center for Palestinian Residency and Refugee Rights, vi-vii. Bethlehem: BADIL, 2005.

Hejoj, Ibrahim 'A Profile of Poverty for Palestinian Refugees in Jordan: the Case of Zarqa and Sukhneh Camps'. *Journal of Refugee Studies* 20 (2007): 120-145.

Human Rights Feature. 'No Place to Return: Afghan Refugees in New Delhi'. Accessed July 4, 2014. http://www.hrdc.net/sahrdc/hrfeatures/HRF04.htm .

Human Rights Watch. 'Stateless Again: Palestinian-Origin Jordanians Deprived of their Nationality'. Last modified 2010. Accessed July 10, 2014. http://www.hrw.org/sites/default/files/reports/jordan0210webwcover.pdf .

Joint IDP Profiling Service (JIPS) *Urban Profiling of Refugee Situation in Delhi: Refugees from Myanmar, Afghanistan, and Somalia and their Indian Neighbours: A Comparative Study*, September 2013, available at: http://fic.tufts.edu/assets/original_Urban_Profiling_of_Refugees_Situations_in_Delhi.pdf [accessed on 6 February 2015].

Jordan: Law No. 24 of 1973 on Residence and Foreigners' Affairs, 1 January 1973, available at: http://www.refworld.org/docid/3ae6b4ed4c.html [accessed 10 July 2014].

Kunz, Egon F. 'Exile and Resettlement: Refugee Theory'. *International Migration Review* 15 (1981): 42-51.

Kushkaki, S. 'Afghan refugees: the Afghan view'. In *The Cultural Basis of Afghan Nationalism*, edited by Ewan W. Anderson and Nancy Hatch Dupree, 115-121. London and New York: Printer Publishers, 1990.

Law No. 6 of 1954 on Nationality (last amended 1987), 1 January 1954, available at: http://www.refworld.org/docid/3ae6b4ea13.html [accessed 10 July 2014].

Malkki, Liisa H., 'Refugees and Exile: From "Refugee Studies" to the National Order of Things'. *Annual Review of Anthropology* 24 (1995): 495-523.

National Authorities, *Jordan: Disengagement Regulations for the Year 1988*, 28 July 1988, available at: http://www.refworld.org/docid/43cd04b94.html [accessed 10 July 2014].

Roberts, Anthea Elizabeth 'Traditional and Modern Approaches to Customary International Law'. *The American Journal of International Law* 95 (2001): 757-793.

Stein, Barry N., 'The Nature of the Refugee problem'. In *Human Rights and the Protection of Refugees under International Law*, edited by Alan E. Nash, 47-72. Halifax: The Institute for Research and Public Policy, 1998.

Takkenberg, Lex. *The Status of Palestinian Refugees in International Law*. Oxford: Oxford University Press, 1998.

Tan, Vivian, 'Afghan minorities seek home in India'. Last modified 13 December 2007. Accessed February 6, 2015. http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=4761579f4&query=new%20delhi .

UN General Assembly, *194 (III). Palestine - Progress Report of the United Nations Mediator*, 11 December 1948, A/RES/194, available at: http://www.refworld.org/docid/4fe2e5672.html [accessed 10 July 2014].

---, *Assistance to Palestine Refugees – Report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East: 1951*, 28 September 1951, A/1905, available at: http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/8d26108af518ce7e052565a6006e8948?OpenDocument&Highlight=0,A%2F1905 [accessed 6 February 2015].

---, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: http://www.refworld.org/docid/3ae6b3970.html [accessed 10 July 2014].

---, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: http://www.refworld.org/docid/3ae6b39620.html [accessed 10 July 2014]

---, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: http://www.refworld.org/docid/3ae6b38f0.html [accessed 10 July 2014].

---, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.refworld.org/docid/3be01b964.html [accessed 10 July 2014].

---, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: http://www.refworld.org/docid/3ae6b3840.html .

---, *Humanitarian assistance*, 4 July 1967, A/RES/2252, available at: http://www.refworld.org/docid/3b00f05968.html [accessed 10 July 2014].

---, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: http://www.refworld.org/docid/3ae6b3aa0.html [accessed 10 July 2014].

---, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: http://www.refworld.org/docid/3ae6b3940.html [accessed 10 July 2014].

---, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: http://www.refworld.org/docid/3ae6b3ae4.html [accessed 10 July 2014].

---, *Statute of the International Law Commission*, 21 November 1947, A/RES/174, available at http://legal.un.org/ilc/texts/instruments/english/statute/statute_e.pdf [accessed 10 July 2014].

---, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: http://www.refworld.org/docid/3ae6b3712c.html [accessed 10 July 2014].

United Nations High Commissioner for Refugees (UNHCR), *Convention and Protocol Relating to the Status of Refugees*, December 2010, available at: http://www.unhcr.org/3b66c2aa10.html [accessed 6 February 2015].

---, *Expert Meeting – The Concept of Stateless Persons under International Law ("Prato Conclusions")*, May 2010, available at: http://www.refworld.org/docid/4ca1ae002.html [accessed 21 April 2015].

---, *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: http://www.refworld.org/docid/53b676aa4.html [accessed 11 July 2014].

---, *UNHCR and De Facto Statelessness*, April 2010, LPPR/2010/01, available at: http://www.refworld.org/docid/4bbf387d2.html [accessed 10 July 2014].

United Nations Office of Legal Affairs (OLA), 'Report on Nationality, Including Statelessness by Mr. Manley O. Hudson, Special Rapporteur'. Accessed April 22, 2015. http://legal.un.org/ilc/documentation/english/a_cn4_50.pdf .

University of Oxford. 'RSC Wednesday Seminars 2011: International Law and Statelessness in the 21st Century'. Last modified July 2, 2014. http://podcasts.ox.ac.uk/rsc-wednesday-seminars-2011-international-law-and-statelessness-21st-century .

UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), *Consolidated Eligibility and Registration Instructions (CERI)*, 1 January 2009, available at: http://www.refworld.org/docid/520cc3634.html [accessed 10 July 2014].

---, 'In Figures'. Last modified July 4, 2014. Accessed July 2, 2014. http://www.unrwa.org/sites/default/files/2013042435340.pdf .

---, *Palestine Refugees*, http://www.unrwa.org/palestine-refugees [accessed 6 February 2015] /

US Committee for Refugees and Migrants. 'World Refugee Survey 2008. Accessed July 4, 2014. http://www.refugees.org/resources/refugee-warehousing/archived-world-refugee- surveys/.

Co-Ethnicity, Security and Host Government Engagement: Egypt as a Non-Traditional Receiver of Migrants and Refugees

KELSEY P. NORMAN*

Abstract:
Countries in the Middle East and North Africa (MENA) are generally considered transit countries or countries of emigration, though many have recently become countries of migrant settlement. Because 'traditional' migrant-receiving states like those in Europe and North America have found new means of fortifying their borders, countries that migrants and refugees once passed through en route to other locations are becoming destination countries. While this phenomenon is not unique to the Middle East and North Africa, the region's proximity to Europe has meant that nearly all MENA states are experiencing this pattern to some extent. In many cases, migrants and refugees linger in so-called transit countries, often resulting in permanent residence and local integration in urban areas. What determines how these new host governments react to and engage with long-standing migrant populations, and should we expect these responses to be different than in traditional migrant host states?

This paper explores why the academic literature derived from traditional migrant-receiving states may not be entirely applicable for understanding how non-traditional countries of migrant settlement choose to engage with migrants and refugees. Using the case of Egypt and nineteen in-country interviews, this paper identifies and examines the factors by which Egyptian officials permit the presence of long-standing migrants and refugees. Egypt is host to both African and Arab migrants and refugees, but the Egyptian government chooses to actively engage only with certain groups when doing so is perceived as politically advantageous. Specifically, Syrian refugees who share co-ethnic and co-religious ties with the host population face either a more inclusive or more exclusive environment, depending on the domestic political context and the individual or group in power.

*Kelsey P. Norman is a doctoral candidate in the Department of Political Science at the University of California, Irvine where her work focuses on Middle East and North African states as countries of migrant settlement. *The research for this paper was completed while Kelsey was a research fellow with the Center for Migration and Refugee Studies at the American University in Cairo, and supported in part by a Kugelman Fellowship from the Center for Citizen Peacebuilding at the University of California Irvine.*

Introduction

Despite the focus within academic literature on immigration to Western states, approximately half of the world's migration occurs between developing countries (OECD 2011). Many states that have traditionally been considered 'immigrant-sending' or 'transit' countries are actually migrant-receiving countries, or receiving countries by default. The focus on developed countries in immigration literature has resulted in scholars understanding much less about the factors shaping official and unofficial policies relating to migrants and their ability to access rights and services in developing countries.

This focus is partly due to the fact that scholarship and policies pertaining to migration in developing countries distinguish between refugees, who are assumed to be only temporarily residing in host states, and economic migrants, who are presumed to be seeking opportunities in Western countries. These scenarios, however, do not account for the several million refugees and migrants who find themselves lingering in transit states, often for decades. Frequently, these situations results in unplanned settlement in locations intended to be connection points in the larger migratory journey.[1]

The term 'migrant' in developing countries often serves as a blanket term for those who are neither asylum-seekers nor refugees. The category therefore contains individuals who have left their home countries to seek economic opportunities elsewhere (alternatively labelled as 'economic migrants,' 'illegal migrants,' 'undocumented migrants') as well as individuals who consider themselves refugees but do not meet the Officer of the United Nations High Commissioner for Refugees (UNHCR) criteria for an official refugee designation ('rejected refugee applicants'). Recognizing this issue of terminology,[2] the word migrant will be used in this study to encompass both refugees and economic or transit migrants, while the term refugee or asylum-seeker will only be used to refer to those who are recognized as either refugees or asylum-seekers by the UNHCR.

In seeking a better understand the process of integrating migrants who settle in host states, the literature on immigrant integration should, in theory, be more applicable than the literature that deals with temporary refugees or migrants. Yet the literature on immigrant

[1] Hoeffler 2013.
[2] Since the 1990s some migration scholars and international migration bodies have begun advocating for the term 'mixed migration' (Betts 2011). This is because the 'root causes' of migration, such as conflict and poverty, are interrelated, and because it has become increasingly difficult to distinguish between forced and economic migrants in certain movements (Castles and Van Heart 2011). Some individuals will also 'jump' categories in order to obtain work or as they acquire new information concerning legal categories, and both refugees and migrants may use the same networks and smugglers to reach their destinations (*Ibid*). However, because the legal definition of refugee remains one based on political as opposed to economic reasons for fleeing a home state, economic migrants generally do not qualify as refugees (Zolberg et al 1989; de Hass 2007).

integration focuses almost entirely on traditional migrant-receiving states in Europe and North America.[3] In this context, what are the factors that determine how a developing country's government chooses to engage with the migrant populations residing on its territory, and under what conditions is the engagement inclusive or exclusionary?

To explore this question using a case study,[4] this paper turns to the Middle East and North Africa (MENA). This region is of special interest because it has been immediately affected by Europe's increased border securitization over the last two decades. With the exception of Israel, Libya and the Gulf states, all MENA countries are primarily migrant-sending states, and it is only during the last two decades that they have also become receiving states.[5]

This paper examines Egypt in particular, the most populous MENA country, and the host of a sizeable urban migrant population.[6] As acknowledged by a key respondent, the Egyptian government is wholly conscious of the proportion of migrants residing within its territory.[7] Egypt unofficially permits migrants' continued presence through both its inability to successfully prevent migrants from entering the country and the fact that the vast majority of migrants are not deported. This pattern of increased immigration with relatively little repatriation or resettlement makes Egypt a typical case among developing states that are transforming from countries of transit into countries of settlement.[8]

To begin, the paper draws on studies of immigrant integration policy in order to examine why we may expect policies toward migrants in developing countries to differ from those in developed states. It identifies several potential explanations for exclusionary host state responses to migrants, including a lack of state institutional and economic capacity, a fear of increased political unrest or violence as a result of migrant home-state connections and conceptions of state membership distinct from liberal-democratic states.

The paper then turns to an in-depth case study of Egypt. In Egypt, migrant groups from the Horn of Africa—Sudanese refugees and migrants in particular—have been predominant since the 1990s.[9] Continuing conflict in the region and the Arab Spring, however, have also caused a sudden, intermittent rise in the number of migrants and refugees from Iraq, then Libya, and most recently Syria. Using nineteen in-country interviews conducted between October 1 and December 31, 2012 in Cairo, Egypt and three follow-up interviews conducted in January 2014,

[3] Sadiq 2009; Adida 2014.
[4] George and Bennett 2005.
[5] Fargues 2009.
[6] Zohry and Harrell-Bond 2003; Jacobsen, Ayoub and Johnson 2011.
[7] Author Interview: Mansour 2012.
[8] Hoeffler 2013.
[9] Kagan 2002.

the paper examines what factors are important in determining how the Egyptian government engages with long-standing migrant and refugee populations residing on its territory and whether treatment toward co-ethnic/co-religious migrants and refugees varies from treatment toward other groups. In the Egyptian case, co-ethnic migrants are members of other Arab states (i.e. Iraqis, Libyans, Syrians) and co-religious migrants are Muslims, the religion of the vast majority of Egyptians. The paper finds that while the Egyptian policy toward its migrant populations reflects a general ambivalence, the Egyptian state may be willing to engage with co-ethnic/co-religious migrants in either an inclusive manner or exhibit exclusionary treatment, depending on the perceived political benefits.

A Review of Host Government Engagement: Traditional and Non-Traditional Receiving Countries

As host government engagement with migrant and refugee populations is the primary interest for this study, the term 'engagement' requires clarification. In most traditional migrant receiving states, engagement with government recognized immigrants and refugees entails a prescribed, standardized process, and newcomers are generally eligible for government-funded services such as language and cultural adaptation classes, assistance in finding housing and access to social and health care assistance.[10] The extant academic literature on migration and its relationship to citizenship is largely preoccupied with addressing why traditional migrant-receiving states have engagement approaches that are inclusive or exclusive and how these have changed over time.[11] In a review of immigrant incorporation across liberal-democratic states, Freeman argues that while differences exist among these states' immigration programs, the differences appear to be declining. All are now engaged in "fierce competition for highly-skilled temporary workers"[12] and have developed immigration control apparatuses and policies for formalizing the status of resident aliens (ibid). While much attention has been given to this set of liberal-democratic countries as migrant-receivers, we know very little about why non liberal-democratic, developing states choose to engage with their migrants or not.

One reason that responses to migrants in non-traditional countries of settlement may differ from traditional receiving states is that developing countries are more likely to experience political unrest, violence, or civil war.[13] In such events, minority groups may be seen as possible collaborators with neighboring enemies, particularly in cases where the minority is related to a neighboring state by ethnicity or religion, or where a minority is found on both sides of an

[10] Castles and Miller 2003; Freeman 2004; Joppke 2010.
[11] Brubaker 1992; Soysal 1994; Koopmans and Stratham 1999; Hansen 2009, Wallace-Goodman 2014.
[12] Freeman 2004:951.
[13] The relationship between a country's development as measured by indicators like GDP or infant mortality rate and conflict is a highly debated one (see, for example, Holtermann 2012), and not the focus of this paper. Nonetheless, it is recognized that civil conflicts occur disproportionally often in developing countries.

international border.[14] States might also fear that migrants will bring with them the security problems of the regions they flee, creating new dynamics within the host society that lead to other security problems such as crime or the formation of gangs.[15]

Additionally, non-traditional migrant receiving countries may have different conceptions of state membership than those found in many liberal-democratic Western countries. These notions of membership may be based on kinship or ethnicity as opposed to civic membership within the nation-state, resulting in differential treatment toward minority groups or migrants.[16] In Arab states specifically, several levels of membership based on religion, tribal association and belonging within the nation-state overlap to determine an individual's citizenship status.[17] In the last three decades most countries in the world have chosen to supplement traditional *jus sanguinis* citizenship (blood descent) with elements of *jus soli* citizenship (territorial descent) for the children of immigrants.[18] However, *jus soli* plays a very limited role in the attribution of nationality in the Arab world, and generally its acquisition by naturalization is restrictively controlled by legislation (ibid). Parolin explains that in many Arab states citizenship is effectively closed if nationality (*jinsiyah*)[19] is not attributed by paternal descent.

Factors with the potential to mitigate exclusionary or hostile treatment toward non-nationals do exist. For example, many developing countries are guarantors to the same international treaties to which developed states are signatories, such as the 1951 Refugee Convention or the 1969 Organization of African Unity (OAU) Refugee Convention. The ability or willingness of developing states to uphold commitments to migrant rights via provision of state services, however, may be lower than in traditional migrant-receiving states due to a lack of institutional and economic capacity.[20] In addition, the majority of signatories to the 2003 International Convention on the Protection of the Rights of All Migrant Workers and Their Families are developing countries, though assenting to the convention may be more of a means for developing countries to protect their emigrants abroad than to protect migrants residing on their territories.[21] Lastly, the past two decades have seen a growth in the number of international civil society groups that question the status of human rights for non-citizens globally, potentially putting pressure on governments to adopt inclusive policies toward migrants and refugees.[22]

[14] Weiner 2005; Mamdani 2002; Keller 2014.
[15] Adamson 2006.
[16] Kymlicka 2010.
[17] Parolin 2009.
[18] Sadiq 2009; Joppke 2010.
[19] Parolin 2009. In Arabic the word *jinsiyah* literally translates to 'nationality,' though it can be used to denote legal membership in the state in the same way that 'citizenship' is used in English.
[20] Sadiq 2009; Rice and Patrick 2008.
[21] Cholewinski 2005.
[22] Taran 2001; Tactaquin 2013.

From this review, several explanations can be derived for the behavior of non-traditional receiving countries toward migrant and refugee populations. These are: cultural/historical understandings of membership in the state, the host government's international obligations, the presence of non-governmental organizations that provide services and advocate on migrants' behalf, the political and social organization of the migrants themselves, and the host country's domestic politics. While each of these aforementioned explanations has the potential to influence host government policies toward migrants, it is unclear which factors are more significant than others. As all the noted factors are present in the Egyptian case, this particular state offers an opportunity to examine the role each factor may have in a particular developing country context.

Data and Analysis: Egypt as a Migrant Receiving Country

Methodology in brief

Data for this study was collected using nineteen in-country interviews.[23] The first set were conducted between October 1 and December 31, 2012 in Cairo, Egypt while former President Mohamed Morsi was in power, and three follow-up interviews were conducted in January 2014 following the Egyptian military coup.[24] The interview subjects included government officials at the Ministry of Foreign Affairs (which is responsible for the oversight of non-nationals in Egypt), policy planners at the UNHCR and the International Organization for Migration (IOM), directors and staff members at foreign and Egyptian-run NGOs, and migrant community leaders who are the elected heads of community-based organizations (CBOs). Initial interview subjects were established with the help of faculty and staff at the Center for Migration and Refugee Studies (CMRS) at the American University in Cairo, and snowball sampling was then used to acquire further contacts. Policy documents were also examined, specifically those located in the library of the CMRS, as a means to provide contextual background on the institutional history and recent legal framework guiding Egypt's migrant and refugee protection sector.

Migrant Demographics

The actual number of migrants residing in Egypt is uncertain, as the number who officially register with the UNHCR is acknowledged to be only a small fraction of the actual total.

[23] Institutional Review Board approval was obtained for this project on October 3, 2012 (HS# 2012-9054).
[24] A full list of interview subjects is available in Appendix A. Interviews were semi-structured and conducted primarily in English with supplementary Egyptian Arabic when required. With the exception of three interviews, interviews were not tape-recorded at the interview subject's request. Notes were taken during the interview as well as shortly thereafter in a separate location. Interviews lasted between half an hour and two hours.

Table I: Most recent UNHCR figures (January 2015)

UNHCR Official Egyptian Figures			
Type of Population	**Origin**	**Total In Country**	**Of Whom Assisted by UNHCR**
Refugees	Somalia	6,300	6,300
	Sudan	15,000	15,000
	Syria	140,000	140,000
	Various	79,600	9,600
Asylum-Seekers	Ethiopia	2,900	2,900
	Somalia	1,800	1,800
	Sudan	15,500	15,500
	Various	6,700	6,700
	Stateless	20	20
Total		267,820	197,820

Note: The UNHCR publically lists the number of refugees/asylum-seekers residing in Egypt as well as those who are assisted by the UNHCR. The fact that these numbers almost perfectly correlate speaks to the fact that these counts only include those refugees who choose to register with the UNHCR and are therefore underestimates.

For example, though only 15,500 Sudanese refugees are officially registered with the UNHCR, the actual number of Sudanese migrants and refugees residing in the country is estimated to be in the several tens of thousands[25]. The vast majority of refugees and migrants reside in Cairo, though other coastal cities such as Alexandria have become popular locations for refugees hoping to be smuggled to Europe by boat.[26] An important element that makes Cairo an attractive destination for refugees is the existence of a large resettlement program, both through the UNHCR presence (the Middle East regional office and the Egyptian office) as well as private sponsorship programs to Canada, Australia, and the United States.[27] This support system constitutes a strong pull factor for those hoping to be resettled, though the numbers of resettled refugees are very small: an average of only 3,000 per year.[28] Due to this pattern of high inflow and low outflow, Cairo hosts a sizeable urban refugee population.

[25] Jacoben, Ayoub and Johnson (2011) cite another unpublished CMRS working paper that places the number of Sudanese migrants and refugees in Egypt at 55-65,000. See also Grabska 2006; Jacobson, Ayoub and Johnson 2012.
[26] Kingsley 2014.
[27] Grabska 2006; Author Interview: Ayoubi 2012, Simojoki 2012.
[28] Kagan 2011.

International and Domestic Legal Frameworks in Egypt

In general migrants view the UNHCR as the body responsible for handling their affairs, regardless of whether they have official refugee status. Four of the five migrant community leaders interviewed did not believe that the Egyptian state is responsible for migrants, despite Egypt's status as a signatory of numerous treaties promising to protect both refugees and migrants within its borders. When asked about whether the UNHCR was the best body to handle the affairs of migrants and refugees, or whether the Egyptian government might also play a role, one migrant community leader replied, "The government is for Egyptians, the UNHCR is for refugees,"[29] implying that the UNHCR is viewed as a parallel structure to the Egyptian government that serves non-nationals.

As a founding signatory to both the 1951 Convention Relating to the Status of Refugees and the 1969 Organization of African Unity (OAU) Refugee Convention, Egypt has undertaken an international obligation to provide asylum and guarantee rights for refugees.[30] That the government allows the UNHCR and IOM (which sometimes assists in refugee resettlement activities) to operate in Egypt and carry out their organizational activities is in some sense evidence that the state recognizes its responsibilities in ratifying the conventions.[31] Additionally, Egypt's assent has given those mandates teeth in terms of implementation in domestic courts. For instance, The Egyptian Foundation for Refugee Rights (EFRR), an organization founded in 2008 that provides legal aid to refugees in Egypt, claims that the 1951 Refugee Convention constitutes the basis for the majority of their anti-deportation cases.[32]

Nonetheless, *refoulement* and prolonged arbitrary detention remain substantial problems for both migrants and refugees with UNHCR-designated status. The EFRR maintains a network of lawyers throughout Egypt and it will dispatch one of them upon learning that a migrant or refugee has been arrested and taken to a police station. However, if the lawyer cannot reach the migrant or refugee in time, then they can be transferred from local police authority to the state security network and it then becomes more difficult to intervene on the individual's behalf. According to the EFRR's Director, "…the cases with the police are such that after one hour you don't know where that person [the migrant or refugee] can go."[33]

Egypt also entered into the 1951 Refugee Convention with careful restrictions, further limiting the rights of refugees. Egypt claimed reservations to Article 12.1, waiving the responsibility of determining the personal status of refugees, as well as Articles 20, 23 and 24,

[29] Author Interview: Abd Alraheem 2012.
[30] Kagan 2011.
[31] Author Interview: Ayoubi 2012, Simojoki 2012.
[32] Author Interview: Bayoumi 2012
[33] *Ibid.*

which claim that refugees should be afforded equal status to nationals in regards to rationing, public relief and assistance and labor laws/social security, respectively.[34] Egypt's formal reservations make these articles inapplicable for refugees residing on its territory. However, Egypt did not place a reservation on Article 17 of the Convention, concerning wage-earning employment, meaning that refugees are legally allowed to seek employment in the formal sector.[35] Nonetheless, refugees and migrants are still subject to national labor laws that give preference to Egyptian nationals. The Director of one of Cairo's refugee schools, St. Andrews School for Refugees, noted that,

> "…it's not accurate to say that refugees don't have the right to work – they have the same rights as other foreigners in this country. But they have to prove that an Egyptian is not more qualified for the same job."[36]

While such policies are not insurmountable barriers for those foreigners recruited to work in Egypt by employers, the country's high unemployment rate[37] makes it effectively impossible for refugees and migrants to find work in the formal economy.[38]

NGOs, CBOs and Advocacy

In Egypt, both NGOs and CBOs provide migrants with the services they are unable to access as non-nationals and, in some cases, advocate on their behalf regarding the provision of four major services: education, health care, employment and legal aid. Nonetheless, a major factor hindering the reach of NGOs' work is UNHCR funding regulations. Organizations receiving the majority of their core funding from the UNHCR are only able to service eligible refugees, a status that is ultimately determined by the Egyptian government. While the UNHCR conducts refugee status determination (RSD) procedures and resettles refugees with the assistance of IOM and individual embassies, it must have the agreement of the Egyptian government to designate which nationalities are eligible for asylum.[39] The Egyptian government is therefore partly responsible for determining which groups of refugees are eligible for UNHCR-funded services.

[34] Zohry and Harrell-Bond 2003.
[35] Jacobsen, Ayoub and Johnson 2011.
[36] Author Interview: Cameron 2012.
[37] According to the International Labor Organization the unemployment rate (measured as the share of the labor force that is without work but available for and seeking employment) in Egypt was 9.0% in 2010, 12.0% in 2011, and 12.7% in 2012 and 2013.
[38] However, some migrants and refugees have been able to find work in the informal economy. A UNHCR representative interviewed stated that migrants and refugees are known to work in the garment, food, artisanal and industrial sectors, in addition to others who do domestic work in wealthy Egyptian households as cleaners, nannies and drivers (Author Interview: Ayoui 2012).
[39] Author Interview: Simojoki 2012.

Alternatives to UNHCR-funded services exist in the form of privately and religiously funded organizations, but these organizations face a challenging political environment. The turbulence of the three years following the 2011 Egyptian Revolution has created an extremely challenging climate for foreign organizations attempting to work on behalf of non-Egyptians, as well as for migrants. This plays out in several ways. First, since the revolution the Egyptian government has become increasingly critical of foreign NGOs, a change from the years prior to the revolution, when a 'laissez-faire' approach toward such organizations was the norm. According to the director of a school for refugees, "Most NGOs operating in Egypt are unlicensed since the process to officially register with the Egyptian government can take multiple years."[40] The directors of three NGOs attested that the post-revolution Egyptian government has been unwilling to register refugee-based organizations at all, thereby rendering them ineligible for funding.[41] As the director of Refugee Legal Aid Protection (RLAP) noted, "In this kind of environment, there is no space for advocacy, and particularly not for advocacy concerning non-nationals."[42]

In addition to NGOs, CBOs – organized primarily by migrants themselves – are also prevalent in Cairo and often provide a physical location for community meetings and gatherings. They provide language-training, aid for those experiencing difficulties in obtaining service provisions or seeking informal work, and community activities, particularly for children.[43] Yet despite the presence of numerous CBOs, these organizations are fragmented and focused primarily on supporting the individual members of their national communities (i.e. Sudanese, South Sudanese, Eritrean, Central African Republic, etc.). Even for highly organized migrant communities like the Sudanese who have numerous community centers in Cairo for various Sudanese ethnic groups and strong intra-group relations, attempts at advocacy pertaining to status and rights in Egypt have largely been unsuccessful and even violent. In the most extreme case, twenty-six Sudanese refugees were killed by Egyptian security forces after refusing to disband their protest outside the UNHCR offices in the upper-class Cairo neighborhood of Mohandiseen in 2006.[44] Following this incident, the Egyptian government required that the UNHCR move its offices to a remote satellite city located on the outskirts of Cairo in order to avoid future incidents of confrontation and violence.

[40] Author Interview: Turland 2012.
[41] Author Interview: Turland 2012, Bristow 2012, Cameron 2012.
[42] Author Interview: Bristow 2012.
[43] Author Interview: Abd Alraheem 2012, Suliman 2012.
[44] Salih 2006. The protest was organized in objection to the long wait times at the UNHCR regarding Refugee Status Determination (RSD) and resettlement.

When Co-Ethnicity/Co-Religiosity Benefits, and When It Does Not

In Islamic states, religion and state overlap in various capacities.[45] With the exception of Syria, Lebanon, Turkey and Israel, MENA countries declare Islam the state religion, and Islamic law serves as either a principle or a supplementary source of the national legal framework.[46] However, even in states where Islam is specifically mentioned in the constitution, the Islamic character of the state exists in tension with other schools of thinking in regards to membership and belonging; namely pan-Arabism and the modern, secular conception of the nation-state.[47] Abu-Sahlieh[48] argues that while the concept of the modern nation-state appears to have triumphed in regards to citizenship and residence, elements of the other two schools of thought are also present and persistently in tension with each other. In the Egyptian context, limited access to naturalization exemplifies this tension well. Only the children of foreigners born in Egypt who also have paternal Arab or Islamic lineage can be naturalized (National Legislative Bodies 1975).[49]

A preference for co-ethnic and co-religious migrants appeared to underlie the decisions made by the government of former President Mohamed Morsi at the time of initial interviews in late 2012. According to NGOs interviewed during this time period, such a preference was thought to be driving the government's relatively warm reception of Syrian migrants in comparison to the longer-standing population of sub-Saharan African migrants.[50] When President Mohamed Morsi announced in September 2012 that all Syrian migrant children residing in Egypt would be granted enrollment in public schools regardless of UNHCR status and that Syrian families could access Egyptian public hospitals free of charge, the Field Office Manager of Catholic Relief Services noted that this is, "…certainly a service not extended to all

[45] Brown 2002; Hirschl 2010.
[46] Brown et al 2006.
[47] Pan-Arabism refers to the idea that each individual Arab country belongs to a larger 'Arab nation,' and was a prominent ideology at various points and in various forms throughout the twentieth century (Dawisha 2003). Conversely, the idea of 'regionalism' rejects the idea of pan-Arabism and asserts that the modern division of the Arab world into nation-states, and the subsequent rise of individual country-level nationalism (for example 'Egyptian-ness'), is the defining feature of modern Arab countries (Abu-Sahlieh 1996). These different conceptions have implications for groups of migrants residing in MENA countries. As Abu-Sahlieh (1996) asserts, if a purely Islamic conception of the state is adopted then each Muslim is part of the Islamic ummah ('nation') and can travel wherever he or she wants in dar al-islam (the land of Islam), benefiting from the same rights as other Muslims. If the concept of pan-Arabismism is adopted, then Arab citizens benefit from rights that non-Arabs cannot have since they are considered to be foreigners. Lastly, if the concept of the nation-state is adopted, only the citizens of the state can benefit from all the rights while the others are considered as foreigners whatever their religion (Abu-Sahlieh 1996).
[48] Abu-Sahlieh 1996.
[49] It is also officially possible for foreigners who have resided in Egypt for ten consecutive years and who meet several stringent requirements including a legal means of 'earning a living' to apply for naturalization from the Ministry of the Interior, though this process has never been successfully attempted by an African migrant or refugee (Author Interview: Cameron 2012).
[50] Author Interview: Ezzat 2012, Turland 2012.

migrant groups."[51] If Egypt's modus operandi toward other migrant groups is generally one of ambivalence, then this recognition and willingness to offer services to Syrians represented an anomalous break.

According to Parolin's[52] logic, this preference for Syrian as opposed to traditional African migrants is related to the pervasive idea of a common Arab lineage. Yet former President Mohamed Morsi's rhetoric regarding Syrians points to a sectarian ideology rather than co-ethnic or co-religious affinities. Morsi's support of Syrian oppositional forces just prior to his ousting in July 2013 clearly demonstrated a sectarian ideology, as his support resulted in the cutting of diplomatic ties with the Syrian Bashar al-Assad government. On 15 June 2013, two weeks before the Egyptian military coup, Morsi announced at a mass rally in Cairo that he would be closing the Syrian embassy in Egypt and that, "…the Egyptian people and army are supporting the Syrian uprising."[53] Those in support of the Syrian opposition's use of violence also spoke at the rally, calling for jihad to combat the Syrian regime (ibid). Vocalizing support for Syrians in Egypt who had fled the Assad state was therefore likely a means of bolstering Morsi's own support among Islamic factions within Egypt.

Parolin's[54] co-religious/co-ethnic thesis also fails to explain why, following the Egyptian military coup in July 2013, Syrians in Egypt became the subject of a government-organized media campaign that referred to the group as terrorists allied with the Muslim Brotherhood and former President Mohamed Morsi's supporters. While the special treatment - healthcare and access to primary education - extended to Syrian refugees under former President Mohamed Morsi in 2012 and early 2013 was upheld by the subsequent military government, the de facto treatment of Syrians changed dramatically after the June 30, 2013 coup d'état. Amr El Shora, the Medical Coordinator of the Refugee Solidarity Movement, an advocacy body for Syrian refugees, assisted in opening a clinic to assist Syrians requiring medical treatment who were unable to visit Egyptian public hospitals due to harassment or fear of arrest following the military coup.[55] However, beginning in November 2013, the clinic came under attack from Egyptian state security, and El Shora and other staff members were threatened that they would be arrested if they did not shut down the operation.[56]

As a result of the increasingly hostile treatment of Syrians in Egypt, Amnesty International documented a sharp increase in the number of Syrian refugees attempting to escape

[51] Author Interview: Ezzat 2012.
[52] Parolin 2009.
[53] Al-Ahram 2013.
[54] Parolin 2009.
[55] Author Interview: Shora 2014.
[56] Ibid.

to Europe.[57] From January to August 2013, an estimated six thousand Syrian refugees managed to reach Italy by boat from Egypt, a figure that spiked to over three thousand during the period from September to mid-October 2013. Further, Human Rights Watch documented over 1,500 cases of prolonged detainment of Syrian refugees between July and December 2013 in Egypt, as well as hundreds of cases of refoulement to Syria.[58]

Nader G. Attar, a co-founder of the Refugees Solidarity Movement, explained in a January 2014 interview that Syrians have become an "easy target" through which the military government can bolster its security state.[59] Attar explained, "Syrian [migrants] are now like the Muslim Brotherhood, the anti-coup protestors and the other revolutionary activists. All of these are groups that the [Egyptian] state has labeled as security threats so that it can expand its policing apparatus."[60]

Both Morsi and the military leadership's treatment of Syrian refugees underscores the importance of a host government's relationship with a migrant's country of origin and the means by which policies toward migrants can be used for political gain. Importantly, in the case of Syrians in Egypt, it also demonstrates that co-ethnic and co-religious relations with the host population do not always benefit migrants, and that during times of domestic instability these affinities can in fact be harmful.

Conclusion

There are factors present in the Egyptian context that might contribute to the inclusive treatment of migrants and refugees; treaty obligations and the presence of international migration bodies, non-governmental organizations and community-based organizations. However, the Egyptian government's current policy toward migrants and refugees reflects a political climate of distributive interest. In other words, the evidence supplied by this case study suggests that the government will recognize and engage with migrant groups only when doing so is perceived as politically advantageous.

The findings of this paper contribute to the small but growing literature that examines whether or not theoretical understandings of the treatment of migrants, derived predominantly from the experiences of Western Europe and North America, are applicable in the developing country context.[61] The case of Egypt suggests that the extant academic literature may not be entirely applicable for understanding how non-traditional, developing countries choose to engage

[57] Amnesty International 2013.
[58] Human Rights Watch 2013.
[59] Author Interview: Attar 2014.
[60] *Ibid*.
[61] Sadiq 2009, Jayal 2013, Adida 2014.

with migrants and refugees. For example, while the literature on immigrant integration tells us that co-ethnic migrants receive more welcoming or accommodating treatment from the state and its host population,[62] this paper shows that the reverse can also be true. Indeed, co-ethnic or co-religious migrants – in this case Syrians– may actually be at greater risk of exclusionary treatment depending on the domestic political situation. This finding coincides with the recent work of Adida,[63] who also explores migrant treatment and reception in a developing state context. Adida shows that in West Africa cultural similarities between migrant minorities and host communities offer no advantage for integration, and may even heighten the potential for migrant scapegoating and exclusion.

The findings presented in this paper may help to inform our theoretical understanding of host government responses to migrant populations in other developing countries, particularly neighboring Arab states. In order to test the findings presented in this paper and to develop a more nuanced understanding of how host government behavior toward migrants in developing countries functions, further studies of Egypt and other non-traditional receiving states are needed.

REFERENCES

Abu-Sahlieh, Sami A. Aldeeb. 1996. "The Islamic Conception of Migration," *International Migration Review* 30(1): 37-57.

Adamson, Fiona. 2006. "Crossing Borders: International Migration and National Security," *International Security*, 31(1), pp. 165–199.

Adida, Claire. 2014. *Immigrant Exclusion and Insecurity in Africa: Coethnic Strangers.* Cambridge: Cambridge University Press.

Al-Ahram. 2013. "Egypt's Morsi Severs Ties with Syria, Warns of 'Counter-Revolution Violence,'" *Al-Ahram* [on-line] June 15, 2013. Available at: http://english.ahram.org.eg/News/74082.aspx [Accessed January 14, 2014].

Amnesty International. 2013. "We Cannot Live Here Anymore: Refugees from Syria in Egypt." Amnesty International [on-line] October 16, 2013. Available at: http://www.amnestyusa.org/research/reports/we-cannot-live-here-anymore-refugees-from-syria-in-egypt?page=2 [Accessed January 15, 2014].

Betts, Alexander. 2011. *Global Migration Governance*. Oxford: University of Oxford Press.

Bosniak, Linda. 2008. *The Citizen and the Alien: Dilemmas of Contemporary Membership.* Princeton: Princeton University Press.

[62] See, for example, Sniderman et al. 2004.
[63] Adida 2014.

Brown, Nathan J. 2002. *Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government.* Albany: State University of New York Press.

Brown, Nathan J., Amr Hamzawy and Marina Ottaway. 2006. "Islamist Movements and the Democratic Process in the Arab World: Exploring the Gray Zones," *Carnegie Endowment for International Peace*, Carnegie Papers Middle East Series, Number 67.

Brubaker, Rogers. 1992. *Citizenship and Nationhood in France and Germany*. Cambridge: Harvard University Press.

Castles, Stephen and Nicholas Van Heart. 2011. "Root Causes," in Alexander Betts (ed.), *Global Migration Governance,* Oxford: University of Oxford Press.

Castles, Stephen and Mark J. Miller. 2003. *The Age of Migration: International Population Movements in the Modern World,* New York: The Guilford Press.

Cholewinski, Ryszard. 2005. "Protecting Migrant Workers in a Globalized World." Migration Policy Institute [on-line] March 1, 2005. Available at: http://www.migrationpolicy.org/article/protecting-migrant-workers-globalized-world [Accessed April 8, 2015].

Dawisha, Adeed. 2003. *Arab Nationalism in the Twentieth Century*. Princeton: Princeton University Press.

de Haas, Hein. 2007. "Turning the Tide? Why Development Will Not Stop Migration", *Development and Change*, 38 (5) pp 819-841.

Fargues, Philippe. 2009. "Work, Refuge, Transit: An Emerging Pattern of Irregular Immigration South and East of the Mediterranean," *International Migration Review* 43(3): 544-577.

Freeman, Gary. 2004. "Immigrant Incorporation in Western Democracies." *International Migration Review*, 38(3), pp. 945-969.

George, Alexander L. and Andrew Bennett. 2005. *Case Studies and Theory Development in the Social Sciences.* Cambridge: MIT Press.

Grabska, Katarzyna. 2006. Marginalization in Urban Spaces of the Global South: Urban Refugees in Cairo. *Journal of Refugee Studies,* 19(3), pp. 287-307.

Hansen, Randall. (2009). "The Poverty of Postnationalism: citizenship, immigration and the new Europe," *Theory and Society* 38: 1-24.

Holtermann, Helge. 2012. "Explaining the Development–Civil War Relationship." *Conflict Management and Peace Science* 29(1): 56–78.

Hirschl, Ran. 2010. *Constitutional Theocracy*. Cambridge: Harvard University Press.

Hoeffler, Anke. 2013. Out of the Frying Pan into the Fire? Migration from Fragile States to Fragile States. *OECD Development Co-operation Working Paper*. Paris: OECD.

Human Rights Watch. 2012. Egypt: End Sinai Nightmare for Migrants. *Human Rights Watch,* September 5. [on-line] Available at: http://www.hrw.org/news/2012/09/05/egypt-end-sinai-nightmare-migrants [Accessed March 8, 2013].

---2013. "Egypt: Syria Refugees Detained: Coerced to Return." Human Rights Watch [on-line], November 11, 2013. Available at: http://www.hrw.org/news/2013/11/10/egypt-syria-refugees-detained-coerced-return [Accessed January 15, 2014].

Jacobsen, Karen, Maysa Ayoub and Alice Johnson. 2011. Remittances to Transit Countries: The Impact on Sudanese Refugee Livelihoods in Cairo. School of Global Affairs and Public Policy, Working Paper 3. Cairo: The American University in Cairo.

Jayal, Niraja Gopal. 2013. *Citizenship and Its Discontents: An Indian History*. Cambridge: Harvard University Press.

Joppke, Christian. 2010. *Citizenship and Immigration*. Cambridge: Polity Press.

Kagan, Michael. 2002. Assessment of Refugee Status Determination Procedures at UNHCR's Cairo Office 2001–2002. *Forced Migration and Refugee Studies (FMRS)*, Working Paper 1. Cairo: The American University in Cairo.

---2011. Shared Responsibility in a New Egypt: A Strategy for Refugee Protection, *School of Global Affairs and Public Policy*. Cairo: The American University in Cairo.

Keller, Edmond J. 2014. *Identity, Citizenship and Political Conflict in Africa*, Bloomington: Indiana University Press.

Kingsley, Patrick. 2014. "Desperate Syrian Refugees Risk All in Bid to Reach Europe," The Guardian [on-line]. September 18, 2014. Available at: http://www.theguardian.com/global-development/2014/sep/18/desperate-syrian-refugees-europe-mediterranean [Accessed January 14, 2015].

Koopmans, Ruud and Paul Statham. (1999). "Challenging the Liberal Nation-State? Postnationalism, Multiculturalism, and the Collective Claims Making of Migrants and Ethnic Minorities in Britain and Germany." *American Journal of Sociology* 105: 652-696.

Kymlicka, Will. 2010. The Rise and Fall of Multiculturalism? New Debates on Inclusion and Accommodation in Diverse Societies, *International Social Science Journal*, 61(199), pp. 97–112.

National Legislative Bodies. 1975. Arab Republic of Egypt. Law No. 26. Concerning Egyptian Nationality, *Official Journal No. 22*, 29 May. Available at: http://www.refworld.org/docid/3ae6b4e218.html [Accessed September 2, 2013].

Mamdani, Mahmood. 2002. *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*. Princeton: Princeton University Press.

Murphy, Dan. 2012. Egypt moves to defuse crisis over NGO trials. *Christian Science Monitor*, [on-line] February 26. Available at: http://www.csmonitor.com/World/Backchannels/2012/0229/Egypt-moves-to-defuse-crisis-over-NGO-trials [Accessed September 12, 2013].

OECD. 2011. Tackling the Policy Challenges of Migration. *Organization for Economic Cooperation and Development*, Paris: OECD.

---2012. South-South Migration in West Africa: Addressing the Challenge of Immigrant Integration. *OECD Development Centre*, Working Paper No. 132, Paris: OECD.

Parolin, Gianluca. 2009. *Citizenship in the Arab World*. Chicago: The University of Chicago Press.

Rice, Susan E. and Stewart Patrick. 2008. "Index of State Weakness in the Developing World," The Brookings Institution [on-line]. Available at: http://www.brookings.edu/~/media/research/files/reports/2008/2/weak-states-index/02_weak_states_index.pdf [Accessed April 5, 2005].

Sadiq, Kamal. 2009. *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries*. Oxford: Oxford University Press Inc.

Salih, Assad Khalid. 2006. Sudanese Demonstration in Cairo: Different Stands and Different Opinions. In: Sudanese Refugee Protest in Cairo: Community Dynamics and Broader Implications, The 4th Annual Forced Migration Postgraduate Student Conference University of East London, March 18-19, 2006. London: University of East London.

Soysal, Yasemin Nuhoglu, 1994. *The Limits of Citizenship: Migrants and Postnational Membership in Europe*. Chicago: University of Chicago Press.

Sniderman, P.M. L. Hagendoorn, and M. Prior. 2004. "Predisposing Factors and Situational Triggers: Exclusionary reactions to immigrant minorities," *The American Political Science Review* 98(1), 35-49.

Tactaquin, Catherine. 2013. "Migrants' Rights & International Solidarity: Interview with Catherine Tactaquin," *Jadaliyya* (Felicia Gustin, Interviewer) [on-line] January 11, 2013. Available at: http://www.jadaliyya.com/pages/index/9516/migrants-rights-and-international-solidarity_inter [Accessed January 20, 2013].

Taran, Patrick A. 2000. "Human Rights of Migrants: Challenges of the New Decade." IOM/UN International Migration Quarterly Review 38(6), Special Issue 2 [online]. Available at: http://www.migrantwatch.org/Resources/challeges_new_decade.html [Accessed April 5, 2015].

The UN Refugee Agency (UNHCR). 2013. Egypt Fact Sheet. *The UN Refugee Agency (UNHCR)* [on-line] January. Available at: http://www.unhcr.org/pages/49e486356.html [Accessed September 12, 2013].

Wallace-Goodman, Sara. 2014. *Immigration and Membership Politics in Western Europe*, Cambridge: Cambridge University Press.

Weiner, Myron. 1995. *The Global Migration Crisis: Challenge to States and to Human Rights*, New York: Harper Collins College Publishers.

The World Bank. 2015. "Unemployment, Total," World Bank Data [online]. Available at: http://data.worldbank.org/indicator/SL.UEM.TOTL.ZS [Accessed April 5, 2015].

Zohry, Ayman and Barbara Harrell-Bond. 2003. Contemporary Egyptian Migration: An Overview of Voluntary and Forced Migration. *Working Paper C3, Forced Migration and Refugee Studies Programme*. Cairo: American University in Cairo.

Zolberg, Aristide, Astri Suhrke and Sergio Aguayo. 1989. *Escape from Violence: Conflict and the Refugee Crisis in the Developing World*. New York: Oxford University Press.

List of Interview Subjects Cited

***The names of those interviewed for this research that have uncertain migrant status in Egypt were changed in order to protect their identity. Additionally, the names of any government officials interviewed were also changed given the current security and political situation*.

Abd Alraheem, Abdalla. 2012. Director, Sudanese Contemporary Center. Personal Interview, November 23, 2012 in Cairo, Egypt.

Ablahi Abdikarim, Amiin. 2012. Somali Community Leader. Personal Interview, December 6, 2012 in Cairo, Egypt.

Abou El Rous, Mervat. 2012. RSC Deputy Manager at the International Organization for Migration (IOM). Personal Interview, October 6, 2012 in Cairo, Egypt.

Attar, Nader G. 2014. Co-Founder of the Refugee Solidarity Movement. Personal Interview, January 4, 2014 in Cairo, Egypt.

Ayoubi, Ziad. 2012. Livelihood Officer, United Nations High Commissioner for Refugees. Personal Interview, October 17, 2012 in Cairo, Egypt.

Badawy, Ahmed. 2012. Chairman, Egyptian Foundation for Refugee Rights, Personal Interview, October 28, 2012 in Cairo Egypt.

Baron, Nancy. 2012. Director of the Psychosocial Training Institute of Cairo. Personal Interview, October 9, 2012 in Cairo, Egypt.

Bayoumi, Mohamed. 2012. Executive Director, Egyptian Foundation for Refugee Rights. Personal Interview, October 28, 2012 in Cairo Egypt.

Bristow, Shane. 2012. Director, Refugee Legal Aid Project (RLAP). Personal Interview, December 3, 2012 in Cairo, Egypt.

Cameron, Fiona. 2012. Director of St. Andrews School for Refugees. Personal Interview, October 8, 2012 in Cairo, Egypt.

Ezzat, Sherine. 2012. Field Office Manager, Catholic Relief Services. Personal Interview, November 8, 2012 in Cairo, Egypt.

Maloof, Nour. 2014. Coordinator at the Tadamon 6th of October Center. Personal Interview. January 8, 2014 in Cairo, Egypt.

Mansour, Talaat. 2012. Director of Foreigners Department, Ministry of Foreign Affairs, December 13, 2012 in Cairo, Egypt.

Mayer, Rachel. 2012. Unaccompanied Children and Youth Senior Officer, AMERA. Personal Interview, November 5, 2012 in Cairo, Egypt.

Ousmane, Abdoul-Raouf. 2012. Center Coordinator of Student Action for Refugees (STAR). Personal Interview, October 1, 2012 in Cairo, Egypt.

El Shora, Amr. 2014. Medical Coordinator of the Refugee Solidarity Movement. Personal Interview, January 5, 2014 in Cairo, Egypt.

Simojoki, Siobhan. 2012. Project Development Officer at the International Organization for Migration (IOM). Personal Interview, October 6, 2012 in Cairo, Egypt.

Suliman, Mahmoud. 2012. Director, Refugees United for a Peaceful Solution. Personal Interview, November 12, 2012 in Cairo, Egypt.

Turland, Jonathan. 2012. Superintendent at African Hope Learning Center. Personal Interview, October 8, 2012 in Cairo, Egypt.

Politicizing Environmental Displacement: A Four-Category Approach to Defining Environmentally Displaced People

NICOLE MARSHALL*

Abstract:
Despite their rising numbers, people displaced by environmental events receive little formal recognition in international law or policy. This article considers that this may be due, in part, to a failure among the international community—academics, human rights lawyers, and policymakers—to settle on a clear and robust politicized definition of 'environmentally displaced persons' built around the circumstances of their displacement. Without a clear definition of environmentally displaced persons that recognizes the deeply political nature of the challenge they present, this article suggests that the international community will be challenged to afford this vulnerable migrant group the rights and recognition they deserve. The article first engages in a brief analysis of the common trends in conceptualizing and defining environmentally displaced people, particularly as they relate to international refugee law. I argue that the dominant trend is to employ a depoliticized or 'naturalized' understanding of environmental displacement that does not adequately capture its political complexity. I then offer a four-category, politicized approach to understanding environmental displacement that rejects the unhelpful term "environmental refugee" and seeks to capture both the political drivers and the complexity of human displacement driven by climate change.

** Nicole Marshall is a doctoral candidate in the department of political science at the University of Alberta in Edmonton, Alberta, Canada. She has presented her work on the ethics of forced environmental migration at a number of international conferences and public talks, and has been the recipient of more than ten awards, including the Queen Elizabeth II Graduate Scholarship and the Social Sciences and Humanities Research Council's Joseph Armand Bombardier Canadian Graduate Research Fellowship. Nicole has also been recognized for excellence in teaching by both the University of Alberta and student groups.* *She would like to thank her reviewers for their helpful comments on earlier versions of this article.*

Introduction

The island of Tuvalu is being submerged by rising sea levels. So are the Maldives, the Marshall Islands, Kiribati, and a number of other small island states in the South Pacific.[1] Agricultural land is being lost across Africa and Asia to the spread of drought and desertification; the Gobi desert alone sees an annual expansion of up to 10,000 square kilometers of semi-arable land.[2] Storm activity resulting in massive environmental destruction and loss of life is increasingly becoming part of the new normal worldwide. The massive destruction caused by the 2005 hurricane season in the United States that included Hurricanes Rita and Katrina, and 2013's Typhoon Haiyan in the Philippines, which alone took over 6,300 lives, are clear examples of the destructive effects of environmental disasters.[3] The environment is clearly impacting the living conditions of people worldwide in significant and often violent ways.

Yet, while these experiences may be more widespread and increasingly common in the modern era,[4] climatic change resulting in migration is not a new phenomenon. Historical examples are numerous: the Eurasian migration of the Huns, Turks, and Mongols from the first millennium BCE through the thirteenth century AD has been linked to general warming trends.[5] The permanent settlement of Europe and the Americas has been linked to the receding of the last glacial period and the emergence of the land bridge across the Bering Strait.[6] The migration associated with the great American 'Dust Bowl' across the U.S. states of Colorado, Kansas, New Mexico, Texas, and Oklahoma in the 1930s[7] also provides a well-documented example of environmental displacement.

[1] Terry Collins, "As Ranks of "Environmental Refugees" Swell Worldwide, Calls Grow for Better Definition, Recognition, Support" (UNU-EHS, 2005.), http://www.ehs.unu.edu/file/get/3916.
[2] Norman Myers, "Environmental Refugees: A Growing Phenomenon of the 21st Century," *Philosophical Transactions of the Royal Society B: Biological Sciences* 357 (1420): 609-613.
[3] "Typhoon Haiyan/Yolanda Fact Sheet #22," USAID, accessed 10 December 2014, http://www.usaid.gov/haiyan/fy14/fs22.
[4] Bogumil Terminski "Environmentally-Induced Displacement. Theoretical Frameworks and Current Challenges" (Geneva: CEDEM, 2012), accessed 13 April 2015, http://www.cedem.ulg.ac.be/wp-content/uploads/2012/09/Environmentally-Induced-Displacement-Terminski-1.pdf
[5] B. van Geel, N.A. Bokovenko, N.D. Burova, K.V. Chugunov, V.A. Dergachev, V.G. Dirksen, and M. Kulkova, "Climate Change And The Expansion Of The Scythian Culture After 850 BC: A Hypothesis," *Journal Of Archaeological Science* 31/4 (2004): 1735-1742; N. Bokovenko, "Migrations of Early Nomads In The Eurasian Steppe In A Context Of Climatic Changes," *Impacts of The Environment On Human Migration In Eurasia*, (Dordrecht: Kluwer Academic Publishers, 2004), 21-33; Bas. van Geel, "PACT 51- Coastal Estonia. Recent Advances in Environmental and Cultural History" *Review Of Palaeobotany And Palynology* 102 (1998): 313-314.
[6] Clive Ponting, *A New Green History of the World,* (New York: Penguin Books, 2007).
[7] Ethan Goffman, "Environmental Refugees: How Many, How Bad?," *CSA Discovery Guides* June (2006).

When considering contemporary environmental displacement, or migration driven primarily by environmental factors,[8] I believe that there are three key historical developments that can assist in conceptualizing today's associated migration issues and ultimately to define environmentally displaced persons. The first is the increased ability of the sovereign state to strictly regulate migration at and across its borders.[9] The second is the basic calculus of industrialization, rising levels of carbon dioxide, and the resultant climate change that can cause displacement.[10] The third is the knowledge arguably held by the international community[11] that Greenhouse Gas (GHG) emissions affect the rate at which the climate is changing.[12] These developments frame environmental displacement in the contemporary era as an active political challenge in a way that may now make it possible to legally address certain aspects of environmental displacement.

Yet, finding grounds to clearly establish international responsibility to address the challenges of environmental displacement is not without substantial challenges. One of these challenges may stem from the fact that the political nature of environmental displacement is not yet widely recognized or supported in international law or policy. This paper suggests that this lack of political recognition presents a deep and significant challenge to the definition and protection of environmentally displaced persons. International law, in particular, is rooted in a discipline that is challenged to fully conceptualize the political nature of environmental displacement because of its focus on traditional political and institutional causes of forced migration. Therefore, environmentally displaced peoples seem likely to face displacement that falls outside traditional vulnerable migrant pathways as they exist in international law. This political and conceptual problem thus holds significant practical implications: some

[8] There has been debate in the field over what constitutes environmental migration (see, especially, Black 2001). This article accepts the basic premise that to be considered environmental migration, the migration must be driven primarily as a result of environmental factors, as the reader will see. However, it also recognizes a challenge on this point, as clearly delineating environmental factors from other drivers of migration – especially economic ones – is exceedingly difficult (see Jane McAdam, *Climate Change, Forced Migration, and International Law*, (Toronto: OUP, 2012); Richard Black, "Environmental Refugees: Myth or Reality?," UNHCR Working Paper no. 34 (2001). For this reason, this article seeks to apply a contemporary political frame in conceptualizing the problem in relation to anthropogenic climate change.

[9] In general, see Michael S. Teitelbaum and Myron Weiner (Eds.), *Threatened Peoples, Threatened Borders*, (New York: W.W. Norton & Company, 1995); in the context of environmental displacement, see Gregory White, *Climate Change and Migration*, (Toronto: Oxford University Press, 2011); or, Étienne Piguet, Antoine Pécoud, and Paul de Guchteneire (Eds.) *Migration and Climate Change*, (New York: Cambridge University Press, 2011)

[10] Edmond A Mathez and Jason E Smerdon, *Climate Change*, (New York: Columbia University Press, 2009); also, Stephen Gardiner "Ethics and Global Climate Change" *in Climate Ethics*, Stephen M. Gardiner, Simon Caney, Dale Jamieson, and Henry Shue Eds, (Toronto: Oxford University Press, 2012: 3-37)

[11] Particularly after 1900 and the widespread signing of the Kyoto Protocol.

[12] Admittedly, there remains some debate as to the level of human involvement in affecting the current conditions of climate change. My point here, however, is that there is sufficient scientific evidence to support the thesis that human involvement can be said to have contributed, to some degree, to what may or may not have otherwise been a 'natural' period of warming.

environmentally displaced peoples may be displaced from their homes without any clear, legal place to go.[13]

In building this argument, the paper begins by recognizing that one of the first and most pressing challenges in addressing environmental displacement is the lack of a clearly articulated and comprehensive definition of environmentally displaced persons. I suggest that such a definition would better enable lawyers, policymakers and academics to fully understand the challenges presented by environmental displacement and to design appropriate responses. To this end, the paper first explores the ways in which environmental displacement has typically been conceptualized in legal and academic arenas, arguing that dominant trends in both tend to employ a depoliticized, or 'naturalized' understanding of environmental displacement that does not adequately capture its political complexity. The paper primarily focuses on legal frameworks dealing with refugees[14] to illustrate this point, although similar trends are found throughout other areas of international law and domestic (im)migration policies.[15] Following this, the paper provides a short comment on the Post-Katrina United States as an illustration of some of the consequences of a depoliticized understanding of environmental displacement. Ultimately, the paper offers a four-category approach to conceptualizing and defining environmental displacement as a political problem, which I believe is better suited to underpin the needed legal and policy responses in the international community. The categories I offer are *imperative environmentally displaced peoples*, *pressured environmentally displaced peoples*, *temporary environmentally displaced peoples*, and *human-induced environmentally displaced peoples*.

The Conceptual Challenges of De-Politicized Environmental Displacement

Perhaps the most contested area of debate over environmental displacement concerns the definition of environmentally displaced persons themselves. There is substantial contention among academics, policymakers, and experts in international law as to who or what distinguishes environmentally displaced persons from those who are traditionally understood as displaced.[16]

[13] See, for example, Environmental News Service. "Pacific Island Villagers Become Climate Change Refugees". http://www.ens-newswire.com/ens/dec2005/2005-12-06-02.html. 2005.
[14] This framework is arguably the most related framework, at least for cross-border environmentally displaced persons. See Matthew Lister, "Climate Change Refugees," *Critical Review of International Social and Political Philosophy* 17, no.5 (September 3, 2014): 618-34.
[15]For example, see Temporary Protected Status, Immigration Reform [United States] (1990); Temporary Protection Directive [European Commission] (2001); Qualification Directive [European Commission] (2004, renewed 2011); National Disaster Housing Strategy [United States] (2009); National Disaster Recovery Framework [United States] (2011); Aliens Act [Finland] (2004 and amendments); Aliens Act [Sweden] (2005 and amendments); among others, all of which naturalize the role of the environment in terms of its displacing capabilities. More below.
[16] See Jane McAdam, "Swimming Against The Tide: Why A Climate Change Displacement Treaty Is Not The Answer," *International Journal of Refugee Law* 23 (2011): 2-27; Jane McAdam, *Environmental Migration Governance*. Research Paper No. 2009-1. UNSW Law. http://ssrn.com/abstract=1412002; Jane McAdam, *Climate Change and Displacement*, (Oxford: Hart Publishing, 2010).; Jane McAdam, *Climate Change, Forced Migration,*

This paper puts forward that a helpful place to begin attempting to understand how environmental displacement is conceptualized is to look directly to the environmental factors that can cause human migration: sea level rise, drought and desertification, and extreme weather.[17] Sea-level rise is often understood as being directly related to the expected displacement of entire island populations in the South Pacific; desertification is commonly linked to slow-moving migration in desert regions like sub-Saharan Africa; and extreme weather is often linked to the temporary displacement of storm survivors around the world (with Hurricane Katrina in the United States and Typhoon Haiyan in the Philippines being two of the most visible devastations in recent memory). The causes of displacement in each case, however, are also often presented as "natural disasters," which is where I believe much of the literature misses a key element of climate change: its political nature.[18] This 'naturalizing' approach conceptually reduces the driving force of environmental displacement to nature and 'bad luck,' nullifying rights claims in the process. Approaches to protection that link environmental science and displacement are capable of capturing many of the ways in which environmental displacement is experienced, but they do not easily support a rational political platform capable of delineating responsibility for

---

and International Law, (Toronto: OUP, 2012); Jane McAdam, *Climate Change Displacement And International Law: Complementary Protection Standards*. UNHCR: Division of Internal Protection, 2011, http://www.unhcr.org/4dff16e99.pdf.; Jane McAdam, "Conceptualizing Climate Change-Related Movement'. (proceedings of the Annual Meeting of American Society of International Law, 2011), 433-436; Jane McAdam and Ben Saul, "An Insecure Climate For Human Security? Climate-Induced Displacement And International Law," *Sydney Centre For Law* Working paper, 2009, http://sydney.edu.au/law/scil/documents/2009/SCILWP4_Final.pdf; Gaim Kibreab. "Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate," Disasters 21 (1997): 20-38; Richard Black, "Environmental Refugees: Myth or Reality?," UNHCR Working Paper no. 34 (2001); Jon Martin Trolldalen, Nina Borgen, and P.T. Scott, "Environmental Refugees: A Discussion Paper," (Oslo: World Foundation for Environment and Development and Norwegian Refugee Council, 1992); A. Suhrke, "Pressure Points: Environmental Degradation, Migration And Conflict," (Fantoft-Bergen, Norway: Chr. Michelsen Institute, 1992); A. Suhrke, "Pressure Points: Environmental Degradation, Migration And Conflict'. (Occasional Paper Series Of The Project On Environmental Change And Acute Conflict, 3:31 (1993). Toronto and Cambridge: University of Toronto and American Academy of Arts and Sciences.; or, A. Suhrke, "Environmental Degradation and Population Flows," *Journal of International Affairs* 47 (1994): 473-496; Stephen Castles and Mark J Miller, *The Age of Migration*, (Basingstoke [u.a.]: Palgrave Macmillan, 2005).; or Stephen Castles, Nicholas Van Hear, Jo Boyden, Jason Hart, Christian Wolff, and Paul Ryder, *Developing DFID's Policy Approach to Refugees and Internally Displaced Persons*, (Oxford: Refugee Studies Centre, 2005).

[17]Mathez and Smerdon, *Climate Change;* Gardiner "Ethics and Global Climate Change"

[18] François Gemenne has recently argued that the depoliticization and "de-victimisation" of environmental migration has enabled the international community to view this type of migration as a "commodity" that could be solved through environmental policy, rather than as a political problem tied to industrialised countries (see Gemenne, "One good reason to speak of 'climate refugees'," *Forced Migration Review* 49 (2015): 70-71). In response, he advocates for an embrace of the term "climate refugee" or "environmental refugee" to politically frame the experience of environmental displacement by recognizing climate-induced migration as persecution. While I recognize and agree with his diagnosis, I am unconvinced of the effectiveness of applying the term "refugee" to the experience of environmental displacement. I am unconvinced precisely *because* of the deeply-rooted, historic political framing of refugee status, which I believe cannot easily be – indeed, should not be – severed from its current legal understanding. I also note the cross-border limitations that using the term refugee has when seeking to recognize internally displaced environmental migrants. While I agree that the depoliticization of environmental displacement has enabled the international community to avoid its responsibilities to environmentally displaced peoples, I advocate for a particularized, political conceptualization of environmental displacement through the definitions proposed in the final section of this paper.

addressing climate change. Therefore, while others in the migration field have linked climate science directly to displacement,[19] this paper highlights why the political calculus involved in both domestic and international climate change policies is significant for establishing a definition for environmentally displaced persons.

While some contention remains as to the specific details and amounts, there is growing consensus in the scientific community that GHG emissions are linked to global warming and the processes of climate change that are expected to cause mass human displacement. Some academics have connected this fact to responsibility, particularly for Western countries, stemming from industrialization in the early 1900s.[20] However, I believe the clearer calculus lies in economic and environmental policies emerging in a post-Kyoto era, where it cannot be argued that states were unaware of the climatic effects of their political choices. Leaving specific calculations for work elsewhere, here it is sufficient to mention this knowledge because it places a political frame around climate change displacement. Within this frame it can accurately be argued that states supporting policies that have enabled GHG emissions since 1990 have knowingly contributed to the conditions of climate change that are now threatening mass displacement.[21] This is significant, because it can conceptually move experiences of environmental displacement from the arena of displaced persons simply being in the wrong place at the wrong time toward a consideration of a political calculus. This move may offer legal remedies for the displaced related to forms of liability and negligence.

Yet, this is not to suggest that environmental displacement is not currently politicized in any form. The recent documentary *Climate Refugees* (2010) and a number of text and media sources provide illustrations of some of the primary ways in which the migration of environmentally displaced peoples are increasingly being politicized by the international community, with migrants targeted as security threats to geopolitical stability and domestic immigration controls.[22] This politicization (tied to security), however, is happening alongside a depoliticization of the causes of environmental displacement and any related rights or responsibilities, especially those that could have similarities to refugee rights.

---

[19] For example, see El-Hinnawi, "Environmental Refugees"; McAdam, "Conceptualizing Climate Change-Related Movement'; Black "Environmental Refugees: Myth or Reality?"; or Kibreab, "Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate, " A. Suhrke, "Environmental Degradation and Population Flows," *Journal of International Affairs* 47 (1994): 473-496; or El-Hinnawi, "Environmental Refugees," (Nairobi: United Nations Environment Programme, 1984).

[20] Raphael Narwrotzki. "Climate Change and Moral Responsibility," *Ethics, Policy, and Environment* 17 (March 2014): 69-87.

[21] See also Johnson, "Ethics, Public Policy, And Global Warming".

[22] *Climate Refugees*. 2010. Film. Michael Nash. Also see: Thomas Homer-Dixon. 'Environmental Scarcities And Violent Conflict: Evidence From Cases'. *International Security* 19 (1994): 5; Millennium, Project. 2011. 'Environmental Threat Matrix'. *Millennium-Project.Org*. http://www.millennium-project.org/millennium/es-3thr.html.

Gaim Kibreab suggests that the very concept of "environmental refugees" may be connected to the agenda of some policymakers in the Global North who seek to further restrict asylum laws and procedures.[23] Kibreab claims that the term was "invented at least in part to *depoliticise* the causes of displacement, so enabling states to derogate their obligation to provide asylum."[24] Current international law does not require states to provide asylum to those who are displaced by environmental degradation, and therefore labeling migrants as environmental refugees enables the governments of the Global North to exclude them from consideration for the protections offered to refugees.[25] Highlighting the environmental nature of displacement moves the migration experience from one that may trigger claims for asylum and rights under international law to one that legally triggers nothing.

I agree that environmental migration is widely "depoliticized" in both international law and policy.[26] Yet, Kibreab's reasoning does not entirely fit with the thrust of the developing literature on forced environmental migration. For example, Richard Black argues that Kibreab's analysis does not correspond with the fact that much of the academic literature on the migration of environmentally displaced persons argues for an *extension* of asylum law and/or humanitarian assistance to include them (indicating a clear realization that these persons are not considered refugees, or protected as such), not its contraction or their exclusion.[27] Overall Kibreab's claim would stand up better if the bulk of the academic literature on defining environmental displacement consistently endorsed a differentiation between the political or economic causes of migration and those resulting exclusively from environmental factors, rather than conceptually conflating the two, as academics such as Norman Myers, Andrew Simms, and others tend to do.[28] Therefore, while I agree with much of Kibreab's analysis, I suggest that part of the reason that we might see a depoliticization (and rejection) of environmentally displaced peoples' rights is that the environment is often conceptually understood as a 'natural' element. To illustrate this point, I will look to specific examples in international law.

---

[23] Kibreab. "Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate,"
[24] Kibreab. "Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate," 21, italics added
[25] Kibreab. "Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate," 21-22.
[26] For example, see TEITIOTA v THE CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS INNOVATION AND EMPLOYMENT [2013] NZHC 3125 [26 November 2013] ; Organization of African Unity Convention (1969); the Cartegena Declaration (1984); Temporary Protected Status, Immigration Reform [United States] (1990); Temporary Protection Directive [European Commission] (2001); Qualification Directive [European Commission] (2004, renewed 2011); National Disaster Housing Strategy [United States] (2009); National Disaster Recovery Framework [United States] (2011); Aliens Act [Finland] (2004 and amendments); Aliens Act [Sweden] (2005 and amendments); among others, all of which naturalize the environment in terms of its displacing capabilities.
[27] Black. "Environmental Refugees: Myth or Reality?" 11-12; also see Trolldalen et al. "Environmental Refugees: A Discussion Paper," 23.
[28] Also see CRIDEAU and CRDP. 2008. *Draft Convention On The International Status Of Environmentally-Displaced Persons*. , University of Limoges: Revue Européene de Droit de l'Environnement; Bonnie Docherty and Tyler Giannini, "Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees," *Harvard Environmental Law Review* 33 (2009): 349, 350, 373.; or 'A Convention for Persons Displaced by Climate Change'

Environmentally Displaced Peoples and International Refugee Law

International and Regional Refugee Law: Environmental Displacement as Political Displacement

I believe the basic conceptual challenge I have highlighted is most evident in the relationship between environmentally displaced peoples and the discourse and documents of refugee law. Here, I will show that while the refugee is conceptualized politically as a function of the state and its actions or inactions, environmentally displaced persons are not conceptualized by this logic, despite having some similar practical experiences.[29]

Under international law, there is no clear definition of environmentally displaced persons. There is, however, case law which clearly tells us what environmentally displaced peoples are not: refugees.[30] Indeed, human rights scholars tend to agree that the term environmental refugee is legally misleading, if not also detrimental to both the status and availability of rights made available to Convention refugees.[31] The problem with extending refugee status to environmentally displaced persons can be found in the politicized, state-centered understanding of "persecution" under the 1951 Refugee Convention definition, which does not encompass environmental events. Yet, as the reader will see, the conceptual divide regarding the definition of persecution is not entirely justifiable due to states' continued commitment to policies that perpetuate GHG emissions and, thus, accelerate climate change and migration.[32] The widespread depoliticized understanding of environmental displacement enables this false dichotomy while conceptually naturalizing the displacement experience and reducing it to bad luck.

Teitiota v. The Chief Executive of the Ministry of Business Innovation and Employment (NZHC 3125 [26 November 2013] presents a clear example of what I call the depoliticized framing of environmental displacement based in international law, which positions the environment as a passive, naturalized, displacing factor, and persecution as an act that can only be imagined as related to the state's action or inaction. This precedent-setting 2013 case involved Iaone Teitiota seeking refugee status in New Zealand for himself and his family on the grounds that his home, Kiribati, was unfit for return due to rising sea levels and increasing salination. This case was the first of its kind to rule on the legal standing of environmentally

[29] See Lister "Climate Change Refugees" on the similarities between environmentally displaced peoples (particularly those from 'sinking' island states) and refugees.
[30] Teitiota v MBIE [2013] NZHC 3125 [26 November 2013].
[31] See McAdam "Swimming Against The Tide: Why A Climate Change Displacement Treaty Is Not The Answer;" Lister, "Climate Change Refugees"; *or,* McAdam, *Climate Change, Forced Migration, and International Law* for an excellent discussion.
[32] Jamieson, 'Ethics, Public Policy, And Global Warming'; Mathez and Smerdon, *Climate Change;* Gardiner "Ethics and Global Climate Change".

displaced persons under international law.[33] In his ruling, Justice Priestly significantly noted that the legal definition of refugee is not limited to the one offered in the 1951 Refugee Convention, but can be expanded and defined as "a person driven from his or her home to seek refuge, especially in a foreign country, from war, religious persecution, political troubles, natural disaster, etc."[34] Nonetheless, he found that he was unable to grant refugee status to Teitiota because of the Convention's strict definition of "persecution," a factor required for legal refugee status, which is defined as "the sustained or systemic violation of basic human rights demonstrative of a failure of state protection."[35] Thus, while Justice Priestly recognized that climatic disasters could cause refugee-like displacement, they cannot trigger refugee rights under international law because the persecution threshold is not met.

Teitiota v. The Chief Executive of the Ministry of Business Innovation and Employment is not the only example of the possible depoliticization of environmental migration supported by international refugee law. Regional frameworks also raise similar questions about how persecution, disturbance, or threat, define who can and cannot be classified as a refugee or protected person. The OAU Convention, for instance, defines refugees as people who are displaced by "events seriously disturbing the public order," which has raised questions as to whether this may include natural disasters or other environmental processes.[36] Edwards, for one, is unconvinced that states utilizing the OAU Convention would have an interpretation that environmentally displaced persons are refugees.[37] This, Edwards claims, is because states rarely declare their intent to act pursuant to their OAU Convention obligations when accepting or rejecting refugee claims and because the general practice of hosting environmentally displaced people would rather be likely to be seen as contributing to the development of temporary protection on humanitarian grounds under customary law.[38] [39] According to Walter Kälin, the same challenge would likely apply to the Cartagena Declaration.[40] Article III defines refugees as having "fled their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or

[33] This decision was passed in New Zealand, and was the first of its kind. In this, it had the capacity to set precedent among common law states (New Zealand, Australia, Canada, and the United States often draw precedent from each other legal decision-making, as is common for states of the historical British Commonwealth: see "The Impact of Foreign Law on Domestic Judgments," *Law Library of Congress* (2015), http://www.loc.gov/law/help/domestic-judgment/index.php).
[34] Teitiota v. MBIE 2013, 9.
[35] Teitiota v. MBIE 2013, 8.
[36] Alice Edwards. 'Refugee Status Determination in Africa'. *African Journal of International and Comparative Law* 14 (2006): 225-7; James C. Hathaway. *The Law of Refugee Status*. (Butterworths 1991); Walter Kälin. 'Conceptualising Climate-Induced Displacement'. In *Climate Change and Displacement: Multidisciplinary Perspectives*, (Portland, Oregon: Hart Publishing, 2010).
[37] Edwards 'Refugee Status Determination in Africa', 225-227.
[38] Edwards 'Refugee Status Determination in Africa', 227.
[39] Jane McAdam tends to agree, holding little faith in regional conventions to consistently provide reliable protection for EDPs (see Jane McAdam, *Climate Change, Forced Migration, and International Law*, (Toronto: OUP, 2012), 49).
[40] Kälin. 'Conceptualising Climate-Induced Displacement', 88-89.

other circumstances which have seriously disrupted the public order." Kälin highlights the difficulty in pinpointing climate change as the primary motivator in a sufficiently meaningful way so as to be able to consistently and reliably extend refugee rights to environmentally displaced persons.[41]

Jane McAdam further points to the key difference between the 1951 Refugee Convention and regional documents like the OAC Convention and the Cartagena Declaration, in regard to their primary failing as potential protection documents for environmentally displaced persons. While the former "assesses the risk of potential future harm, both regional instruments seem to require evidence of an *actual* threat; protection is premised on having already been compelled to leave because of it."[42] She therefore argues that their ability to offer pre-emptive migration protection is limited.[43]

By my own analysis, the framing of both of these regional documents further serves to illustrate the depoliticized (or naturalized) conceptualization of the environment in international law, where legitimate displacement is understood primarily as a political failing of the state that has resulted in (politically-framed) civil disorder. This point underscores the importance of the political framing of environmental displacement to clearly conceptualize the challenge environmentally displaced peoples present to the international community. In many ways, we can clearly understand environmental displacement as a deeply political experience, conceptually similar to that of political displacement: people are displaced due to circumstances that are largely beyond their control, but which can be traced to action/inaction on the part of the international community (particularly, as noted, since 1990). Yet, where Kibreab might locate the protection problem in the adding of 'non-political' migrants to a politically-defined group with access to protection (refugees), I offer that the protection problem may lie in the failure to recognize, or the ambition to obscure, the political nature of environmental displacement as it exists today. Even in a case where the intellectual separation between 'political' and 'non-political' causes of displacement is challenged (*Teitota*), the international community fails to offer protected status.

Rejecting Refugee Discourse for Environmentally Displaced Peoples

Despite the fact that the 'environmental refugee' does not legally command refugee status, the term still holds a commanding presence in the field.[44] The term 'environmental

[41] Kälin. 'Conceptualising Climate-Induced Displacement', 88-89.
[42] McAdam, *Climate Change, Forced Migration, and International Law,* 49.
[43] McAdam, Climate Change, Forced Migration, and International Law, 49.
[44]For example, see Lister "Climate Change Refugees"; or Diane C. Bates, "'Environmental Refugees? Classifying Human Migrations Caused By Environmental Change," *Population and Environment* 23 (2002): 465-477.

refugee' may be seductive, as Kibreab suggests, because it can be used to limit protections,[45] but perhaps also because refugee status holds substantial weight in international law and policy due to its associations with a comprehensive set of special rights and protections.[46] The challenge with an approach that adheres a position of limited protection (environmentally displaced person) to one that has an established set of protections (refugee), as we have seen, is that the practical conditions of environmental displacement do not actually align with the legal definition of a Convention refugee. Thus, terms like 'environmental refugee' can lead to legal and political confusion regarding the rights offered to environmentally displaced persons. This may lead to a notion of environmentally displaced persons where the multifaceted nature of this kind of displacement is problematically collapsed into one which is only capable of understanding a small portion of the environmentally displaced: those who are cross-border migrants.[47] This is particularly problematic because the vast majority of environmentally displaced persons do not, or are not able to, leave their countries of origin.[48] By attempting to create a linkage between environmental migrants and refugees, it is only made clearer that even if environmentally displaced peoples were included under the 1951 Refugee Convention, more than half would be left without sufficient protection.

Recognizing that prescribing refugee rights for environmentally displaced persons would be inadequate, McAdam has argued that a collaborative approach would be better suited to protect their rights. She argues that existing laws are largely sufficient to protect people displaced by environmental causes, under a combination of the 1951 Refugee Convention, the Guiding Principles on Internal Displacement, international environmental law, regional refugee instruments such as the 1969 Organization for African Unity Convention and the 1984 Cartagena Declaration, and international humanitarian law, particularly as it applies to disaster response.[49] Yet, even here, this approach misses an opportunity to highlight international responsibility: in as much as climate change can be clearly understood as having a political, causal element since 1990, environmental displacement resulting from the processes of climate change should be understood as a political problem, encapsulated by political responsibility. Underscoring McAdam's concerns, this approach further lends itself to the logic of liability in the legal profession, which is capable of supporting legal rights claims where 'natural' disasters, or 'bad luck,' are political rather than natural events.

[45] Kibreab. "Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate," 21-22.
[46] Particularly, see Bates, "Environmental Refugees? Classifying Human Migrations Caused By Environmental Change".
[47] See Black, "Environmental Refugees: Myth or Reality"; McAdam , *Climate Change, Forced Migration, and International Law*.
[48] International Organisation for Migration and Refugee Policy Group. 1992. *Migration and The Environment*. Geneva and Washington, DC: IOM/RPG.
[49] McAdam "Swimming Against The Tide: Why A Climate Change Displacement Treaty Is Not The Answer,"; McAdam, *Climate Change, Forced Migration, and International Law*. An exception here, drawn from the latter source is with regards to pre-emptive migration.

Rejecting Concepts, Rejecting People: Some Consequences of Depoliticization for Environmentally Displaced Peoples

Beyond the legal and conceptual challenges of defining environmental displacement as political, the challenges of enacting protections are also significant. To date, most industrialized states have done little to recognize the challenge of protecting any set of rights for environmentally displaced persons.[50] The same can be said of a number of international organizations, such as the United Nations High Commissioner for Human Rights (UNHCR) and the Internal Displacement Monitoring Centre (IDMC), neither of which accept responsibility for the protection or monitoring of environmentally displaced peoples.[51] There are several possible explanations for their lack of action, including a lack of resources or lack of consensus as to who, specifically, should receive recognition as environmentally displaced persons.[52] After all, almost all instances of environmental displacement are exacerbated by the challenges presented by poverty,[53] race,[54] gender,[55] or other experiences of marginalization. When coupled with the perseverance of inaccurate, over-simplified, or even well-meaning 'environmental refugee' discourse, the extension of suitable rights or recognition to environmentally displaced persons becomes an increasingly difficult and ambiguous task.

Environmentally displaced persons experience the consequences of the discord over the definition of environmental displacement. One particularly distressing example of an ineffective

[50] To date, only a small number of states have directly sought to address the challenge of environmental displacement through legislation (particularly: Sweden, Norway, and Finland lead this group). The Nansen Initiative has sought change through the development of a state-led, intergovernmental response to what it recognizes as a protection gap for Environmentally Displaced Peoples (Nansen 2015). It was launched in 2012 by Switzerland and Norway with the goal of building consensus around a Protection Agenda to address the needs, of cross-border EDPs in particular, specifically by building from a series of intergovernmental and civil society consultations in the Pacific, Central America, the Horn of Africa, Southeast Asia, and South Asia (Nansen 2015). The results of their findings are currently being consolidated, and are planned for global intergovernmental consultation in Geneva, in October 2015 (Nansen 2015).

[51] See Sheila Murray, "Environmental Migrants And Canada's Refugee Policy," *Refuge* 27 (2011): 89-102.

[52] For example, in 2004 McNamara conducted a set of 45 interviews with United Nations ambassadors and senior diplomats regarding "environmental refugees." Her research revealed that as a result of a general lack of discursive consensus, common language and shared definitions, the issue of forced environmental migration was pushed to the periphery of UN discussions and policy initiatives, as key members felt unable or unwilling to take on such a large and undefined problem (Karen Elizabeth McNamara. 'Conceptualizing Discourses on Environmental Refugees At The United Nations'. *Population And Environment* 29 (2007): 12-24).

[53] See, for example, Alisson Flâvio Barbieri and Ulisses E.C. Confalsonieri, "Climate change, migration, and heal in Brazil," *in Étienne Piguet, Antointe Pécoud, and Paul de Guchteneire (Eds.) Migration and Climate Change:* 49-73; or, Allan Findlay and Alistair Geddes, "Critical views on the relationship between climate change and migration some insights from the experience of Bangladesh," *in Étienne Piguet, Antointe Pécoud, and Paul de Guchteneire (Eds.) Migration and Climate Change:* 138-159.

[54] Sarah R. Lowe, Kara Lustig, and Helen B. Marrow, "African American Women's Reports of Racism during Hurricane Katrina," *New School Psychology Bulletin*. 8(2) (2011): 46–57.

[55] Lori M. Hunter and Emmanuel David, "Displacement, climate change, and gender," *in Étienne Piguet, Antointe Pécoud, and Paul de Guchteneire (Eds.) Migration and Climate Change:* 306-330.

"collaborative approach"[56] to dealing with environmental displacement and environmentally displaced persons, suggested to varying degrees by both the UN and scholars like McAdam, is the United States' efforts to avoid labelling Hurricane Katrina survivors as internally displaced persons (IDPs).[57] Cohen argues, and I agree, that a lack of political will on the part of the United States' government to recognize that the global nature of environmental displacement could include their own population accounts for some of this ineffectiveness. I also suggest that the ineffectiveness of the collaborative approach is significantly enabled by a depoliticization of environmental displacement by the international community.

In 2005 Hurricane Katrina made landfall in the southern United States, causing massive destruction, killing more than 1,800 people, and displacing countless more.[5859] After the devastation, the United States' government "settled on every possible description of those uprooted by Hurricane Katrina except IDPs,"[60] according to Cohen's study following media and official governmental releases. She found that Katrina survivors were described as "evacuees," "disaster victims," and even "refugees," (here, depoliticized due to the obvious misuse of the term). Such framing naturalized and depoliticized the cause of their displacement. According to Cohen, this depoliticization was related to the American government's conceptual view that displaced peoples are not produced in their own developed and democratic country, but are rather the result of conflict elsewhere in the world.[61] Further, the United States' discursively depoliticized approach may not have been as widely criticized by the international community as were other problematic aspects of their reaction to the crisis,[62] because Katrina survivors did not clearly fit the common international conception of displaced people as those whose migration is the result of political state action or inaction, or civil unrest.[63] This point further underlines the ineffectiveness of assigning traditional labels in the context of environmental migration, in part due to the discursive baggage associated with them (i.e. the notion that IDPs do not exist in developed countries). Furthermore, the failure to recognize environmental displacement as internal displacement effectively shielded the treatment of these environmental IDPs from

[56] Particularly, between the UNHCR and IDMC, but also suggested on for international law by McAdam *Climate Change, Forced Migration, and International Law*.
[57] Roberta Cohen, "For Disaster IDPs: An Institutional Gap," *The Brookings Institution*, 2008. http://www.brookings.edu/opinions/2008/0808_natural_disasters_cohen.aspx#_ftn2 .
[58] The Federal Emergency Management Fund received applications for assistance from over 700,000 families and individuals following Hurricane Katrina.
[59] *Times-Picayune*, September 26, 2005, page A-12. Retrieved on 2006-06-05.
[60] Roberta Cohen, "For Disaster IDPs: An Institutional Gap," *The Brookings Institution*, 2008. http://www.brookings.edu/opinions/2008/0808_natural_disasters_cohen.aspx#_ftn2 .
[61] Cohen, "For Disaster IDPs: An Institutional Gap".
[62] It should be noted that general critiques were laid on the United States' government for their lack of emergency preparedness, as well as the racialized, economic, and gendered effects of their response (see Jean Ait Belkhir and Christiane Charlemaine "Race, Gender, and Class Lessons from Hurricane Katrina," *Race, Gender & Class* 14 (2007): 120-152; also notes xliv, xlvii).
[63] Also see Romain Huret, "Explaining the Unexplainable: Hurricane Katrina, FEMA, and the Bush Administration" *in Hurricane Katrina in Transatlantic Perspective*. Eds. Romain Huret and Randy J. Sparks (Baton Rouge: Louisiana State University Press, 2014): 38-49.

international scrutiny and monitoring: a point which Cohen argues contributed to their poor treatment and limited access to funding and mobility support.[64]

The United States is not unique in its treatment of environmental displacement. For example, the government of Canada has similarly failed to recognize the environment as a rights-triggering form of displacement in the north, where indigenous peoples' traditional lifestyles are increasingly threatened by climatic warming and melting ice, including their effects on food security.[65] In northern Europe (particularly, Sweden, Norway, Finland, and Denmark), environmental events are more commonly recognized as factors that may cause human displacement in domestic immigration policies.[66] Yet, even where the environment is politically recognized as a legitimate cause of displacement, this recognition triggers no special rights beyond a stay of deportation for environmentally displaced peoples.[67] Again, much like in *Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment* (2013), the lack of protection rights in these policies seem to indicate a conceptual disconnect between the causes and consequences of displacement.

Separating environmentally displaced persons from mobility rights under international law and downplaying their displacement diminishes their human dignity as they struggle to adapt to climate change and its effects. It is my contention that steps need to be taken which address the issue of environmental displacement directly, as a political challenge that demands a specific political and legal response. A collaborative approach drawing from existing legal or policy perspective leaves too many protection gaps which can result in the suffering of vulnerable environmentally displaced persons due to an inaccurate framing of the political and responsibility-triggering nature of environmental displacement. In response, I propose a four-category conceptualization of environmental displacement that makes room for the complexities of this displacement without depoliticizing its rights-bearing capacity.

[64] Cohen, "For Disaster IDPs: An Institutional Gap".
[65] For example, see: James D. Ford, "Vulnerability of Inuit food systems to food insecurity as a consequence of climate change: a case study from Igloolik Nunavut," *Regional Environmental Change* 9 (2009): 83-100; James D. Fors, Tristan Pearce, Frank Duerden, Chris Furgal, and Barry Smit, "Climate change policy responses for Canada's Inuit population: The importance of and opportunities for adaptation," *Global Environmental Change* 20 (2010): 177-191.
[66] See Vikram Kolmannskog and Finn Myrstad, *Environmental Displacement in European Asylum Law*, Norwegian Ministry of Foreign Affairs, 2009, http://www.nrc.no/arch/_img/9429378.pdf.
[67] Temporary Protection Directive [European Commission] (2001); Qualification Directive [European Commission] (2004, renewed 2011); Aliens Act [Finland] (2004 and amendments); Aliens Act [Sweden] (2005 and amendments); Kolmannskog and Myrstad, *Environmental Displacement in European Asylum Law*.

Proposing a Definition: A Four-Category Conceptualization of Environmentally Displaced Peoples

Too many concurrent definitions of environmental displacement have often lead to the adoption of a simplified understanding of the problem that either excludes or conflates key differences in experience and fails to incorporate the political nature of displacement. Other definitions, such as that of the United Nations Environment Programme (UNEP), define environmental refugees[68] in a way that is so general as to do little to accurately conceptualize the causes and consequences of displacement, nor to support a legal responsibility to environmentally displaced persons. This and other similar definitions[69] ultimately fail to support appropriate policy or legal resolutions. In response, I offer a four-category conceptualization of the challenge presented by environmentally displaced peoples, framed by the political nature of climate change discussed above. This is fundamentally different than the current naturalized understanding of environmental displacement, which does not easily translate into international law.[70]

Imperative Environmentally Displaced Peoples. Imperative Environmentally Displaced Peoples are people who are or will be permanently and irrefutably displaced from their homes and/or livelihoods primarily as a result of anthropogenic climate change. These environmental factors are not natural, but can be at least in part directly tied to human activity, particularly that of industrialized states.[71] The threat to small island states like Tuvalu or Kiribati, expected to be submerged this century at the current rate of sea level rise, will clearly establish a need for such a recognized category of migrant. This group will have the strongest claim for receiving a distinct set of protection rights that would, minimally, be similar to those of current refugees, as the situation of their displacement necessitates that another state accept them as residents. Legally speaking, an argument highlighting persecution resulting from the relationship between industrialization and climate change may be required to set aside these rights. Challenges related to the protection of such a category of environmentally displaced persons include ensuring that this displaced group not be focused on to the exclusion of others, nor be tied too heavily to pre-existing refugee definitions.

Pressured Environmentally Displaced Peoples. This category easily forms the largest and most problematic group of environmentally displaced people. As a result of slow-moving but devastating anthropogenic climate change many people are pressured to migrate in order to sustain basic living requirements. This category would include residents of Tunisia, Libya,

[68] "people who have been forced to leave their traditional habitat, temporarily or permanently, because of marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life." El-Hinnawi, "Environmental Refugees".
[69] Particularly, see Myers "Environmental Refugees: A Growing Phenomenon of the 21st Century"
[70] McAdam, *Climate Change, Forced Migration, and International Law*.
[71] See Mathez and Smerdon, *Climate Change.*

Morocco, or China, who live along the border regions such as the Gobi desert, where land is suffering from the effects of desertification and subsistence agriculture is no longer a way to achieve food security. These migrants face significant challenges in securing migration rights because of their numbers and a difficulty in distinguishing their circumstances from those of economic migrants, who receive no protective rights related to their migration. The politicization of environmental displacement is necessary to distinguish this category as *environmentally* displaced peoples, in such a way as to create legal responsibility, without which it is likely that their access to international recognition and rights will be stymied. Further, while the number of migrants in this category is enormous, most will likely remain within their current borders and would primarily need adaptation support to improve their access to sustainability.[72]

Temporary Environmentally Displaced Peoples. Survivors of Hurricanes Katrina or Rita in the United States, or those of the 2004 Indian Ocean Tsunami,[73] are examples of peoples who have experienced environmental displacement resulting from a severe environmental weather event. The severity of the event, and the condition of infrastructure and financial support available to return living conditions to pre-event status (or habitable conditions) are factors that will all significantly affect how "temporary" the absence of these environmentally displaced persons must be. Domestic political emergency preparedness policies also affect the level of risk associated with displacement in many cases. (For example, levees.org has levied serious critique at the United States' government for failing to build adequate levees in New Orleans, even after Hurricane Katrina.) It should also be recognized that the longer the period of time over which migrants are displaced, the less likely it may be that they will want to return home, as a result of having set down new roots, found new (and potentially more sustainable and/or profitable) employment, and/or re-built their lives. In cases of cross-border temporary displacement, it will be important to be wary of the problems currently faced by 'voluntary' repatriation under the refugee regime.[74]

Human-induced Environmentally Displaced Peoples. This category would classify residents displaced from their homes as a result of human conflict over environmental resources. Those forced to migrate as a result of conflicts over diamond extraction in the countries of Sierra Leone, Angola, Liberia, Ivory Coast, or the Democratic Republic of Congo could be located in this category of environmentally displaced persons. This category, if recognized, could also hold

[72] Given the choice, an overwhelming majority of potential environmentally displaced persons do not wish to leave their countries of origin (see, for example, http://www.cbc.ca/thecurrent/episode/2013/10/28/should-international-law-recognize-climate-change-refugees/)

[73] There is increasing evidence that tsunamis are linked to climate change, where temperature changes in ocean currents disrupt otherwise stable ocean fault lines, or cause underwater avalanches (see "Climate Change And Tsunamis: Ice Melt May Cause Underwater Avalanches, Research Shows," *Huffington Post* 16 August 2013. Accessed 25 May 2015 from http://www.huffingtonpost.com/2013/08/16/climate-change-tsunamis_n_3769200.html).

[74] See B.S. Chimni, "From resettlement to involuntary repatriation: Towards a Critical History of Durable Solutions to Refugee Problems" *Refugee Survey Quartrely*. 23(2004): 66-72.

substantial implications for persons displaced as a result of conflicts over water and food. Human-induced Environmentally Displaced Peoples seem less likely to face the same conceptual challenges as the previous three categories, because human-induced displacement is largely politically recognized under the international protection regime.

Delineating and awarding protection to environmentally displaced persons in each of these categories presents unique challenges. While none of these categories are clear-cut or without complications, we should remember that more than 25 million people are currently displaced at least in part by environmental events, with their numbers expected to rise sharply into the future.[75] Therefore, this area of protection is clearly one worthy of further consideration in the international community, and worth defining explicitly. Indeed, whether one advocates a new and comprehensive protection regime for environmentally displaced peoples, an overlapping protection regime, or a focus on domestic migration policies to protect their rights as vulnerable migrants, a clear definition will be a strong asset.

Conclusion

This article has argued that the lack of a clear understanding of the political nature of environmental displacement presents serious challenges in securing sufficient rights for environmentally displaced people under international law and policy. There is substantial discord among academics, experts in international human rights law, and policymakers worldwide as to what constitutes environmental displacement and how the challenges it presents should be addressed. Neither major international organization tasked with the protection of vulnerable migrant groups (the UNHCR or IDMC) accepts responsibility for their protection in their mandate, nor does international law offer a clear legal resolution to their plight. Where regional recognition of the challenge exists – particularly in the African Union – little has been accomplished in terms of securing rights or protection in an international context due, in part, to what I have argued is a depoliticized understanding of environmental displacement on the part of the international community. The primary response from the international community has been to take a collaborative approach, but this approach fails to fully grasp the political nature of environmental displacement and allows too many gaps in protection.

In response, this article has put forth four politically-framed categories of environmentally displaced persons for consideration. Ultimately, these categories offer a political understanding of environmental displacement that this article has argued is necessary to support appropriate responses in law and policy, and to avoid severe social and political justice failings as the number of environmentally displaced peoples continues to rise.

[75] Myers "Environmental Refugees: A Growing Phenomenon of the 21st Century"; see also UNHCR, "2013 UNHCR Regional Operations Profile - North America and The Caribbean" (2013) http://www.unhcr.org/pages/49e492086.

Germany as Host: Examining ongoing anti-immigration discourse and policy in a country with a high level of non-national residents

SABINE LEHR, PhD*

Abstract:
For decades Germany has experienced a high volume of immigration and ranks first among European Union (EU) member states in absolute numbers of non-national residents. Germany has also received significant numbers of asylum seekers since the late 1970s. Following World War II, the country absorbed one of the world's largest ethnic migrations in the form of ethnic Germans from Eastern Europe, and has more recently agreed to resettle a considerable number of refugees displaced by the ongoing conflict in Syria. These realities clash with ongoing anti-immigrant rhetoric that penetrates German society and that is also strongly reflected in the country's contemporary immigration and integration policy. In this opinion paper, I address the dynamics of German anti-immigration discourse and integration policy alongside the presence of large numbers of migrants, including refugees and asylum seekers. I attempt to provide an explanation for these dynamics based on Germany's historic struggle between xenophobic tendencies and liberal aspirations, and in an existing climate where anti-immigrant rhetoric is not restricted to political parties or geographic areas that have traditionally held negative views on immigration and multiculturalism. By focusing on and analyzing the prevalent socio-political discourse and refugee policy in the country, including an emphasis on the Migration and Integration glossary, I argue that xenophobic, anti-immigrant discourse in German society is not simply a recent phenomenon linked to rising numbers of newcomers, but one that follows a distinct historic national trajectory of xenophobia.

**Sabine Lehr is Immigrant Services Manager at the Inter-Cultural Association of Greater Victoria and Adjunct Assistant Professor at the University of Victoria, Canada, where she teaches in the area of community development. She holds a PhD in educational studies from the University of Victoria and a certificate in refugee and forced migration studies from York University in Toronto. She serves on the board of directors of the Victoria Coalition for Survivors of Torture.*

Introduction

Germany continues to experience a high volume of immigration and ranks first among European Union (EU) member states in absolute numbers of non-national residents.[1] Following World War II, Germany absorbed one of the world's largest ethnic migrations in the form of ethnic Germans from Eastern Europe.[2] Germany has also received significant numbers of asylum seekers since the late 1970s, even though numbers have recently been spread more evenly across EU member states.[3] According to the United Nations High Commissioner for Refugees' *Global Trends Report 2012* Germany was the only country in the industrialized world represented among the top 10 refugee-hosting countries.[4]

These realities clash with the way in which Germany's historical legacy is reflected in contemporary immigration and integration policy, reflected, for example, under the Chancellorship of Helmut Kohl (1982 – 1998), which was adamant that "Germany is not a country of immigration".[5] In his analysis of immigration and integration policy in the UK and Germany, Green outlined how the multi-ethnic, culturally pluralistic character of most (former West) German cities was not supported by the necessary political adjustments that would have allowed immigrants easy access to permanent residence. As a result, access to full citizenship is still the exception and not the rule for immigrants.[6] In 2007 Goodman described Germany as the ultimate example of a country where, historically, "restrictive attitudes toward immigration and exclusionary citizenship traditions have long stood in contrast to opportunities for economic migrants and 'ultrapermissive' asylum policies".[7]

The concept of multiculturalism is politically loaded in Germany. Anti-immigrant rhetoric originates in a variety of political corners and is not restricted to right-wing parties with traditionally negative views on multiculturalism. In October 2010, Chancellor Angela Merkel declared multiculturalism "dead" in Germany and indicated that this approach had "utterly

[1] Simon Green, "Divergent Traditions, Converging Responses: Immigration and Integration Policy in the UK and Germany," *German Politics* 16, no. 1 (2007): 95.
[2] Green, "Divergent Traditions": 98.
[3] Green, "Divergent Traditions": 101.
[4] United Nations High Commissioner for Refugees [UNHCR], *UNHCR Global Trends 2012* (Geneva, Switzerland: UNHCR, 2013), 14.
[5] Sara Wallace Goodman, "The Politics and Policies of Immigration in Germany," *German Politics and Society* 85, no. 25 (2007): 99.
[6] Green, "Divergent Traditions": 99.
[7] Wallace Goodman, "The Politics and Policies of Immigration in Germany," 100.

failed."[8] Moreover, during the same speech, she reinforced that the Christian leitmotif guided integration policies and said that "Germany was defined by Christian values and that 'those who do not accept this are in the wrong place here'."[9] The anti-Muslim remarks by politician Thilo Sarrazin of the Social Democratic Party, who accused Turks and Arabs of being incapable of integration, drew international attention and even a reprimand from the UN Committee on the Elimination of Racial Discrimination.[10] Previously, Sarrazin's book *Deutschland schafft sich ab* (Germany Abolishes Itself), published in 2010, had become one of the most successful bestsellers of all time in Germany. The book's main message is that "a once great nation [Germany] is now at grave risk of descending into idiocy as immigrants [Turks] are genetically of lower intelligence and have higher fertility rates."[11] Interior Minister Thomas de Maizére of the Christian Democratic Union party even created a term (quickly adopted by journalists) for those allegedly resisting integration by, for example, refusing to attend German language classes: *Integrationsverweigerer* (Person Resisting Integration).[12]

It is against this backdrop that I have assessed and tried to make sense of integration policies and realities in Germany. By focusing on the prevalent socio-political discourse around refugee policy in the country, I argue that xenophobic, anti-immigrant discourse in German society is not simply a recent phenomenon linked to rising numbers of newcomers that are perceived and constructed as culturally different from native Germans, but one that follows a distinct historic national trajectory of xenophobia. Xenophobia was previously heavily channeled into anti-Semitic sentiments which became taboo and drew strong censorship following the post-war years.[13] Xenophobic hostility now finds its outlet predominantly in anti-immigrant attitudes and behaviours directed against Muslim groups, most recently fuelled by the global "War on Terror" debate and the highly exaggerated notion of a clash of cultures between the 'civilized' (Western, Judeo-Christian) and 'non-civilized'(Muslim) world.

Refugees and Asylum Seekers in Germany: An Overview

In many countries the right to asylum and the protection of those fleeing persecution is anchored by the 1951 Convention Relating to the Status of Refugees. In Germany, these rights

[8] Kate Connolly, "Angela Merkel Declares Death of German Multiculturalism," *The Guardian* (October 17, 2010): http://www.theguardian.com/world/2010/oct/17/angela-merkel-germany-multiculturalism-failures .
[9] Liz Fekete, "Understanding the European-wide Assault on Multiculturalism," (Institute of Race Relations, April 21, 2011), http://www.irr.org.uk/news/understanding-the-european-wide-assault-on-multiculturalism/ .
[10] "Battling Racism: UN Body Reprimands Germany over Sarrazin Comments," *Spiegel Online International* (April 18, 2013): http://www.spiegel.de/international/germany/un-anti-racism-committee-reprimands-germany-over-sarrazin-comments-a-895247.html .
[11] Fekete, "Understanding the European-wide Assault on Multiculturalism," paragraph 3.
[12] "Unwort des Jahres: 'Alternativlos' siegt for 'Integrationsverweigerer'," *Topnews.de* (January 18, 2011): http://www.topnews.de/unwort-des-jahres-alternativlos-siegt-vor-integrationsverweigerer-39358.
[13] Bergman, W. "Antisemitism and Xenophobia in Germany since Unification," In *Antisemitism and Xenophobia in Germany after Unification*, ed. H. Kurthen, W. Bergmann, and R. Erb (New York, NY: Oxford University Press, 1997), 22.

and protections also have a foundation in the 1949 constitutional Basic Law for the Federal Republic of Germany. This law has to be seen against the backdrop of Germany's history during the Nazi regime, when many Germans fled persecution and sought protection in other countries.[14] Refugee protection has therefore long been a recognized and sensitive issue in Germany, and the legal right to asylum enshrined in the Basic Law has even been described as "the most generous in the Western hemisphere."[15]

Between 1984 and 1992, Germany experienced a steep increase in asylum applications. This led to a reform of German asylum law in 1993 that was followed by a decline in asylum applications, which returned to pre-1984 levels.[16] Whether as a result of these new policies or for other reasons, the number of asylum applicants declined considerably between 1995 and 2001. One major factor affecting these statistics was the civil war in former Yugoslavia. This conflict led to a peak in applications from 1991-1993, but most of the refugees taken in during those years have since left Germany.[17] Since the turn of the century, new and increasing conflicts in the Middle East have triggered another spike in global refugee numbers. By 2013, Germany was receiving, by far, the largest absolute number of asylum applications in the EU–a total of 126,995, or almost 30% of all EU applications. This figure is almost 2.5 times the figure for 2010, and six times the figure for 2006.[18] In 2014, Germany received 202,834 applications.[19] In 2013, Germany granted refugee status, subsidiary protection, or humanitarian/compassionate protection to 20,128 persons (out of a total of 80,978 decisions rendered in the first instance), and in 2014, that number was 40,563 (out of a total 128,911 decisions rendered in the first instance).[20],[21]

Unique among all Western European states but Sweden, Germany responded to the escalating Syrian crisis by accepting up to 30,000 Syrians per year in 2013 and 2014 as "contingent refugees"[22] (essentially resettled refugees). 20,000 were to enter Germany as

[14] Federal Ministry of the Interior, *Migration and Integration: Residence Law and Policy on Migration and Integration in Germany* (Berlin, Germany: Federal Ministry of the Interior, 2014), http://www.bmi.bund.de/SharedDocs/Downloads/EN/Broschueren/2014/migration_and_integration.pdf?__blob=publicationFile, 12.
[15] Bergmann, W. "Antisemitism and Xenophobia in Germany since Unification," 29.
[16] Federal Ministry of the Interior, *Migration and* Integration, 2014, 17.
[17] *Ibid*., 18.
[18] *Ibid*., 50.
[19] Asylum Information Database, *Statistics: Germany*, 2015, http://www.asylumineurope.org/reports/country/germany/statistics .
[20] *Ibid*.
[21] *Ibid*. The difference between total decisions and positive protection decisions does not mean that the remaining numbers of cases were all rejected. The figures for 2013 and 2014 include a considerable number of otherwise closed or discontinued cases, including those where another state is responsible for the asylum procedure under EU regulations. In both years, the "otherwise closed/discontinued" category accounts for over one third of all decisions.
[22] Marcus Lütticke, "Syrian Refugees in Germany," *Deutsche Welle* (June 10, 2014): http://www.dw.de/syrian-refugees-in-germany/a-17697536 .

humanitarian admissions and 10,000 under individual sponsorship programs.[23] By June 2014, 11,500 visas had been issued towards this goal.[24] These displaced Syrians join other Syrians who arrived in previous years, either as contingent refugees or asylum seekers. Contingent refugees, contrary to asylum seekers, can work immediately in Germany. Nonetheless, they have restricted residency rights and receive a residency permit for two years only.[25]

Persons who are granted asylum or refugee status in Germany following an asylum claim receive a residence permit that is valid for three years, after which a decision is made as to whether the status should be revoked (usually based on a change in the situation in the applicant's home country). Should revocation not be applied, the person can then apply for a permanent settlement permit[26], but recognition as a person entitled to asylum or refugee status is not a lifetime status.[27] These restrictions show that while Germany may be generous with regard to the temporary protection of refugees, permanent resettlement is more difficult for refugees and asylum seekers to achieve.

Compounding this difficulty is the historic unattainability of becoming a German national without being born to German parents. Germany only introduced some form of *jus soli* (citizenship for those born in Germany) in the year 2000. Prior to this change, Germany relied on the principle of *jus saguinis* (the right of blood), which only granted citizenship to those whose parents were citizens of Germany. Barriers to naturalization thus remain high, and dual nationality is only accepted during the naturalization process on an exceptional basis. By 2005, 47.2% of all naturalizing immigrants were able to attain dual citizenship, but this rate was largely achieved because of the granting of dual citizenship to most former refugees applying for naturalization.[28]Given that most refugees are unable to obtain a passport from their country of origin or a third country, the granting of dual citizenship by the country that protects them is a positive move. However, immigrants and refugees in Germany can only apply for naturalization after they have lived in Germany with a residence permit for at least eight years. Asylum seekers often spend considerable time in the country prior to being granted a residence permit, which means that they may spend a decade without a passport and without full citizenship rights.

Germany's unwillingness to genuinely open up to newcomers is also reflected in the country's current refugee return and deportation system. Voluntary return of refugees to their

[23] European Resettlement Network, "Germany Extends Humanitarian Admission Programme to an Additional 10,000 Syrian Refugees," http://www.resettlement.eu/news/germany-extends-humanitarian-admission-programme-additional-10000-syrian-refugees .
[24] *Ibid*.
[25] Lütticke, "Syrian Refugees in Germany."
[26] *Ibid*.
[27] Federal Ministry of the Interior, *Migration and Integration*, 2014, 151.
[28] Evelyn Ersanilli and Ruud Koopmans, "Rewarding Integration? Citizenship Regulations and the Socio-Cultural Integration of Immigrants in the Netherlands, France and Germany," *Journal of Ethnic and Migration Studies* 36, no. 5 (2010): 777.

home countries is organized through two programs: the Reintegration and Emigration Program for Asylum-Seekers in Germany (REAG) and the Government Assisted Repatriation Program (GARP), in collaboration with the International Organization for Migration. In 2013, 10,251 persons left Germany via these programs.[29] In 2013, for the first time since 2002, the number of deportations rose considerably over the previous year: 10,197 were deported in 2013, and a further 132,000 persons were required to leave the country, including 95,000 whose deportation had been suspended.[30]

The German Migration Report provides further insights into the precarious state of certain groups of migrants in Germany. Even though Germany's Migration Report does not distinguish between refugees and other migrants, but rather refers generally to the *foreign population* or *population with migration background*,[31] it nonetheless indicates that a high percentage of Syrian and Afghan nationals (two major refugee-producing countries), for example, have limited access to residence permits on humanitarian grounds. [32] People under a deportation ban are automatically entitled to a residence permit and have their deportation temporarily suspended; however, "such persons are not regarded as legally residing in Germany".[33] They are effectively left in a limbo situation for at least the first year, after which they are granted "lower-priority access to the labour market".[34] Only after four years may they be granted full labour-market access if deportation is still not possible under the law. The precarious situation imposed on migrants from countries in war and turmoil, many of whom have protracted experiences of flight and trauma, impedes these populations' ability to integrate within the country where they seek safety.

Integration Policies and Programs in Germany

Several authors have outlined the increasingly restrictive nature of integration policies in the European Union, which include mandatory participation in integration programs and an emphasis on the link between integration and citizenship.[35] [36] Germany's 2014 policy document

[29] Federal Ministry of the Interior, *Migration Report 2013* (Berlin, Germany: Federal Ministry of the Interior, 2014), http://www.bmi.bund.de/SharedDocs/Downloads/DE/Broschueren/2014/migrationsbericht_2013_de.pdf?__blob=publicationFile, 154-156.
[30] Federal Ministry of the Interior, *Migration and Integration* 2014, 159-160. Deportation could be suspended, for instance, in situations where a deportation ban has been instituted, preventing returns to a particular country of origin due to a situation in that country.
[31] Federal Ministry of the Interior, *Migration Report 2013.* (Note: The report is only available in German, and the terms used in this paper are translations of the German original).
[32] *Ibid*., 215.
[33] *Ibid*., 125.
[34] *Ibid*.
[35] Sergio Carrera, "A Typology of Different Integration Programmes in the EU," *Briefing Paper, Centre for European Policy Studies* (Order Form No. IP/C/LIBE/OF/2005-167), 2006b: http://www.libertysecurity.org .
[36] Christian Joppke, "Beyond National Models: Civic Integration Policies for Immigrants in Western Europe," *West European Politics* 30, no. 1 (2007).

Migration and Integration[37] clearly states that:

> the Federal Government's integration policy is based on the principle of offering more support for integration efforts while making requirements [for entry] stricter. Immigrants are expected to make efforts – supported by government services - to learn German and become acquainted with Germany's legal system, history and culture as well as values that are important in Germany.[38]

This document specifically stresses the link between integration and "peaceful coexistence" in the context of Germany's 4 million Muslim residents. To provide a venue for dialogue around the integration of Muslims into German society, former Interior Minister Wolfgang Schäuble of the conservative Christian Democratic Union created the German Islam conference (Deutsche Islamkonferenz) in 2006.[39] However, the conference has come under intense criticism because the focus has in recent years shifted from co-operation between religious communities and the state to security issues and terrorism.[40]

Migration and Integration also shows evidence of the German government's ongoing preoccupation with the question of whether Muslims can successfully integrate into German society. The language used by the Federal Government around this politically sensitive issue keeps changing, but the main thrust remains in place. The 2011 version of *Migration and Integration* contained the following paragraph:

> The aim of integration should not be merely to organize the co-existence of people from different cultures. A society cannot long endure an internal divide based on cultural differences. Speaking the same language and accepting the basic values of the receiving society are basic requirements for maintaining societal cohesion.[41]

This paragraph has been removed in the 2014 version of *Migration and Integration*, likely to avoid the potentially inflammatory connotation of the reference to a "society enduring an internal divide based on cultural differences." Notwithstanding the softening of language, though, the terminology of 'co-existence' has been maintained in the 2014 document, which in

[37] This document of the German Government provides a basic outline of Germany's policy on migration and integration in a European context. It explains the legal foundations and requirements determined by law on asylum, residence and freedom of movement, and contains structural data and information on immigration in general and on specific groups.
[38] Federal Ministry of the Interior, *Migration and Integration*, 2014, 51.
[39] *Ibid*., 81-82.
[40] Stefan Dege, "Questions of Equality at the Fore in German Islam Conference," *Deutsche Welle* (May 6, 2013): http://www.dw.de/questions-of-equality-at-the-fore-in-german-islam-conference/a-16794063 .
[41] Federal Ministry of the Interior, *Migration and Integration: Residence Law and Policy on Migration and Integration in Germany* (Berlin, Germany: Federal Ministry of the Interior, 2011), http://www.bmi.bund.de/SharedDocs/Downloads/EN/Broschueren/Migration_und_Integration_en.html , 54. (Accessed July 15, 2014. This document has in the meantime been removed and replaced with the 2014 version).

and of itself appears to run counter to the notion of integration. Both versions of this policy document contain sections on political extremism and Islamism, with the latter being the only "extremism by foreigners" specifically described and singled out.[42] [43]

To follow Germany's refugee policy trajectory, it is important to note that until late in the 20th century Germany lacked a national strategy on integration. Germany's current Immigration Act (*Zuwanderungsgesetz*) only came into force in January 2005. The principal approach to integration now rests on the ability of the immigrant to participate in German society, asking immigrants to assume a certain level of responsibility for the integration process.[44] The Act defines compulsory integration courses that consist of a German language and an orientation course on the German legal system, history, society and culture.[45] Only upon successful completion of these courses is an immigrant in Germany entitled to residency, and to social and welfare benefits.[46]

This shift to civic integration courses, which are often part of the citizenship trajectory, has been widely adopted in many European member states.[47] Germany's position on integration policies is regarded as less radical than that of some of its neighbours, for instance Denmark and the Netherlands, where there are clear sanctions for non-participation in integration programs. However, there is evidence that Germany is increasingly following the lead of these countries with regard to linking linguistic assimilation and acculturation on the naturalization trajectory.[48]

Acquiring permanent residence also requires passing an exam.[49] The Integration Certificate that is awarded to successful participants may facilitate their naturalization process, as successful test results serve to demonstrate the knowledge required for the naturalization test.[50] [51] The renewal of residence permits is also incumbent on a person's ability to demonstrate compliance with any requirement to attend and pass the final test administered during an integration course.[52]

---

[42] *Ibid*., 178-179.
[43] Federal Ministry of the Interior, *Migration and Integration*, 2014, 167-169.
[44] UNHCR, *A New Beginning: Refugee Integration in Europe* (Geneva, Switzerland: UNHCR, 2013), 47.
[45] Special assistance is available for persons with multiple barriers, especially youth, women, and those with limited or no literacy skills. *Ibid*., 58.
[46] Carrera, "A Typology of Different Integration Programmes": 4.
[47] Jacobs and Rea, "The End of National Models?"
[48] Dirk Jacobs and Andrea Rea, "The End of National Models? Integration Courses and Citizenship Trajectories in Europe," *paper presented at the EUSA Conference, Montreal, Canada* (May 2007), http://aei.pitt.edu/7916/1/jacobs-d-11i.pdf .
[49] Jacobs and Rea, "The End of National Models?"
[50] UNHCR, *A New Beginning*, 92.
[51] Federal Ministry of the Interior, *Migration and Integration*, 2011, 79.
[52] *Ibid*.

[53] The attendance of integration courses and passing of standard language tests is also a prerequisite for naturalization.[54]

Recognized refugees are also mandated to participate in the integration program. The overall outcome of this program is heavily monitored by an evaluation committee, which advises on curricula and content, and an integration panel, which assesses the medium- and long-term outcomes of these courses.[55] In 2010, the Federal Ministry of the Interior found that just fewer than 50% of those who completed the course attained the level B1 – independent language use – as set out by the Common European Framework of Reference for Languages.[56]

Integration courses are not free for immigrants: A general integration course consists of 660 hours, and a participant pays approximately EUR 792. Specialized integration courses can cost up to EUR 1,152. There is a built-in incentive to sit and pass the test within a certain period of time, in which case the person may be able to claim back 50% of the course cost. If the participant receives unemployment benefits or cost-of-living support, or is otherwise in financial need, s/he may be exempted from paying the fee.[57] [58] Requiring refugees to meet the same integration thresholds as all other immigrants imposes additional hardships on the former. Contrary to many other immigrants, refugees have frequently entered Germany following years of displacement and complex flight paths. As a result, they may have experienced trauma and may have had their education interrupted. Refugees are much more likely than other immigrants to suffer from psychological disorders including post-traumatic stress disorder, which can make it more difficult for them to meet integration course requirements.

The Refugee Integration Process in Germany

As in many other societies around the world, the integration process for refugees in Germany is more challenging than for other immigrants. There is considerable anecdotal and empirical evidence supporting this claim, even though the state does not track refugee integration separately from general migrant integration, nor disaggregate data obtained through censuses or

[53] Federal Ministry of Justice and Consumer Protection, "Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act)," (2014): http://www.gesetze-im-internet.de/englisch_aufenthg/residence_act.pdf .
[54] Joppke, "Beyond National Models": 14.
[55] UNHCR, *A New Beginning*, 58.
[56] Federal Ministry of the Interior, *Migration and Integration*, 2011, 55.
[57] Federal Office for Migration and Refugees [FOMR], "Foreign Nationals with Residence Titles Issued from 2005 Onwards: Conditions of Attendance and Costs for Foreign Nationals," (2013a): http://www.bamf.de/EN/Willkommen/DeutschLernen/Integrationskurse/TeilnahmeKosten/Aufenthaltstitel_nach/aufenthaltstitel_nach-node.html .
[58] Federal Office for Migration and Refugees, "Integration Course for Immigrants," (2013b): http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Flyer/Lernen-Sie-Deutsch/lernen-sie-deutsch.pdf?__blob=publicationFile .

other statistics for refugees.[59] Lumping refugees together with all other immigrants conceals unique challenges that refugees face in accessing state services. For example, the statistics on successful completion of the integration course, measured by counting the number of persons who pass the final exam, show success rates in excess of 90% overall.[60] However, it is unclear which demographics had test results at the differing levels of proficiency. This masks the possibility that refugees, who tend to arrive with higher levels of stress and trauma and from linguistic backgrounds different from European Romance languages, may find it more difficult to acquire high proficiency through the standardized course.

Legal status restrictions, in particular, can have a considerable impact on a refugee's ability to integrate. In a study including Eritrean refugees in Germany, Al-Ali, Black, and Koser found that insecure status forced some to take on short-term jobs in geographically delimited job markets. In some cases, refugees waiting for a determination also had restrictions imposed on their general mobility by the German government, under the residency obligation that was in place until recently.[61] In recognition of this geographic barrier[62], the German government recently changed the laws governing asylum and residence, and now allows for the residency obligation to be lifted after three months' residence in Germany.[63] Another example of the barriers erected around integration can be found in an in-depth study of refugee children in three large German cities. Anderson found that uncertainty about their future and the inability to engage in life-planning, due to insecure status, interfered with their integration.[64] Even though refugee children may have more interaction with mainstream society through going to school than their parents or older generations of refugees, they experience lingering linguistic, cultural and social disadvantage,[65] often due to spending many years in residential hostels (*Asylantenheim*) that increase geographical and social isolation.[66] Refugee children often suffer ongoing identity crises as they hear parents talk about a homeland to which the children do not feel a strong connection, while at the same time feeling pressure to adjust to a new country in which they may not be permanently entitled to stay.[67]

[59] UNHCR, *A New Beginning*, 30.
[60] Federal Ministry of the Interior, *Migration and Integration*, 2011, 73-76.
[61] Nadje Al-Ali, Richard Black, and Khalid Koser, "Refugees and Transnationalism: The Experience of Bosnians and Eritreans in Europe," *Journal of Ethnic and Migration Studies* 27, no. 4 (2001).
[62] Until the end of 2014, residence permits for refugees awaiting determination were limited to the town or district in which their place of accommodation was located.
[63] Federal Government, Press and Information Office, "Asylum and Refugee Policy: Improvements for Asylum-Seekers": http://www.bundesregierung.de/Content/EN/Artikel/2014/10_en/2014-10-29-verbesserungen-fuer-asylbewerber-beschlossen_en.html
[64] Philip Anderson, "'You Don't Belong here in Germany . . .': On the Social Situation of Refugee Children in Germany," *Journal of Refugee Studies* 14, no. 2 (2001): 187.
[65] *Ibid*., 189.
[66] Residential hostels are camp-like places of residence in often remote locations, where refugees (sometimes unaccompanied minors) are crowded together during the frequently lengthy waiting time for a determination on their case. *Ibid*., 192.
[67] *Ibid*., 195-96.

Ersanilli and Koopmans studied the links between naturalization and socio-cultural integration in Germany and two other European countries. Even though the authors did not explicitly study refugees, their focus on Turkish immigrants provides valid insights, as Turks are a group of migrants that differ considerably from native populations in Western European states, with regard to socio-cultural characteristics. Ersanilli and Koopmans found that identification with the host country among naturalized and non-naturalized Turkish immigrants was lower in Germany than in France and the Netherlands, both of which have more accessible citizenship regimes. Naturalized immigrants experienced fewer problems speaking German than non-naturalized immigrants. Overall, Germany, with its restrictive naturalization policies, performed comparatively poorly with regard to socio-cultural integration.[68]

Non-integration is not necessarily an objectively observable phenomenon, but it is part of a public and highly subjective discourse. In her critical analytical study, Gruner showed that there is a perception among German citizens that immigrants are reluctant to integrate into German society and that they therefore engage in voluntary self-segregation. She provides evidence that such segregation is, in fact, the result of racialized power relationships, stereotypes, and discourses linked to the mindsets and behaviours of the non-immigrant population, rather than the immigrants' intentions.[69]

Linking Official State Terminology and Popular Discourse on Integration[70]

With regard to Gruner's work, it is instructive to examine the glossary attached to the 2014 Migration and Integration policy document.[71] The first thing that struck me, as a scholar and practitioner dealing with immigration and refugee issues in Canada, was the widespread use of the word "foreigner" (*Ausländer*) in all official documentation produced by German authorities. The glossary defines this term as "anyone who is not German within the meaning of Article 116 (1) of the Basic Law, which is primarily based on possession of German citizenship".[72] Given the difficulty of obtaining German citizenship, this means that a large number of persons who have lived in Germany for considerable periods of time, or who were even born in Germany, are labeled as "foreigners", foregrounding their otherness and contrasting it with those that have full German citizenship. This could be seen as contributing to the long-term negative connotation in German public discourse of the term *Ausländer*.

[68] *Ibid*., 788.
[69] Sabine Gruner, "'The Others Don't Want . . .'. Small-Scale Segregation: Hegemonic Public Discourses and Racial Boundaries in German Neighbourhoods," *Journal of Ethnic and Migration Studies* 36, no. 2 (2010): 283.
[70] In this section, I am making general reference to common discourse among the German population, based on having grown up in the country and returning on a regular basis. My remarks are not based on literary references or empirical research.
[71] Federal Ministry of the Interior, *Migration and Integration*, 2014.
[72] *Ibid*., 188.

The problematic nature of this label becomes clearer with regard to German nationality law, which applies, for the most part, *jus sanguinis* over *jus soli*, linking citizenship to the citizenship of a person's parents, rather than a person's country of birth. Reforms to the Nationality Law implemented in 1999 eased *jus sanguinis* and allowed the children of 'foreigners' born in Germany to attain German citizenship by birth, under certain conditions. Later on, however, these persons have to choose between their German citizenship and the citizenship of their parents.[73] These persons are, according to German policy, still 'foreigners.' This extended use of the term 'foreigner' has contributed greatly to the negative connotation the term has taken on, and its frequent use in hate rhetoric.

The term *illegal alien* is also included in the state's glossary, even though this term is, per definition, not a formal legal term in Germany. In the glossary the term is noted to be "used by the general public to refer to foreigners living in Germany without the permission or knowledge of the responsible authorities."[74] It is curious enough that this negative term is listed among the more formal terminology of the glossary, but even more so that the document assumes a general use by the public, which may lead to it appearing as if it was a legitimate legal category.

Yet another term in the glossary extends the labels placed on immigrants and refugees into the indeterminate future. The glossary definition of a *person of immigrant background* includes not only those who have immigrated to Germany since 1949, but also comprises "all foreigners born in Germany and all German nationals born in Germany with at least one parent who immigrated to Germany or was born as a foreigner in Germany".[75] As such, the definition of a person of immigrant background can extend into the third generation and comprises persons who are not immigrants at all.

The word *immigration* itself is further disambiguated in Germany. The German language has two words that denote kinds of immigration: *Einwanderung* and *Zuwanderung*. The difference is subtle. *Einwanderung* "refers to the lawful entry and residence of foreigners intending from the outset to settle permanently in Germany, i.e. legal immigration . . . [whereas *Zuwanderung*] has become the accepted term to describe all forms of migration . . . across national borders."[76] In popular discourse, though, such distinction is not made. As a result, both terms are used to portray a negative image of immigration and are used in slogans such as "stoppt die Einwanderung" ["stop the *Einwanderung*"].[77] The dual discourse, far from

[73] *Ibid*., 190.
[74] *Ibid*., 189.
[75] *Ibid*.
[76] *Ibid*.
[77] Patrick Gensing, "Anti-EU-Parteien: 'Weder Rechts noch Links' [Anti-EU-Parties: 'Neither Right nor Left']," Publikative.org (May 23, 2014): http://www.publikative.org/2014/05/23/weder-rechts-noch-links/ .

distinguishing between legal and other forms of migration, can thus be (mis)used to depict all migratory flows as undesirable.

Finally, the glossary uses the terms *asylum applicant* and *person entitled to asylum* to depict those seeking protection from persecution and those having been recognized as needing protection, respectively.[78] It is peculiar that the state chooses to continue using the reference to asylum in both cases. In common discourse used by the general public, the German term *Asylanten* is frequently used for both asylum applicants and persons entitled to asylum. In this way, those with a legitimate claim to protection may easily be confused with those deemed to have entered Germany illegally or without a valid asylum claim.

The historic roots of contemporary anti-immigrant integration policy and discourse

Scholars have argued about whether current integration programs and citizenship trajectories constitute a shift away from a multicultural agenda in integration policy.[79] The concept and the reality of integration, in the German context, is increasingly becoming a uni-directional process in which the migrant bears full responsibility, and where the vital role of the host society in enabling the newcomer's integration is overlooked. The German government does not appear to see a link between the various practices discussed in this paper and barriers to immigrants' sense of belonging and thus their integration. The unabated use of divisive labels, the lumping together of refugees and other immigrant categories, the long road to permanent residency for refugees and even longer road to citizenship, and the linking of integration policy and practice to concerns about security and Islamization are among those barriers to integration. The discourse around immigration and integration, systematically and legally established by the state and further muddied by the colloquial terminology used by the general public, does little to promote the process of integration for those sometimes eternally labeled 'foreigners'. Shifting the responsibility for integration onto the newcomer, on the contrary, is likely to give rise to highly problematic discourses, of which language such as *Integrationsverweigerer* is only one example.

Germany has been much more open to sheltering refugees, statistically, than many other industrialized countries in the world. This lean toward an 'open door' policy, however, has not translated into providing a more welcoming environment once refugees have arrived. Isolated, albeit highly mediatized, incidents of real or perceived Islamic extremism in western countries are fueling the hostile atmosphere further. In recent months, the populist right-wing group Patriotic Europeans against the Islamization of the West, or PEGIDA, has been staging growing

[78] Federal Ministry of the Interior, *Migration and Integration*, 188.
[79] Jacobs and Rea, "The End of National Models?".

protests in various German cities.[80] The protesters include citizens concerned about religious fanaticism, but also those who espouse racist ideologies. As a consequence, the protesters' messages blur the lines between opposition to Islamic extremists and Muslim refugees.[81]

Equally disturbing are reports about conditions in German asylum homes that surfaced in the fall of 2014. Private companies widely operate these homes, and nationwide housing standards for asylum seekers and refugees do not exist.[82] Dilapidated facilities are common and finding adequate personnel is difficult. Incidents of racist attacks on refugees in these homes sparked investigations which revealed an infiltration of security personnel by right-wing extremists.[83] Even though there are basic standards that apply to initial reception centers (where refugees may stay during their first three months in Germany), as well as to subsequent accommodation, there is considerable confusion around policies, jurisdiction and applicable regulations.

Joppke characterized Germany's integration model as an example of "repressive liberalism" where "liberal goals are pursued with illiberal means."[84] I believe this dynamic is embedded in a larger, century-long struggle between the forces of liberal thinking and philosophy, as exemplified by the likes of Immanuel Kant, Georg W. F. Hegel, Wilhelm von Humboldt, and Ralf Dahrendorf, and a strong anti-liberal, xenophobic undercurrent that has at times evolved into more extreme forms, culminating in the Holocaust. Adam and Moodley have argued in their recent book *Imagined Liberation: Xenophobia, Citizenship and Identity in South Africa, Germany and Canada* that Germany, in spite of its racist past and the re-education efforts of the post-war years, has failed to embrace universal human rights.[85] The authors point to a form of "*Alltagsrassismus*" (everyday racism), which is symptomatic of a "deeply entrenched cognitive identity map" that constructs the dominant group as "normal", and demeans the different "other."[86]

This general xenophobic tendency has been further exacerbated by two factors: German reunification in 1990, and increasing Islamophobia across Europe. Due to the low number of foreigners in former East Germany and the limited exposure to multicultural settings before re-unification, xenophobia was higher in former East Germany than in West Germany. Because of

[80] Dennis Stute, "Anti-Islamization Protests Expand in Germany," *Deutsche Welle* (December 7, 2014): http://www.dw.de/anti-islamization-protests-expand-in-germany/a-18113657 .
[81] *Ibid*.
[82] "Germany's Woeful Asylum Infrastructure," *Spiegel Online International* (October 6, 2014): http://www.spiegel.de/international/germany/abuse-case-reveals-terrible-state-of-refugee-homes-in-germany-a-995537.html .
[83] *Ibid*.
[84] Joppke, "Beyond National Models": 1.
[85] Heribert Adam and Kogila Moodley, "Xenophobia in Germany," in *Imagined Liberation: Xenophobia, Citizenship and Identity in South Africa, Germany and Canada* (Stellenbosch, South Africa: Sun Press, 2013), 133.
[86] *Ibid*: 138.

lingering socio-economic disadvantages in Eastern Germany, such as high unemployment and lower incomes, Eastern Germans continue to have considerably hostile attitudes towards foreigners.[87] Islamophobia and its constituent form, Islamo-skepticism, are deeply intertwined with fear and skepticism about large-scale immigration to Europe.[88]

Contrary to the situation in other European countries that are also experiencing an influx of Muslim migrants, the Islamo-skeptic narrative in Germany is also fed by decades of political ambivalence over the presence of Turkish migrants in the country, who account for two thirds of the Turkish diaspora community in Europe.[89] Many first-generation Turkish immigrants originally entered Germany as *guest workers (Gastarbeiter)*, a term colloquially used to refer to foreign workers from Turkey recruited between 1955 and 1973 to meet the demand for unskilled and semi-skilled labour in the decades immediately following the Second World War.[90] The German government's original intention to limit the length of time foreign workers could stay in Germany was met with opposition from employers and the workers themselves. Rather than returning to Turkey, most guest workers stayed, had children and eventually reunited with additional family members who emigrated from Turkey to Germany. This has ultimately resulted in the presence of a very large population of Turkish descent in Germany. Many Germans have watched the growing number of adherents of the Muslim faith with skepticism. As Taras has observed, Islamophobia "bundles religious, ethnic, and cultural prejudices together, just as anti-Semitism"[91] did–a troubling observation.

Ultimately, the seeming paradox between Germany's situation as a major recipient country for refugees and other migrants, and the negative discourses that surround these residents, is less mystifying than it may first appear. In the decades following the Nazi era, Germany strove to restore its image of good global citizenry on the international political scene. The country's role in creating large-scale displacement during the Second World War resulted in an obligation to absorb displaced ethnic Germans from Eastern Europe. Based on this history, post-war Germany developed a strong policy response to global migratory pressures. These retributive efforts were well aligned with the philosophies of Germany's liberal tradition and intellectual elites. They clash, however, with continued xenophobic tendencies that run deep in German society. These xenophobic tendencies also increasingly permeate the regulatory controls imposed upon those that are considered foreigners.

---

[87] *Ibid*: 143-144.
[88] R. Taras, "Islamoskepticism and its Counter-Narratives: Transnational Identity, Cultural Wars, and Religion's Place," In *European Identity and Culture: Narratives of Transnational Belonging*, ed. R. Friedman and M. Thiel (Farnham, UK: Ashgate Publishing, 2012), 137-55.
[89] *Ibid*: 144.
[90] Federal Ministry of the Interior, *Migration and Integration*, 2014, 190.
[91] Raymond Taras, "'Islamophobia Never Stands Still': Race, Religion, and Culture," *Ethnic and Racial Studies* 36:3 (2012): 425.

Whether it is the recent PEGIDA movement, the popularity of Theo Sarrazin's anti-Muslim and Social Darwinist postulations, or the *Alltagsrassismus* (everyday racism) appearing in many different forms (from subtle racial slurs to regular violent attacks on immigrants and refugees), widespread xenophobia is, unfortunately, a characteristic of German society. Germany is not alone in this regard among its European neighbours: In the European Parliament elections in May 2014, far-right, anti-immigrant parties made major gains. In Germany, the right-wing Alternative for Germany (AfD) party has recently sought dialogue with the PEGIDA movement, and the party had major successes in three Eastern German State elections in 2014 where it won 12, 10, and 10 percent of the vote, respectively.

Such widespread symbolism, slogans, and openly displayed far-right attitudes would have been unthinkable in the Germany of the 1970s in which I grew up and came of age. Yet, even then, the barriers between the native population and those labeled as 'foreigners' were palpable. Germany may have extended assistance to refugees in need in the past and in the present, but it has never embraced them, as evidenced in discourse and policy. For many 'foreigners', Germany offers a place to live (at least for a period of time), but whether it will ever feel like home remains doubtful.

REFERENCES

Adam, Heribert, and Kogila Moodley. "Xenophobia in Germany." Chap. 6 in *Imagined Liberation: Xenophobia, Citizenship and Identity in South Africa, Germany and Canada*. Stellenbosch, South Africa: Sun Press, 2013.

Al-Ali, Nadje, Richard Black, and Khalid Koser. "Refugees and Transnationalism: The Experience of Bosnians and Eritreans in Europe." *Journal of Ethnic and Migration Studies* 27, no. 4 (2001): 615-634.

Anderson, Philip. " 'You Don't Belong here in Germany…': On the Social Situation of Refugee Children in Germany." *Journal of Refugee Studies* 14, no. 2 (2001): 187-199.

Asylum Information Database. *Statistics: Germany*. (2015): http://www.asylumineurope.org/reports/country/germany/statistics

"Battling Racism: UN Body Reprimands Germany over Sarrazin Comments," *Spiegel Online International* (April 18, 2013): http://www.spiegel.de/international/germany/un-anti-racism-committee-reprimands-germany-over-sarrazin-comments-a-895247.html.

Bergmann, W. "Antisemitism and Xenophobia in Germany since Unification." In *Antisemitism and Xenophobia in Germany after Unification*, edited by H. Kurthen, W. Bergmann, and R. Erb, 21-38. New York, NY: Oxford University Press, 1997.

Carrera, Sergio. "A Typology of Different Integration Programmes in the EU*," Briefing Paper, Centre for European Policy Studies* (Order Form No. IP/C/LIBE/OF/2005-167, 2006):

http://www.libertysecurity.org.

Connolly, Kate. "Angela Merkel Declares Death of German Multiculturalism." *The Guardian* (October 17, 2010): http://www.theguardian.com/world/2010/oct/17/angela-merkel-germany-multiculturalism-failures.

Dege, Stefan. "Questions of Equality at the Fore in German Islam Conference." *Deutsche Welle* (May 6, 2013): http://www.dw.de/questions-of-equality-at-the-fore-in-german-islam-conference/a-16794063.

Ersanilli, Evelyn and Ruud Koopmans. "Rewarding Integration? Citizenship Regulations and the Socio-Cultural Integration of Immigrants in the Netherlands, France and Germany." *Journal of Ethnic and Migration Studies* 36, no. 5 (2010), 773-791.

European Resettlement Network. "Germany Extends Humanitarian Admission Programme to an Additional 10,000 Syrian Refugees." http://www.resettlement.eu/news/germany-extends-humanitarian-admission-programme-additional-10000-syrian-refugees

Federal Government, Press and Information Office. "Asylum and Refugee Policy: Improvements for Asylum-Seekers." http://www.bundesregierung.de/Content/EN/Artikel/2014/10_en/2014-10-29-verbesserungen-fuer-asylbewerber-beschlossen_en.html

Federal Ministry of the Interior. *Migration and Integration: Residence Law and Policy on Migration and Integration in Germany*. Berlin, Germany: Federal Ministry of the Interior, 2011. http://www.bmi.bund.de/SharedDocs/Downloads/EN/Broschueren/Migration_und_Integration_en.html. (Accessed July 15, 2014)

Federal Ministry of the Interior. *Migration and Integration: Residence Law and Policy on Migration and Integration in Germany*. Berlin, Germany: Federal Ministry of the Interior, 2014. http://www.bmi.bund.de/SharedDocs/Downloads/EN/Broschueren/2014/migration_and_integration.pdf?__blob=publicationFile.

Federal Ministry of the Interior. *Migration Report 2013*. Berlin, Germany: Federal Ministry of the Interior, 2014, http://www.bmi.bund.de/SharedDocs/Downloads/DE/Broschueren/2014/migrationsbericht_2013_de.pdf?__blob=publicationFile.

Federal Ministry of Justice and Consumer Protection. *Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act)*. Saarbruecken, Germany: juris GmbH, 2014, http://www.gesetze-im-internet.de/englisch_aufenthg/residence_act.pdf

Federal Office for Migration and Refugees. *Foreign Nationals with Residence Titles Issued from 2005 Onwards: Conditions of Attendance and Costs for Foreign Nationals*. (2013a): http://www.bamf.de/EN/Willkommen/DeutschLernen/Integrationskurse/TeilnahmeKosten/Aufenthaltstitel_nach/aufenthaltstitel_nach-node.html.

Federal Office for Migration and Refugees. *Integration Course for Immigrants*. (2013b): http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Flyer/Lernen-Sie-Deutsch/lernen-sie-deutsch.pdf?__blob=publicationFile

Fekete, Liz. "Understanding the European-wide Assault on Multiculturalism." (Institute of Race Relations, April 21, 2011). http://www.irr.org.uk/news/understanding-the-european-wide-assault-on-multiculturalism/.

Gensing, Patrick. "Anti-EU-Parteien: 'Weder Rechts noch Links' [Anti-EU-Parties: 'Neither Right nor Left']." *Publikative.org* (May 23, 2014): http://www.publikative.org/2014/05/23/weder-rechts-noch-links/.

"Germany's Woeful Asylum Infrastructure," *Spiegel Online International* (October 6, 2014): http://www.spiegel.de/international/germany/abuse-case-reveals-terrible-state-of-refugee-homes-in-germany-a-995537.html.

Green, Simon. "Divergent Traditions, Converging Responses: Immigration and Integration Policy in the UK and Germany." *German Politics* 16, no. 1 (2007): 95-115.

Gruner, Sabine. " 'The Others Don't Want…'. Small-Scale Segregation: Hegemonic Public Discourses and Racial Boundaries in German Neighbourhoods." *Journal of Ethnic and Migration Studies* 36, no. 2 (2010): 275-292.

Jacobs, Dirk, and Andrea Rea. "The End of National Models? Integration Courses and Citizenship Trajectories in Europe". *Paper presented at the EUSA Conference, Montreal, Canada*, May 2007: http://aei.pitt.edu/7916/1/jacobs-d-11i.pdf.

Joppke, Christian. "Beyond National Models: Civic Integration Policies for Immigrants in Western Europe." *West European Politics* 30, no. 1 (2007): 1-22.

Lütticke, Marcus. "Syrian Refugees in Germany." *Deutsche Welle* (June 10, 2014): http://www.dw.de/syrian-refugees-in-germany/a-17697536

Mestheneos, Elizabeth, and Elizabeth Ioannidi. "Obstacles of Refugee Integration in the European Union Member States." *Journal of Refugee Studies* 15, no. 3 (2002): 304-320.

Stute, Dennis. "Anti-Islamization Protests Expand in Germany." *Deutsche Welle* (December 7, 2014): http://www.dw.de/anti-islamization-protests-expand-in-germany/a-18113657

Taras, Raymond." 'Islamophobia Never Stands Still': Race, Religion, and Culture." *Ethnic and Racial Studies* 36:3 (2012): 417-33.

Taras, R. "Islamoskepticism and its Counter-Narratives: Transnational Identity, Cultural Wars, and Religion's Place." In *European Identity and Culture: Narratives of Transnational Belonging*, edited by R. Friedman and M. Thiel, 137-55. Farnham, UK: Ashgate Publishing, 2012.

United Nations High Commissioner for Refugees. *A New Beginning: Refugee Integration in Europe*. Geneva, Switzerland: UNHCR, 2013. http://www.refworld.org/docid/522980604.html.

United Nations High Commissioner for Refugees. *UNHCR Global Trends 2012*. Geneva, Switzerland: UNHCR, 2013. http://unhcr.org/globaltrendsjune2013/UNHCR%20GLOBAL%20TRENDS%202012_V08_web.pdf

"Unwort des Jahres: 'Alternativlos' Siegt vor 'Integrationsverweigerer'," *Topnews.de* (January 18, 2011): http://www.topnews.de/unwort-des-jahres-alternativlos-siegt-vor-integrationsverweigerer-393587.

Wallace Goodman, Sara. "The Politics and Policies of Immigration in Germany." *German Politics and Society* 85, no. 25 (2007): 99-110.

Understanding India's Refusal to Accede to the 1951 Refugee Convention: Context and Critique

SREYA SEN*

Abstract:
India is the largest refugee receiving country in South Asia. Refugee groups that have sought asylum in India include Tibetans, the Tamil from Sri Lanka, Partition refugees from erstwhile East and West Pakistan, the Chakmas from Bangladesh, Bhutanese refugees from Nepal, Afghans, Rohinyga and other refugees from Myanmar and refugees from Somalia, DRC and Sudan. In spite of having such a substantive asylum seeking and refugee population, India is not a signatory to the 1951 Refugee Convention[1] or the 1967 Protocol[2]. Neither has any domestic legislation in India been passed to protect refugees. The fate of individual refugees in India is essentially determined by protections that are made available under the Indian Constitution. The question often raised is why India, like several other nations in South Asia, has not ratified the 1951 Refugee Convention. This article analyzes a number of scholastic arguments that have been made to explain India's refusal to accede to the Convention, and examines the existing legal set-up for refugees in India in order to arrive at an understanding of the context of non-accession. This opinion paper concludes that India will likely never be party to the Convention despite hosting numerous refugees on its soil, and argues that uniform domestic protection legislation must be enacted.

**Shreya Sen is pursuing her doctoral research as a Junior Research Fellow at the University of Calcutta, India. Her research focuses upon the gendered dimensions of environmental displacement in South Asia. Shreya Sen is a member of the ESPMI Executive Committee.*

An Overview of the Legal Situation of Refugees in India

There is no domestic procedure or law that governs the protection of refugees in India. There is also no regional agreement of a binding nature such as the Organization for African Unity (OAU) Convention (1974) or a detailed declaration for refugee protection such as the

[1] Convention Relating to the Status of Refugees 28th July 1951.
[2] Protocol Relating to the Status of Refugees of 31 January 1967.

Cartagena Declaration (1984) enacted in Central America.[3] Refugees on Indian soil are instead subject to the control provisions of domestic legislation such as the Passports Act of 1967 (Act 15), the Registration of Foreigners Act of 1939 (Act No. 16) and the Foreigners Act of 1946 (Act No. 31), all of which define a person of non-Indian nationality as a 'foreigner', independent of their specific legal status.

While the Indian state does offer *de facto* protection to refugees, the absence of any legal framework for refugee protection makes the status of a refugee in India a precarious one. This status is usually based on the goodwill and tolerance of the government in power. The ad hoc approach adopted by the government of India towards refugees is reflected in the fact that most refugees have not been granted uniform rights and privileges or legal status[4]. UNHCR Refugee Certificates are technically recognized by the government as legitimate proof of a refugee's status. However, while the Foreigners Regional Registration Office, local police authorities, and the Ministry of Home Affairs are aware of the existence of such certificates, refugees in possession of these certificates are granted extended periods of stay without any permanent status in India. Refugee certificates remain the only measure of protection against arbitrary arrests and the detention and deportation of refugees in the absence of any other identification papers.

The role of The National Human Rights Commission (NHRC), which was established via The Protection of Human Rights Act in 1993, is worth mentioning for its laudable efforts towards upholding the dignity and safety of refugee communities in India. The function of the NHRC is to investigate complaints of human rights violations either on the basis of a petition that is presented to the NHRC by the person whose rights have been violated, or by anyone else on his or her behalf (*suo moto*).[5] The NHRC has been known to intervene on behalf of several refugee groups in India, the most notable example being its intervention in the harassment of Chakma refugees by the state of Arunachal Pradesh. The NHRC is provided with its own team of investigators by the NHRC Regulations, but it is also allowed to recruit outsiders--such as members of diplomatic corps stationed presently in New Delhi, in human rights courts, in state human right commissions and in non-governmental organizations--who might be of assistance to the investigation of cases as either observers or investigators.

---

[3]Sen, Sarbani. "Paradoxes of the International Regime of Care: Role of the UNHCR in India." In *SamaddarRanabir Ed. Refugees and the State: Practices of Asylum and Care in India, 1947-2000*, 398-399. 2nd ed. Sage Publications, 2008.

[4] Certain refugee groups have been granted uniform refugee rights. For instance, despite the 'ambiguous' status of Sri Lankan Tamil refugees in India they are accepted as de facto refugees and there are organized administrative mechanism set up for them (Raizada 2013). See Raizada, H. Sri *Lankan Refugees in India: The Problem and the Uncertainty*, International Journal of Peace and Development, Vol.1, No.1, August 2013, pp 1-29. http://acascipub.com/International%20Journal%20of%20Peace%20and%20Development/IJPD_Vol.%201,%20No.%201,%20August%202013/Sri%20Lankan%20Refugees%20in%20India.pdf .

[5]Chimni.B.S "Status of Refugees in India: Strategic Ambiguity." In *SamaddarRanabir Ed. Refugees and the State: Practices of Asylum and Care in India, 1947-2000*, 455. 2nd ed. Sage Publications, 2008.

India's International Commitments

While India is not a signatory of the 1951 Refugee Convention, it is still obliged to adhere to the principle of *non-refoulment*, which forms a crucial part of customary international law. The principle of *non-refoulement* is one that is binding on every state whether or not that state has ratified the 1951 Refugee Convention or its 1967 Protocol. This obligation is further strengthened by India's ratification of the 1984 Torture Convention. A wider legal basis for respecting customary international law has been articulated by the Torture Convention, including the principle of *non-refoulement*. Article 3 states that,

1. No State Party shall expel, return (refouler) or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds[6], the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.[7]

It is important to remember, however, that there are no specific provisions in the Indian Constitution that oblige the Indian state to implement or reinforce international conventions and treaties. An analysis of case law and a joint reading of the different provisions listed under the Constitution clearly reveal that international agreements, conventions, covenants, and treaties will constitute an aspect of domestic law in India if and only if these are incorporated specifically into its legal framework by the government. The Supreme Court has ruled that international refugee law needs to first undergo a transformation into Indian municipal law before this can become an internal law in a number of decisions [8]. While international legal clauses may be invoked in Indian court, their implementation is subject to there being no existing conflict between domestic and international law and, further, no violation of the spirit of national legislation and the Indian Constitution. If any conflict does exist, it has been well established that it is the domestic law which shall prevail.[9]

Critical Analysis of India's Stance on the 1951 Convention

[6] Coercion, intimidation, infliction of pain by persons who act in an official capacity.
[7] (Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 10 December 1984).
[8] "The Status of International Law under the Constitution of India," http://www.legalindia.com/the-status-of-international-law-under-the-constitution-of-india/ .
[9] Ananthachari, T. "Refugees in India: Legal Framework, Law Enforcement and Security." In *ISIL Yearbook of International Humanitarian and Refugee Law*, (2001).Paragraph 34.

Scholars of India and South Asia offer a number of insights into India's position with regard to the 1951 Refugee Convention. Myron Weiner, for instance, believes that there are certain features unique to the region of South Asia that must be borne in mind when discussing the problem of failure to accede[10]. Weiner argues that borders in the region are highly permeable and that each South Asian state lacks the political, administrative or military capacity to enforce rules with regard to population entry. Weiner also raises the issue that the cross border movements of people in South Asia are known to affect political stability, international relations and internal security, and not simply the provision of services to new arrivals or the composition and structure of the labor market. He also notes that it is possible that refugee flows would result in or be seen as effecting change in the religious or linguistic composition within the receiving area of the country.

Weinar is correct that local anxieties are particularly acute when a perceived economic or cultural threat exists. In 1971, for example, owing to the substantive presence of Bengalis in the North Eastern States of Tripura, Assam, Meghalaya, state authorities were concerned that this Bangladeshi 'influx' would lead to indigenous peoples becoming minorities in their own land. Governments within South Asia believe that international agreements could end up constricting their freedom of action, and have thus largely concluded that unwanted migrations, including those of refugees, should be the focus of bi-lateral rather than multilateral relations. As observed by David Dewitt and Amitav Acharya,[11] Third World nations are highly sensitive to international humanitarian operations, even if these are conducted by neutral multilateral organizations. There are many examples of the unshakeable faith that SAARC member states have in bilateral negotiations to resolve conflicts. The South Asian Association for Regional Cooperation (SAARC)'s exclusion of population movement concerns from its purview, which was done primarily out of fear that its inclusion might disrupt the organization, is one such example, as are the ongoing dialogue between Bhutan and Nepal to improve the plight of the Lhotsampa Bhutanese refugees in the South of Nepal and between India and Bangladesh to resolve the situation of Chakma refugees given asylum in the Indian state of Arunachal Pradesh.

There are other possible reasons that India's accession to the 1951 Convention has never come about, I believe. Firstly, it is necessary to note that India has always hosted refugees quite willingly and has allowed the UNHCR to have an official presence in New Delhi and Chennai; thus India feels there is no need to ratify the Convention. Secondly, as argued by some scholars[12], India has adopted a skeptical outlook towards the political or non-humanitarian role

[10]Weiner, Myron. "Rejected Peoples and Unwanted Migrants in South Asia." In *Economic and Political Weekly*, 1737-46.34th ed. Vol. 28. 1993.
[11] Acharya Amitav and Dewitt .B. David, "Fiscal Burden Sharing" in Hathaway C. James, Ed. *Re-conceiving International Refugee Law*, 126, The Hague: Martinus Njhoff Publishers, 1997.
[12] Saha K.C. "The Genocide of 1971 and the Influx in the East" in In *Samaddar Ranabir Ed. Refugees and the State: Practices of Asylum and Care in India, 1947-2000* pp 24- 241. 2nd ed. Sage Publications, (2008.)

of the UNHCR, owing to the uncooperative stance demonstrated by the UNHCR during the Bangladesh crisis of 1971. A third important reason for India's refusal to accede to the 1951 Refugee Convention is that the rights that are incorporated within the Convention for refugees are entirely impractical for Third World countries like India, which can barely meet the needs and requirements of its own citizens. India could always make use of or invoke a reservation clause in order to accede to the Convention, but doing so would not restrict criticism from the Indian NGO community and the UNHCR. The general lack of understanding of refugee law in Indian official circles further complicates matters; the discretionary powers that would be vested with the Indian state were it to ratify the Convention have not been deeply considered.

Legal scholars in India often reference the Eurocentric definition of a refugee as defined in the Convention, and I believe this is apt.[13] These scholars have argued that the definition confines itself to the violation of civil and political rights of refugees, but does not extend to economic, social and cultural rights. The definition does not allow for the protection of groups or individuals fleeing situations of generalized violence or internal warfare. If India is to be party to the 1951 Refugee Convention, it would also have to allow for the intrusive supervision of the national regime by the UNHCR, via Article 35,[14] and the UNHCR would be granted permission to access detention centers and refugee camps. The apprehension that NGOs could embarrass India before the international community by presenting negative reports that fail to take into cognizance the practical difficulties faced by a Third World nation like India is present.[15]

These valid legal critiques also lay the groundwork for considering the serious issue of burden sharing[16], which affects India's decision of whether to accede. B.S Chimni makes the defensible argument that India should always refrain from acceding to the 1951 Convention, as it is violated by nations in the Global North in both the letter as well as the spirit of the law. [17] Chimni feels that India, along with other South Asian nations, should argue that accession to the Convention would be conditional to a reversal of the no entry regime created by western states. This regime is currently evidenced by a wide range of administrative and legal measures, including the safe third country rule, carrier sanctions, interdictions, visa restrictions, the

[13]Chimni B.S. "Status of Refugees in India: Strategic Ambiguity." In *Samaddar Ranabir Ed. Refugees and the State: Practices of Asylum and Care in India, 1947-2000,* 444-445. 2nd ed. Sage Publications, (2008.)
[14] Article 35 entitled, "Co-operation of the national authorities with the United Nations' States": (1) The Contracting States undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
[15] Chimni B.S. "Status of Refugees in India: Strategic Ambiguity." In *Samaddar Ranabir Ed. Refugees and the State: Practices of Asylum and Care in India, 1947-2000* pp 445.. 2nd ed. Sage Publications, (2008.)
[16] a principle of customary international law that requires all states to share the responsibility of asylum provision
[17]Chimni B.S. "Status of Refugees in India: Strategic Ambiguity." In *Samaddar Ranabir Ed. Refugees and the State: Practices of Asylum and Care in India, 1947-2000,* 447-448. 2nd ed. Sage Publications, (2008.)

widespread practice of detention, removal of access to social welfare benefits for asylum seekers, and, again, the restrictive interpretations of the refugee definition.

Conclusion

Political, economic and ethical considerations prevent the Indian state from being party to the 1951 U.N. Convention on Refugees, and this paper has shown the practical and conceptual difficulty the Indian government, local officials, and scholars have with reconceptualizing the Convention or Constitution for the purposes of protection. Therefore, it is vital that the development of a specific legislative framework for addressing refugee issues be established. If the 1951 Refugee Convention is not incorporated into the domestic legal setup in India, a uniform legislation, at the least, must be enacted for the protection of refugees. A rights-based approach must be adopted for refugee concerns to be given proper weight in a framework which recognizes the essence of humanitarian problems, and which provides legal recognition to the crucial fact that all persons, national or alien, are worthy of treatment that does not violate their dignity. A rights-based, specific, and uniform legislation will reduce the chance of the fate of refugees being entirely left to the discretionary powers of the Indian Executive and Judiciary[18].

REFERENCES

Ananthachari, T. "Refugees in India: Legal Framework, Law Enforcement and Security." In*ISIL Yearbook of International Humanitarian and Refugee Law*, 2001.

Chimni.B.S "Status of Refugees in India: Strategic Ambiguity." In *Samaddar Ranabir Ed. Refugees and the State: Practices of Asylum and Care in India, 1947-2000*, 2nd ed. Sage Publications, 2008.

Chimni, B.S. "Legal Condition of Refugees in India." In *Chimni B.S Ed. International Refugee Law: A Reader*, 7th ed. Sage Publications, 2008.

LianCung Van Salai “A Brief Introduction to the Legal Status of Refugees in India: Indian Policies and Laws towards Refugees. Available at:http://www.academia.edu/3073508/A_Brief_Introduction_to_the_Legal_Status_of_Refugees_in_India_India_Policies_and_Laws_towards_Refugees.

Nayak Kumar Prafulla, “Protection of Refugees: A Humanitarian Crisis in India” Voice of Research, Vol.2,Issue 3, 2013.

[18] For some discussion of the work on developing a model of South Asian refugee law, please see the work of Ranabir Samaddar and Tapan Bose, or organizations such as the South Asia Forum for Human Rights and the Calcutta Research Group. See Bose, Tapan K. *Protection of refugees in South Asia: need for a legal framework*, South Asia Forum for Human Rights, Kathmandu, 2000.

Nair Arjun, "National Refugee Law for India: Benefits and Roadblocks" *IPCS Research Papers*, 2007.

Weiner, Myron. "Rejected Peoples and Unwanted Migrants in South Asia." In *Economic and Political Weekly*, 34th ed. Vol. 28. 1993.

The Hindu Opinion. "Wanted: A Law for Refugees." 2012. *The Hindu.* Available at http://www.thehindu.com/opinion/editorial/wanted-a-law-for-refugees/article3812816.ece.

Sen, Sarbani. "Paradoxes of the International Regime of Care: Role of the UNHCR in India." In *SamaddarRanabir Ed. Refugees and the State: Practices of Asylum and Care in India, 1947-2000*, 2nd ed. Sage Publications, 2008.

Sengupta Ipshita, "UNHCR's Role in Refugee Protection in India" *Infochange Agenda*, October 2014, http://infochangeindia.org/agenda/migration-a-displacement/unhcrs-role-in-refugee-protection-in-india.html.

Climate refugees? Alternative and Broadened Protection Avenues for Refugees from Small Island Developing States (SIDS)

MAINÉ ASTONITAS*, JACQUELINE FA'AMATUAINU,** AHMED INAZ***

Abstract:
New migration trajectories arise out of the increasing vulnerability of fragile environments and the eventual movement of affected people beyond their national borders. However, "climate refugees" and similar terms, which were coined in a context of environmental degradation and climate change, are often contested. This has contributed to the lack of recognition of a potential new category of protection for climate-induced migrants. The imminence of climate change and related migration is a particular concern for Small Island Developing States (SIDS), which have limited capacity to adapt to extreme weather events. With this opinion piece, we aim to contribute to the ongoing discussion on environmentally-induced migration from SIDS. The following discussion will focus on the Pacific context, in which power differences between sending and receiving nations have influenced regional legal regimes for granting refugee status. We believe that the insufficiency of legal definitions that are not tied to an international protection scheme is apparent, but we also explore alternative avenues of protection that find a domestic context in Kiribati, Tuvalu, and New Zealand. We argue that the effects of climate change can be considered a legitimate form of persecution under the 1951 Refugee Convention for those leaving climate-affected SIDS, broadening its scope and providing a viable avenue of international protection.

** Mainé Astonitas is a PhD Candidate in Development Studies at The University of Auckland. Her main interest is the impact of transnational migration, and she currently focuses on labour and social relations around seasonal migration from the Recognised Seasonal Employer scheme (RSE) in New Zealand and Vanuatu.*

*** Jacqueline Fa'amatuainu is a PhD Candidate in Development Studies at The University of Auckland. She is following the UNFCCC negotiations as part of her doctoral research and was an Advisor for the Government of Samoa's delegation to the 2014 UNFCCC 20th session of the Conference of Parties (COP20) in Lima, Peru.*

**** Ahmed Inaz is a PhD Candidate in Development Studies at The University of Auckland. He has worked in various development departments of the government of the Maldives, and his*

research interests are institutions, climate change adaptation, participation, political ecology, sustainable development and tourism development.

Introduction

While academic debate has introduced nuance to the original concept of "climate refugees" defined by the United Nations Environment Programme[1] to refer to the climate-related movement of people, current international legal frameworks do not offer protection to those affected. The more recent variety of terms, such as ecomigrants,[2] climate exiles[3], and ecological refugees[4] lack clear legal and operational definitions. More specifically, practical solutions to the increased climate-related challenges faced by the SIDS community have yet to be acknowledged and problematised. This opinion piece will discuss whether the current legal framework contained within the 1951 Refugee Convention[5] can be expanded to provide an avenue for international protection for those affected by climate change induced migration from SIDS.

Small Island Developing States (SIDS) are, due to their topography and location, particularly vulnerable to climate variability and rising sea levels caused by climate change. For the most part, developing low-lying countries are those considered most at risk of producing migrants due to the effects of climate change.[6] At an international level, the UNHCR does not support the climate migration label as a viable ground for claiming refugee status under the 1951 Refugee Convention.[7] The UNHCR does, however, project an increase of climate induced displacement by 2050, which could mean up to a billion people.[8] While it is already known that climate change and rising sea levels will especially affect countries with low altitudes, potential migration from developed countries is hardly considered in the regional policy discourses that

[1]EL-Hinnawi, E. (1985). Environmental Refugees. Nairobi, Kenya: United Nations Environment.
[2]Wood, W. B. (1995). Hazardous journeys: Ecomigrants in the 1990s. In D. Conway & J. C. White (eds.) Global change: How vulnerable are north and south communities? Indiana: Indiana Center on Global Change and World Peace.
[3]Byravan, S., & Rajan, S.C. (2006). Providing new homes for climate change exiles. Climate Policy, 6, 247-252.
[4]Westra L. (2009) Environmental justice and the rights of ecological refugees, Earthscan, London. Nine, C. (2010) Ecological Refugees, States Borders, and the Lockean Proviso. Journal of Applied Philosophy, Vol.27 (4), 359-375.
[5]UNHCR Convention and Protocol Relating to the Status of Refugees. Retrieved from: http://www.unhcr.org/3b66c2aa10.html
[6] Small islands and coastal communities experience ecosystem losses due to the rising sea level caused by climate change.
[7] As the responsibility of the UNHCR falls in the area of forced displacement, they have "serious reservations with respect to the terminology and notion of environmental refugees or climate refugees." UN High Commissioner for Refugees (UNHCR), *Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective*, 23 October 2008. Retrieved from: http://www.unhcr.org/4901e81a4.html.
[8] Low Carbon Development Partnership (2009). Climate change could mean a billion refugees by 2050 - UNHCR. Retrieved from: http://www.lowcvp.org.uk/news,climate-change-could-mean-a-billion-refugees-by-2050-unhcr_907.htm.

raise alarm over increases in the number of displaced people and refugees.[9] This absence creates myths which greatly oversimplify human-environment interactions, and portray affected populations who are primarily non-Western as victims.[10] If climate change generates different migration patterns, those affected by these patterns need to be incorporated into the existing protection frameworks of the 1951 Refugee Convention[11] as well as the United Nations Framework Convention on Climate Change (UNFCCC).[12] These mandates require a clear definition of climate migration to create protocols that would allow governments to grant or deny asylum.

In this opinion piece, we will discuss whether the current legal framework of the 1951 Refugee Convention[13] can be expanded to provide an avenue for international protection of those affected by climate change induced migration from SIDS. We exemplify the complex situation of SIDS and refugee protection with two recent cases in New Zealand: *Teitiota v Chief Executive of Ministry of Business, Innovation and Employment* [2014] NZCA 173[14] and *AD (Tuvalu)* [2014] NZIPT 501370-371. Both cases consider claims for refugee or protected person status available under New Zealand's Immigration Act 2009. The *Teitiota* decision highlights the reluctance to broaden the refugee or protection person status to apply to a person who was vulnerable to the impacts of climate change. In contrast, *AD (Tuvalu)* shows how the appellants from Tuvalu successfully prevented their deportation from New Zealand on humanitarian grounds, as the Immigration and Protection Tribunal (IPT) decision acknowledged the effects of climate change as a contributing factor against deportation.

---

[9] For an interesting analysis of global policy discourses in relation to security and climate change see. Detraz, N. & Betsill, M. Climate Change and Environmental Security: For Whom the Discourse Shifts. International Studies Perspectives (2009) 10, 303–320 and DeWitte, C. At the Water's Edge: Legal Protections and funding for a new generation of climate change refugees. Ocean and Coastal Law Journal (2010) 16, 211-234.

[10] Bettini, G. & Andersson, E. (2014). Sand Waves and Human Tides: Exploring Environmental Myths on Desertification and Climate-Induced Migration. The Journal of Environment & Development, 23(1), 160-185.

[11] In addition to the 1951 Refugee Convention, the UNHCR mandate includes: victims of manmade disasters and persons of concern to the High Commissioner. See ECOSOC Resolution 2011 (LXI) of 2 August 1976. Retrieved from: http://www.unhcr.org/refworld/docid/3ae69ef418.html, General Assembly Resolution 31/35 of 30 November 1976, Retrieved from: http://www.unhcr.org/refworld/docid/3b00f0375c.html, and General Assembly Resolution 48/118 of 20 December 1993, Retrieved from: http://www.unhcr.org/refworld/docid/3b00f2641c.html. These instruments will not be further addressed in this paper.

[12] United Nations (1992). United Nations Framework Convention on Climate Change Retrieved from: http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf

[13] UNHCR Convention and Protocol Relating to the Status of Refugees. Retrieved from: http://www.unhcr.org/3b66c2aa10.html

[14] The adverse effects of climate change were outlined in the Immigration and Protection Board decision, *AF (Kiribati)* [2013] NZIPT 800413. The Tribunal decision declined the claims for refugee and protected person status. The application for leave to appeal to the High Court under s 245 of the Immigration Act 2009 was declined: *Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment* [2013] NZHC 3125. The Court of Appeal upheld the High Court decision to decline leave to appeal: *Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment* [2014] NZCA 173. For a complete background, refer to both the High Court and Court of Appeal upholding the Tribunal's original findings.

Climate change and refugee status claims in New Zealand

New Zealand ratified the primary instrument of refugee law, the 1951 Convention Relating to the Status of Refugees, on 30 June 1960 and the 1967 Protocol Relating to the Status of Refugees on 6 August 1973. Additionally, it signed the UNFCC on June 4 1992, which entered into force on March 21, 1994. The fact that New Zealand is subject to obligations under international law renders the 1951 Refugee Convention an appropriate instrument for seeking redress. However, the operationalization of a category for climate change refugees and vulnerable individuals leaving adverse environmental conditions is not yet legally binding. Individuals fleeing environmentally adverse conditions continue to lack any protection under New Zealand's existing domestic legal framework and are treated as any other applicant for refugee protection.

Nonetheless, for the last decade, Pacific Island appellants have based their claims for protection on the effects of climate change in their place of origin, arguing for refugee status in New Zealand[15]. For example, the adverse effects of climate change on the low-lying atolls of Kiribati and Tuvalu have received considerable attention. Pacific Island migrants coming from Kiribati or Tuvalu to New Zealand, who are unable to obtain residence and whose presence eventually becomes unlawful, have appealed to the effects of climate change to seek protection person status under the Immigration Act 2009.[16] Presently, stateless Pacific Island asylum claimants are treated as aliens, and refugee status is not granted for environmental reasons. A forward-looking assessment of risk faced by refugee status claimants on the grounds of climate change could be an avenue to explore if the government would decide to provide protection for Pacific countries already affected by climate change. Unfortunately, any potential new statutory class of 'climate change refugee' encounters the legal constraints associated with framing and recognizing new types of refugee claims.

Teitiota v Chief Executive of Ministry of Business, Innovation and Employment [2014] NZCA 173

In the case of *Teitiota v Chief Executive of Ministry of Business, Innovation and*

[15] Mc.Adam, J. (2010) Climate change displacement and international law. Retrieved from: http://www.unhcr.org/4d05ecf49.pdf .

[16] In 2000, a group of claimants from Tuvalu unsuccessfully argued that environmental factors combined with factors at the individual and household levels meant that they should be recognized as refugees. See, Refugee Appeal No 72185 (10 August 2000) at para [13] - [19]; Refugee Appeal No 72186 (10 August 2000); Refugee Appeal Nos 72189-72195 (17 August 2000); Refugee Appeal Nos 72313-72316 (19 October 2000).

Employment,[17] the appellant was a citizen of Kiribati. Given the combined risks of climate change-related sea-level rise and the environmental changes in Kiribati, the appellant and his wife moved to New Zealand and had three children in the country. Once their presence in New Zealand became unlawful[18], Mr Teitiota sought refugee and protected person status in New Zealand due to the adverse environmental conditions in Kiribati and appealed to the Immigration and Protection Tribunal (IPT) when the Refugee Status Branch officer declined to grant this request.

While this was not the first case in New Zealand where appellants included climate change grounds in their appeal, local and international media portrayed this case as ground-breaking.[19] The key issue in this case concerned whether people especially vulnerable to the climate change phenomenon can be provided appropriate protection based primarily on these grounds.

In *Teitiota*, the IPT deemed it essential to apply the legal definition of refugee as contained within Article (1)(A)(2) of the 1951 Refugee Convention.[20] The requirement for refugee protection as per the Convention is that a person must have a fear of being persecuted for a number of reasons, such as ethnicity or political views. This persecution must relate to the

[17] The application for leave to appeal to the High Court under s 245 of the Immigration Act 2009 was dismissed: *Teitiota v The Chief Executive of the Ministry Innovation and Employment* [2013] NZHC 3125.

[18] See, Immigration Act 2009 (NZ), section 9 for meaning of unlawfulness in New Zealand (in relation to a person who is not a New Zealand citizen). A person who is unlawfully in New Zealand has an obligation to leave New Zealand whether or not the person is aware of the obligation or of the implications of not meeting this. In this Act, a person who is not a New Zealand citizen is unlawfully in New Zealand if the person is in New Zealand but—(a) is not the holder of a visa granted under this Act; or (b) has not been granted entry permission under this Act. (2) A person's status as being unlawfully in New Zealand is calculated—(a) as starting on the date the person arrived in New Zealand, if the person has never been lawfully in New Zealand since his or her arrival; or (b) as starting on the day after the date on which the person's visa expired or was cancelled without another visa being granted; or (ba) [as starting on the day after the date on which a permit granted to the person under the former Act expired or was revoked without another permit being granted under that Act; or] (c) in accordance with sections 373 and 374, if—(i) the person was born in New Zealand on or after 1 January 2006; and (ii) he or she is not a New Zealand citizen. See also, Immigration Act 2009 (NZ), sections 129-131 on the claims sought for recognition as a refugee or protected person.

[19] Irvine, C. (November 26, 2013). Kiribati climate change refugee rejected by New Zealand. Retrieved from: http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/kiribati/10474602/Kiribati-climate-change-refugee-rejected-by-New-Zealand.html
Godfery, M. (May 12 2014) New Zealand refuses climate change refugees – mass action is now needed retrieved from: http://www.theguardian.com/commentisfree/2014/may/12/new-zealand-refuses-climate-change-refugees-mass-action-is-now-needed
Perry, N (November 26, 2013) Ioane Teitiota, Kiribati Man, Sees Climate Change Refugee Claim Rejected By New Zealand Judge. Retrieved from: http://www.huffingtonpost.com/2013/11/26/ioane-teitiota-kiribati-refugee_n_4342127.html

[20] It is important to note that this Tribunal is not a treaty supervisory body. Instead, refugee status determinations by the IPT are concerned with answering a fundamentally different issue – whether the individual's circumstances meet the legal international definition of 'persecution,' and thereby require international protection.

violation of human rights and the failure of the state in question to protect the refugee claimant from persecution. Mr. Teitiota was classified a 'sociological' refugee[21] seeking better quality of life, but not the subject of persecution on environmental grounds.

Both the High Court and Court of Appeal upheld the original findings of the IPT. In *Teitiota*, Justice Priestley stated that the facts did not satisfy the persecution or serious harm elements under the five grounds provided by the 1951 Refugee Convention.[22] The Court of Appeal upheld the High Court decision by concluding that the appellant would not suffer physical harm from the deprivations arising out of the effects of climate change. The final judgement clearly stated that climate change and its effect on countries like Kiribati, however, is not appropriately addressed under the 1951 Refugee Convention.[23] Nonetheless, the Court upheld the IPT's findings that because of the indiscriminate nature of climate change related events, there was no way in which the 1951 Refugee Convention could be specifically used to grant protection in this instance. Since the effects of climate change in Kiribati, one of the world's lowest-lying nations, would equally affect the entire population, the Court found that no particular person faces individualized persecution, as necessary for obtaining refugee status under the 1951 Refugee Convention.

AD (Tuvalu) [2014] NZIPT 501370-371

In *AD (Tuvalu)*, climate change was considered a relevant factor in a humanitarian appeal. Mr. Sigeo Alesana and his wife had lived in Tuvalu until 2007, when the impacts of climate change and sea level rise were already making their life difficult. The couple, concerned about their future, moved to New Zealand with Mr. Alesana's mother. After the couple overstayed their visa, they applied for refugee and protected person status. After several attempts to gain residency, Mr. Alesana, his wife, and two children successfully appealed to the IPT in New Zealand in August 2014. While environmental degradation was only one of several reasons that may have affected the family's livelihood, the family was portrayed in the media as being 'the first climate refugees.'[24]

[21] The sociological definition of a refugee encompasses a person having to leave a country regardless of the cause.
[22] *Teitiota v Chief Executive Ministry of Business, Innovation and Employment* NZHC 3125, [2014] NZAR 162 at [54].
[23] Teitiota v Chief Executive of Ministry of Business, Innovation and Employment [2014] NZCA 173 at [41].
[24] ABC News Australia (August 5, 2014) Tuvalu climate family granted New Zealand residency on appeal. Retrieved from: http://www.abc.net.au/news/2014-08-05/an-tuvalu-climate-family-granted-nz-residency-on-appeal/5650584 ;
Mass, A. (August 3, 2014) Tuvalu climate change family win NZ residency appeal The New Zealand Herald Retrieved from: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11303331
Smith, T. (August 7, 2014). Tuvalu *climate refugees granted residency in New Zealand.* Retrieved from: http://tcktcktck.org/2014/08/tuvalu-climate-refugees-granted-residency-new-zealand/63891

However, climate-change related risk was not the determinative issue in the IPT"s decision to allow the family to stay in New Zealand. Climate change and environmental degradation as a humanitarian circumstance was submitted *inter alia* as one factor supporting the appeal. The IPT found that broader implications on the extended family and an eventual deportation could ultimately affect the wellbeing of the two children in question. The IPT is required by the United Nations Convention on the Rights of the Child to have regard for the best interests of children.[25] As such, the IPT also considered that the family's children would become more vulnerable to natural disasters because of the adverse impact of climate change if they were to return to Tuvalu. Ultimately, the IPT granted the family of four Tuvaluans residence in New Zealand based on humanitarian grounds, accepting that exposure to the impacts of natural disasters can aggravate humanitarian circumstances and can form a part of the analysis for humanitarian claims. The IPT found that the family circumstances shifted this case beyond the threshold for granting relief based on humanitarian grounds.[26] The strong family ties to their community as well as children's well-being and their adjustment to New Zealand, demonstrated by references collected from relatives, the church, and the children's school, supported this family's application. On a cumulative basis, the Tribunal held that this particular case warranted protection due to exceptional circumstances of a humanitarian nature, which proved that it would be unjust to deport the appellants from New Zealand as the children would lack adequate protection on the basis of these intersecting factors. Nonetheless, contrary to the media's treatment of *AD (Tuvalu)*, which emphasised climate change as a new avenue for refugee claims, the decision did not set a precedent for future claimants, as the Court found that the concept of 'refugee' cannot currently be applied to people fleeing climate change.

Protection status in New Zealand: The "Good" Migrant

In both *Teitiota* and *AD (Tuvalu)*, it is clear that there is protection gap for people who are vulnerable to the impacts of climate change and wish to claim refugee status.

Noack, R. (August 4, 2014) Has the era of the 'climate change refugee' begun? The Washington Post. Retrieved from: http://www.washingtonpost.com/blogs/worldviews/wp/2014/08/07/has-the-era-of-the-climate-change-refugee-begun/

[25] Subject to Art 3 of the UN Convention on the Rights of the Child, New Zealand continues to affirm the principle of the best interests of the child. The welfare and best interests of the child are the first and paramount consideration of New Zealand courts. See, Ministry of Social Development (2015). United Nations Convention on the Rights of the Child: Fifth Periodic Report by the Government of New Zealand 2015. Retrieved from: http://www.msd.govt.nz/ See, especially *Chief Executive of the Ministry of Business, Innovation and Employment v Liu* [2014] NZCA 37. Here Art 3.1 of the UN Convention of the Rights of the Child was engaged and there was no doubt that the interests of the child, a primary consideration under the Convention, favoured the respondent remaining in New Zealand. See also, *AD (Tuvalu)* 2014] NZIPT 501370-371 at [23].

[26] *AD (Tuvalu)* [2014] NZIPT 501370-371 at [32].

Taken together, two areas need to be examined in order to determine the protection status under the Immigration Act of 2009 for persons arguing the effects of climate change as relevant factors in a humanitarian appeal against deportation:

- Prerequisite human rights, which are undermined as a result of being exposed to the effects of climate change;
- Specific circumstances where the effects of climate change would be considered an exceptional circumstance making it unjust for a person to be deported to an area where exposure to these factors would be inevitable.[27]

On the basis of these factors, in *Teitiota* the IPT allowed deportation because escaping from a natural disaster was not considered a stand-alone reason to obtain protection under the 1951 Refugee Convention.[28] The Court of Appeal found that the IPT "concluded that whilst the applicant's standard of living, if he returned to Kiribati, would be less than what he enjoyed in New Zealand, this did not constitute serious harm for Refugee Convention purposes,"[29] and at the same time, that the climate change appeal "question is essentially a question of fact not of law."[30] On the other hand, in *AD (Tuvalu)*, deportation was prevented on the grounds that such an act would be against the best interests of the concerned children, and because the family was considered to have already adapted to living in the country (there was "no adverse public interest").[31] The Tribunal articulated that "(t)he breach of the Immigration Act [the family overstaying their visa] in this case does not outweigh the other positive factors in this case and create a public interest in deporting him." He and his family were already engaged with the community and were leading a 'productive life' in New Zealand.[32]

These two cases demonstrate the extremes of what have been portrayed as 'bad' and 'good' types of mobility in the context of environmental migration to New Zealand.[33] The good type of mobility has been understood as derived from 'adaptation' measures against climate change: "it strives at forming adaptive and resilient self-entrepreneurs, docile subjectivities adapted to market economy – thereby obtaining a pacification of unruly sectors of populations

[27] Some of these factors could include sea levels rising which lead to significant areas going underwater and results in land barren for growing crops; frequent submersion of land yielding it untenable for food production or the establishment of permanent homes; no prospects of finding employment and/or housing due to climate-induced changes; and the length of time and level of establishment of the applicants in New Zealand.
[28] [2013] NZHC 3125 at [26].
[29] [2013] NZHC 3125 at [56].
[30] [2013] NZHC 3125 at [62].
[31] [2014] NZIPT 501370-71 at [34].
[32] In [2014] NZIPT 501370-71 at [34] the Tribunal assesses as positive the potential of Alesana to become a role model "for other resident or citizen children of Tuvaluan origin."
[33] Bettini, G. (2013) Climatised Moves - Climate-induced Migration and the Politics of Environmental Discourse. LUCSUS (Lund University Centre for Sustainability Studies).

yet to be inscribed under the neoliberal rule."[34] While current immigration schemes in New Zealand[35] could be a feasible option for some migrants, for others, not being able to rely on labour mobility will mean that they are not protected[36]. In *AD (Tuvalu)*, the family was portrayed as well-adapted to the receiving country, as all members of the family were involved in community life, through participation in school or at church, and already integrating into New Zealand society.[37] This contrasts with the discourse around the *Teitiota* case, where the claimant from Kiribati was described as a non-authorized migrant failing to integrate into the community.

Towards alternatives and a broadening of protection for SIDS

To adequately reflect the dynamics of climate change and migration, protected person status should incorporate the multiple stressors related to climate migration and the complexity of factors behind it. One alternative to these gaps in protection and problematic discourses is to widen the scope of New Zealand's immigration policy to statutorily include categories of claims made by people who are vulnerable to natural or man-made disasters. As climate change was not a common concern when the 1951 Refugee Convention was signed, the inclusion of these more recent, relevant criteria could potentially aid in securing protection status for climate-induced refugees. Considering this protection as a fundamental human right undermined by exposure to the effects of climate change would mean showing that deporting a claimant to such an area would amount to persecution as defined in the 1951 Refugee Convention. The developments in international human rights law and other associated legal frameworks should facilitate rather than obstruct protection for new categories of refugees, as well as human rights considerations that transcend a good/bad mobility discourse.[38]

One potential step for helping SIDS overcome climate change-induced migration challenges is for the leaders of these countries to realise that practical solutions should come as a partnership between SIDS and the international community. Taking forward the message of the United Nations Third International Conference on SIDS' 2014 meeting on climate change in

[34] *Ibid* .p. 55.
[35] Historically, New Zealand has had temporal migration programs oriented to Pacific SIDS. Pacific Access Category (PAC), which grants residence in New Zealand has a lottery selected quota of people from Kiribati, Tuvalu, and Tonga. Samoan citizens have the option to apply to the Samoan Quota.
[36] Settlement visas in New Zealand require a pre-arranged work relationship. As such these schemes designed to improve labour mobility privilege the able bodied and in some cases countries have been affected by 'brain drain' when sending their most qualified people abroad.
[37] In *AD (Tuvalu)*, letters of support were made to Immigration New Zealand for a visa to allow the husband to remain in New Zealand. The letters confirmed the husband's wider integration into the local community as a "dedicated member" of the church choir and youth fellowships. It was also made clear that the eldest child has been integrated into the New Zealand school system.
[38] See UNHCR Convention and Protocol Relating to the Status of Refugees. p. 2-3. Retrieved from: http://www.unhcr.org/3b66c2aa10.html

Samoa, the current President of Kiribati, Mr. Anote Tong, challenged the global community to move forward to fill the gap "between what needs to be done and what is being done."[39] At the same time, however, he strongly confirmed his rejection of creating a new category of climate change or environment refugees,[40] as he believed this would have serious implications on the dignified treatment of Kiribati citizens. Instead, he proposed the framework of migration with "dignity."[41] This framework would include increasing the skill set of Kiribati citizens in order to allow them to migrate through existing migration channels, mainly to Australia and New Zealand.

The fact that SIDS communities have the likelihood of becoming refugees highlights the problems they face in terms of lost livelihoods and the need for increased international protection. While President Tong's concerns dealt with the possibility of planning ahead to prevent a need for seeking refugee status, we believe that there is also a need to broaden the conceptualisation of the refugee to incorporate the climate change context into international refugee law. Environmental degradation and human migration issues are intertwined. Practical solutions for environmentally motivated migration from SIDS require a wide network of cooperation on both the regional and international levels. National responses to environmentally displaced persons are inadequate and require an international intervention.

The SIDS are comprised of communities that have always borne the brunt of environmental change, and there is keen awareness among Pacific SIDS of their particular vulnerabilities to the effects of climate change. The Forum leaders of the Council of Regional Organisations of the Pacific (CROP) shares this awareness, and are mandated to improve the cooperation, coordination and collaboration among intergovernmental regional organisations. In recent years, the Pacific Islands Forum Secretariat (PIFS), which includes 16 independent and self-governing states in the Pacific, has focused on human rights mechanisms throughout the region and the need to plan ahead for further climate-induced changes resulting in mass

[39] Dateline Pacific & Figueres, C. & Moon, B & Tong, A. (September 5, 2014) *Talk less, act more on climate change – SIDS* [Interview transcript]. Retrieved from: http://www.radionz.co.nz/international/programmes/datelinepacific/audio/20148421/talk-less,-act-more-on-climate-change-sids

[40] "…but I think if we come as refugees, in fifty to sixty years time (sic), I think they would become a football to be kicked around". Wilson, D. (2008) Interview Anote Tong President of Kiribati Climate change...nobody is immune. Retrieved from: http://www.pacificdisaster.net/pdnadmin/data/original/KIR_Interview_Climate_Change_nobody_immune.pdf

[41] In line with the 'migration with dignity' discourse, to prevent unplanned relocation Kiribati has already purchased land in Fiji for eventual relocation. Caramel, L. (July 1, 2014) Besieged by the rising tides of climate change, Kiribati buys land in Fiji. Retrieved from: http://www.theguardian.com/environment/2014/jul/01/kiribati-climate-change-fiji-vanua-levu

migration through regional agreements[42]. However, the governments of receiving states such as New Zealand have not actively supported an explicit engagement with policy and the legal and practical implications of the likely influx of climate change related migration to non-SIDS countries. We believe the starting point for this dialogue must prioritise a re-examination of the definition of a climate refugee and how climate change can be considered a form of persecution under international refugee law.

All states should share a common obligation to protect the environment,[43] but in reality states have different capacities and views on their responsibilities depending upon the technology and wealth of the country.[44] Different approaches to tackling environmental challenges also shape different social and economic outcomes that were previously unforeseen. Pacific SIDS currently rely upon the cooperation of global and regional partnerships for the financial support to protect and restore their environment. Even so, Pacific SIDS need to review their strategic plans and institutional frameworks by seeking robust partnerships to develop scenarios for potential migrants who might otherwise satisfy the definition of a refugee as per the 1951 Refugee Convention. SIDS need to be more proactive and draw up practical plans that are linked to their own annual budgets and other operational plans. It would therefore appear that immigration policy and processes should prioritise climate-vulnerable populations.

Climate change binds local and global stakeholders to a shared responsibility due to the complexity of an issue that demands complex solutions. We see climate change as a "societal problem that has an environmental constituent."[45] Therefore, it is important to analyse both the multiple sources of vulnerabilities and the adaptive capacities of migrants at a local scale, while at the same time recognizing that these local manifestations are also products of larger-scale

[42]Moana Declaration (2013). Outcome Statement of Pacific Parliamentarians, Retrieved from: http://countryoffice.unfpa.org/pacific/drive/PACIFICCONFERENCEOFPARLIAMENTARIANSFORADVOCACYONICPDBEYOND2014OutcomeStatement.pdf .
Another precedent Also the Cotonou Agreement (EU and ACP States) considers in its scope of financing "humanitarian and emergency assistance including assistance to refugees and displaced persons." article 60 Cotonou Agreement (2010) Retrieved from: http://www.epg.acp.int/fileadmin/user_upload/Cotonou_2010.pdf
[43] 'Common but differentiated responsibilities' (CBRD) is a principle which refers to the notion that was included in section 2.1 of the Rio Declaration. United Nations (1992). Rio Declaration on Environment and Development. Retrieved from: http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm/ In the UNFCCC, this framework was expanded to include respective capabilities and this was later embedded into many UN conventions such as the Convention on Biodiversity and Convention to Combat Desertification.
[44] Article 3 of the United Nations (1992). United Nations Framework Convention on Climate Change. Retrieved from: http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf
[45] Stehr & von Storch (2005). Introduction to papers on mitigation and adaptation strategies for climate change: protecting nature from society or protecting society from nature? Editorial. Environmental Science & Policy 8., page 537.

global forces.[46] Solutions for climate change should emphasize building safe and sustainable societies.

Conclusion: Regional Meets Global

The possibility of New Zealand offering protection to 'climate refugees' has recently been part of a new surge of regional policy interest in climate-induced migration. Understanding the roles, responsibilities and challenges of each involved party is critical in formulating a solid consensus as part of the international response to climate-induced migration from SIDS. In New Zealand, and around the world, there is no substantive legal framework that includes climate change as part of the definition of 'refugee.' Despite existing immigration policy not having been developed to respond to climate change-induced migration, there have been regional calls within the international community for New Zealand to scale up their technical and financial support for climate change action and, if necessary, to support relocations from SIDS.[47]

In the Pacific context, regional responses to climate displacement have been firmly placed on the agenda of Council of Regional Organisations in the Pacific (CROP). In Rarotonga, Cook Islands in May 2013, Pacific Regional consultations were organised to assess the merits of building consensus on the development of a protection agenda to address the needs of climate change induced migration.[48] Such dialogue on voluntary migration and resettlement is imperative for the development of coordinated regional responses and could provide some hope of upending the predominant climate induced migration discourse that anticipates mass relocation to more developed countries.

The impact of climate change cannot be contained within national boundaries. Although most climate-induced migration occurs internally, there are many persons who have already moved across international borders. The increasing vulnerability of fragile environments will inevitably result in the movement of people beyond their home countries. If current legal definitions and instruments are limiting the protection measures offered to those endangered by the effects of climate change, then we must address these definitions. The value of life must not be subject to legal barriers that hinder the implementation of solutions. We need to see past our current limitations to address the issue of populations displaced forcefully from their lands,

[46] Barnett, J. & Campbell, J. (2010) Climate Change and Small Island States: Power, Knowledge and the South Pacific. Earthscan Publications, Limited
[47] Niue Declaration on Climate Change, Report on New Zealand's views on the possible security implications of climate change. Annex A. Retrieved from: http://www.un.org/esa/dsd/resources/res_pdfs/ga-64/cc-inputs/New_Zealand_CCIS.pdf
[48] Nansen Initiative. (2008). *Conclusions: Nansen Initiative Pacific Regional Consultations.* Retrieved from http://www2.nanseninitiative.org/.

livelihoods and nations, by climate change. This is an issue that requires innovative solutions, and there is a need to redefine international responsibilities and legal provisions to support solutions for the pressing issue of climate induced migration.

Refugee decision-making in Canada: difficulties in accessing the research site and strategies for resolution

SULE TOMKINSON, PH.D.*

Abstract:
Qualitative social science literature is often silent on the methodological difficulties of research undertaken within certain state organizations in democratic countries. State organizations often operate privately as a result of confidentiality concerns and access is not easily granted to researchers. In this opinion piece I illustrate how being flexible during the fieldwork process may open different gates for entry. In this case, a flexible research methodology required reaching out to various actors involved in the determination process for access opportunities. In particular, I discuss my research on refugee decision-making at the Immigration and Refugee Board of Canada (IRB). My research focused on, in addition to IRB decision-makers, both refugee claimants and those that work on their behalf, including lawyers and advocacy organizations. The strategies I discuss below are the result of eighteen months of ethnographic field research on this topic in Canada.

**Sule Tomkinson recently completed her doctoral studies in the Department of Political Science at the Université de Montréal. Her dissertation, entitled "Contextualizing discretion: Micro-dynamics of Canada's refugee determination-system," received an outstanding dissertation award and she was nominated to the Dean's Honor List. Sule's research interests lie within the fields of law and society, including migration governance, international human rights law and decision-making.*

On November 15, 2013, I wrote in my field diary:

> *It has been a few months since I made several phone calls and wrote e-mails to the Communication Department of the Immigration and Refugee Board of Canada (IRB), indicating my intention to interview officials occupying managerial positions.*[1] *The senior communication officer who called me back had asked me to send him the questions I was intending to ask at a probable interview. I did and I still have not heard from them. I had no idea that trying to interview people employed at an administrative tribunal would be this challenging. Observing refugee hearings was [challenging], since they are closed to the public. But why interviews? Why do the IRB managers keep refusing to talk to me? What is funny is how researchers talk about the difficulty of research in authoritarian regimes. Here I am in Canada, one of the greatest democracies of the world, yet the IRB managers will not talk to me.*
>
> *I remember one of the first refugee hearings I observed almost a year ago. I had shown my research ethics certificate*[2] *to the Board member who was presiding at the refugee hearing. After the refugee claimant I was accompanying indicated that he was OK with my presence, I sat at the back of the room and started observing and listening attentively. At the break, I put on my most pleasant face and went to say "Hi" to the Board member: "I am a PhD student in political science and I am interested in refugee decision-making". He responded, "Cool, you should drop off a copy of your thesis when you are done". I did not want to let go that fast. I was trying to explore refugee decision-making, and he was one of the people making these decisions. Observing refugee hearings was one thing, but I needed to interview the decision-makers to understand their perception of both themselves and of refugee claimants. Otherwise, could I call what I was doing ethnography? That is why I was straightforward [in response]; I said, "Actually, I am hoping to interview a few Board members". In response, he laughed and said, "Good luck with that".*
>
> *I remember feeling surprised; not understanding what the big deal was. Researchers had interviewed refugee decision-makers in other contexts such as Finland and the United States*[3]*. Why was it so hard to talk to them in Canada? I know that the tribunal's Code of Conduct does not*

[1] This group includes a broad group of officials who have supervisory duties and act as liaisons between their team and upper management. Their titles range from Regional Coordinator to Deputy Chairperson. These persons are distinct from the IRB Board Members who make refugee determinations.
[2] For ethical conduct of research involving humans, researchers must have their research projects approved by the Research Ethics Boards of their home institution.
[3] Such as Kynshilehto & Puumala (2013) and Schoenholtz, Schrag, & Ramji-Nogales (2014)

> *allow the decision-makers to speak to researchers, media or [the] public, but why? Who is protected by this rule? The Board member, the refugee claimant or the IRB as an organization? I am convinced that I have a responsibility to my research participants—especially refugee claimants—to offer [a] first [hand] account of what they go through to receive Canada's protection, but I cannot get into the organization…*

This excerpt describes my frustrations with the difficulty of accessing the Immigration and Refugee Board of Canada (IRB), the independent, impartial administrative tribunal that makes refugee status determinations. The issues I addressed are fragmented; I started by complaining about IRB managers' hesitancy to respond to my interview demands and ended up criticizing the official policy that prevents access to Board members, Canada's official refugee decision-makers.[4]

How did you react while reading it? Did you relate to some of my research considerations, or the weak position that I was occupying in the field research? Or did you feel that I sounded like a researcher who was telling a woe-is-me story?

Despite the strength of the qualitative social research literature that discusses methodological difficulties in authoritarian countries,[5] very little has been written about the access difficulties researchers studying organizations that implement migration policy face in democratic countries.[6]

The aim of this opinion piece is to demonstrate both the ways in which access to a Canadian administrative tribunal can be challenging and frustrating, and how being flexible during the fieldwork process may open different gates for entry. In this case, a flexible research methodology required reaching out to various actors involved in the determination process for access opportunities. By giving examples and sharing strategies from my eighteen months of ethnographic field research, I illustrate how the identification of powerful gatekeepers and developing close professional relationships with them was vital for accessing a research site.

Researching Board members, seeking access through gatekeepers

Methodology and barriers to access

A well-established perspective on the position of the field researcher in relation to research participants permeates qualitative social science research: field research often takes place in sites where the researcher is more powerful compared to research participants. The

[4] I was not aware of the codified barriers that prevented interviewing IRB Board members when I was writing my research project and seeking ethics approval. Interviewing these officials was not among my principal, but rather secondary objectives. However, in order to comprehend the organizational functioning of the IRB, interviewing IRB managers/officers was important, and there are no administrative barriers preventing such communication.
[5] Belousov et al., 2007; Clark-Kazak, 2009; Jacobsen & Landau , 2003; Reny, 2011; Wood, 2006
[6] Beaudoin, 2014; Jubany, 2011; Satzewich, 2014

researcher is seen as the one who is in control while the participants are the ones who are prone to exploitation. This perspective certainly dominates research that includes refugees or refugee claimants.[7] However, this position "obscures the varied ways the researcher's power and authority can shift and change in differing relationships and situations in the field"[8] . Direct observations in research sites that bring powerful elites and less powerful actors together constitute situations in which gaining access is not a once and for all matter, but an ongoing process. It is important for the researcher to be strategic while also protecting the integrity of the research and research participants. I will explain how I occupied a rather weak position at the beginning of the research, trying to secure access to the refugee hearing through several gatekeepers.

My doctoral research focused on refugee determination in Canada and aimed to understand why there are differing rates of granting refugee status among IRB Board members.[9] [10] When reporting this highly mediatised issue, journalists have claimed that refugee determination is characterized by inconsistent decision-making, alleging that the Board member who hears the claim makes a greater difference than the merits of the case.[11] Despite frequent attention paid to this issue in the media, there was no empirical study that explored why variation in practice occurred. Previous research conducted through interviews with former Board members who were no longer employed at the IRB indicated that some were more suspicious than others in regard to the accuracy and the truth of refugee claimants' narratives[12]. In my research, I wanted to adopt a theoretical framework based on street-level observation, and as such I was interested in the studying the Board members' concrete practices in the hearing room[13]. In order to understand how Board members were using their discretionary powers to identify refugees among the claimants I had to directly observe refugee hearings. I also hoped to learn how refugee-receiving countries like Canada apply international human rights law, control their borders, and allocate opportunities for entry and legal status.

Previous studies show that researchers are generally likely to encounter difficulties when they research state organizations and politically sensitive subjects internationally, such as asylum screening at the airport[14], visa officers' discretionary practices in visa interviews[15] or the struggles of Roma refugee claimants to be recognized as genuine refugees by the IRB[16]. When I was writing my thesis proposal, I was already worried about access to the field. Refugee hearings are private proceedings and Board members have discretion over who will be admitted to and excluded from the hearing room. The anonymity and confidentiality of the refugee determination hearing are among the main concerns of the IRB, though under most circumstances the presence

[7] See Block, Riggs, & Haslam (2013) and Block, Warr, Gibbs, & Riggs (2012) for two recent discussions on these issues.
[8] Pierce, 1995, p. 95
[9] For a more detailed description of the research project see Tomkinson (2015).
[10] Macklin, 2009; Rehaag, 2008
[11] Elliott, 2015; Humphreys, 2014; Keung, 2011, 2012; McKie, 2009; Sanders, 2013; Sheppard, 2012
[12] Crépeau & Nakache, 2008; Rousseau & Foxen, 2005; 2006
[13] Lipsky, 1980
[14] Jubany, 2011
[15] Satzewich, 2014
[16] Beaudoin, 2014

of outside persons is possible with the consent of the refugee claimant. Under certain conditions, however, I learned that some Board members have excluded outside professionals or even the claimants' family from the hearing room against the will of the claimants, and some never allow observers.[17]

Unless I encountered Board members who were comfortable with my presence, my research could have been in jeopardy. At first, I did not know who to contact and how to explain what I was doing. In order to gain access to the field, I was planning to introduce myself to refugee advocacy organizations and ask them to facilitate my meeting with refugee claimants, who could then grant me their permission to attend the hearing. Yet, I was not sure this strategy would work.

In what follows, I present a chronological account of the strategies I followed in order to gain access to the refugee hearings. After reaching out to three sets of organizational gatekeepers; refugee advocacy organizations, refugee lawyers and IRB managers, I will explain why refugee lawyers constituted the best partners.

The pre-field research process: unexpected connections

With worries of access in mind, I started reaching out to refugee advocacy organizations by calling offices and sending e-mails, briefly explaining my research (which was in its infancy at the time) and asking if they would be willing to introduce me to refugee claimants. I also visited the IRB Eastern office in Montreal at the Guy Favreau Complex in late February 2012. In contrast with the hearing rooms and private offices of IRB officials, the IRB reception is open to the public. Mine was an impromptu visit and I had no expectations other than simply seeing the physical space.

While there, I met refugee lawyer Georges Teuré, who had just completed representing a refugee claimant at the IRB[18]. I briefly explained my intention to observe refugee hearings to him, and he invited me to observe two hearings with him the following week.[19] Mr. Teuré also introduced me to an official from the IRB Immigration Appeal Division the same day, who gave me the name of a well-known refugee advocate and lawyer, Michael Lewis. Through an online search, I found more information about Mr. Lewis's affiliate refugee lobbying organization, established by refugee lawyers, and information about its annual conference in March 2012. The conference was open to the public at a fee. I attended the conference and spoke about my research project with Michael and five other refugee lawyers during the breaks. While I contacted these lawyers by e-mail and phone without response, only Mr. Teuré was willing to help. At that point, I booked a lunch meeting with Michael one week after the conference, he agreed to put me in contact with other refugee lawyers, and I observed two other hearings with

[17] Canadian Council for Refugees (2012) The Experience of Refugee Claimants at Refugee Hearings at the Immigration and Refugee Board

[18] All names have been changed to protect anonymity.

[19] Mr. Teuré added that he would have to check with his clients, the refugee claimants he was representing, and get back to me regarding permission to attend.

him during the first week of April. At that point, I was almost confident that I had practically solved the issue of 'getting in'[20]. This was an important discovery, as around 80 percent of refugee claimants in Canada are represented by refugee lawyers.[21]

Access rationales

During the pre-field-research process, I had had better luck approaching lawyers than advocacy organizations to access refugee hearings, as I had not yet received any response to my e-mails and calls to community organizations in Montreal. As my field research proceeded into late 2013 and I got to know more about the work of these organizations, I learned that they were offering their services to the most disadvantaged of the refugee claimants, such as those who failed to secure legal aid, were detained, or had already been rejected. Gifford's[22] analysis of Australian service providers and community organizations is very pertinent here because she reminds us that these organizations can be "fierce gatekeepers when it comes to refugee research. As gatekeepers, they may see themselves as refugee protectors – from outsiders and from institutional practices and forms of power that would do them harm." Since refugee claimants are often seen as vulnerable[23], these organizations take protecting the claimants as their duty. As my field progressed, the members of refugee advocacy organizations that I came to know indicated that they did not want to traumatize the claimants further as a result of my presence in the hearing room, and did not believe that their work matched my research interests. I might have unwittingly triggered this perception of mismatch by communicating to them that the focus of my research was principally on the Board members. I came to know the significance of understanding the larger context of their assistance, such as the legal work put into preparing the refugee claim and the issues unrepresented and/or detained claimants face. Reformulating research objectives to overlap with the mission and concerns of advocacy organizations may be a helpful idea to increase their willingness to help researchers.

The lawyers who were active in refugee lobbying organizations were more willing to participate in my research, however. As one lawyer from Association québécoise des avocats et avocates en droit de l'immigration (AQAADI) put it, "What you do can be useful for us, for the claimants, and in our communication with the Board." I argue that, among others, there were two reasons for their willingness, both tied to the extensive transformation of refugee law during my fieldwork. The *Protecting Canada's Immigration System Act* came into force on December 15, 2012. This policy change, introduced by the Conservative government, aimed to dissuade fraudulent refugee claimants, and accelerated the refugee determination process drastically.

First, some of these lawyers, especially the ones who played active part in lobbying organizations, believed in the importance of research for challenging policy regarding immigration and refugee matters. The lawyers who participated in my research actively referred to their use of public policy research in their successful appeal to the Federal Court to reverse the

[20] Lofland, Snow, Anderson, & Lofland, 2006, p. 33.
[21] Rehaag, 2011.
[22] 2013, p.51.
[23] Manjikian, 2010.

conservative policy that cut the health benefits of refugee claimants from countries considered democratic and respectful of human rights (DCOs).[24]

Second, after the policy change, the number of claims filed in 2013 dropped to 9,700[25] from 20,461 in 2012[26]. This meant a drastic decrease in the number of clients (refugee claimants) the refugee lawyers could represent. In the interviews I conducted, younger lawyers in particular expressed their concerns of financial instability. As an occupational group, refugee lawyers were under threat. As a researcher, I was offering a willing ear to listen to their problems and concerns, and possibly an opportunity to draw attention to the real problems they faced in the field.

Further attempts to gain access

Aside from these more informal sampling strategies, I also tried to obtain an access permit from the IRB management. I had met both the late Chairperson and the Assistant Deputy Chairperson of the IRB in May 2012 at the annual conference of the Canadian Association for Refugee and Forced Migration Studies (CARFMS), and both had found my research interesting. The late Chairperson had encouraged me to make a formal demand for an access permit to the IRB Communications Department to observe a number of hearings. Following a three month deliberation, my demand was refused on the basis of being beyond the operational capabilities of the Montreal branch. I also inquired about the likelihood of undertaking a short internship at the IRB office. My aim was to see the Board members in their everyday collegial context and see what their work consisted of outside of the hearing room. However, I was told that this was not possible.[27]

During summer and fall 2012, I attended the general assemblies and local activities of provincial and national refugee advocacy/lobbying organizations and observed a few judicial review hearings at the Federal Court.[28] The refugee lawyers' lobbying organizations' meetings and my visits to the Federal Court, however, were the most fruitful ones for meeting refugee lawyers and asking them to invite me to the refuge hearings.[29] At that point, mentioning the support of a few well-known refugee lawyers who were associated with my research to the new

[24] The lawyers from the Canadian Association of Refugee Lawyers along with the Canadian Doctors for Refugee Care appealed at the Federal Court of Canada against the health care cuts. The decision written by the Honorable Madam Justice Mactavish shows the number of research affidavits written by several experts and academics. SeeT-356-13 Canadian Doctors for Refugee Care and others v. Attorney General of Canada and Minister of Citizenship and Immigration, 2014 FC 651, Retrieved from http://cas-ncr-nter03.cas-satj.gc.ca/rss/T-356-13%20Cdn%20Doctors%20v%20AGC%20Judgment%20and%20Reasons.pdf .
[25] IRB, 2014.
[26] CIC, 2013.
[27] I managed to interview three Board members and seven former Board members, after one current Board member helped me establish contact with others. Interviews took place in Summer/Fall 2013 and Summer/Fall 2014 in Montreal and Toronto.
[28] The Federal Court hearings are open to the public.
[29] During 2013, I became an active participant in a few refugee associations. I volunteered at several refugee lawyers' activities and national conferences, and organized a yoga fundraising event for a refugee lawyers' association. My eagerness to help definitely increased the lawyers' willingness to introduce me to their clients.

lawyers I met was a successful strategy. Towards the end of 2012, when I was ready to observe refugee hearings (after receiving the Research Ethics Certificate), I had had twelve lawyers to introduce me to the refugee claimants that they represented. In just over a year, I managed to observe 50 refugee hearings.

Conclusion

In this opinion piece, I briefly explained how I negotiated access to the hearing room at the IRB. If I had waited to hear from the advocacy and service organizations, without following other strategies of access, I would most likely have observed only a few refugee hearings. If I had stopped my efforts to gain access to the hearing room after the IRB's official rejection, my research would not have been possible. As argued above, my limited understanding of refugee decision-making and communication of these issues to protective refugee advocates may have resulted in their hesitancy to assist with my research. Refugee lawyers, on the other hand, being one of the most prominent actors in the hearing room, had other professional concerns and believed that my research could potentially be of help to them.[30] When there are access issues, it is important to be flexible and to persevere at the initial stages of research, reaching out to several gatekeepers for access opportunities.

REFERENCES

Beaudoin, J. C. (2014). *Challenging Essentialized Representations of Romani Identities in Canada.* (Doctorate Monograph), The University of Western Ontario Retrieved from http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=3333&context=etd

Belousov, K., Horlick-Jones, T., Bloor, M., Gilinskiy, Y., Golbert, V., Kostikovsky, Y., . . . Pentsov, D. (2007). Any port in a storm: fieldwork difficulties in dangerous and crisis-ridden settings. *Qualitative Research, 7*(2), 155-175.

Block, K., Warr, D., Gibbs, L., & Riggs, E. (2012). Addressing Ethical and Methodological Challenges in Research with Refugee-background Young People: Reflections from the Field. *Journal of Refugee Studies*, 26(1), 69-87

Block, K., Riggs, E., & Haslam, N. (2013). Values and Vulnerabilities: The Ethics of Research with Refugees and Asylum Seekers: Australian Academic Press.

CIC. (2013). *Facts and figures 2012 – Immigration overview: Permanent and temporary residents*. Retrieved from http://www.cic.gc.ca/english/resources/statistics/facts2012/temporary/27.asp.

Clark-Kazak, C. (2009). Power and politics in migration narrative methodology: Research with young Congolese migrants in Uganda. *Migration Letters*, *6*(2), 175-182.

Crépeau, F., & Nakache, D. (2008). Critical Spaces in the Canadian Refugee Determination System: 1989-2002. *International Journal of Refugee Law, 20*, 50-122.

[30] To give a brief example, in April 2015, I was invited by Canadian Association of Refugee Lawyers to give a presentation on the impact of quality of counsel in refugee decision-making.

Elliott, L. (2015, May 16). Refugee board members' rulings varied widely in 2014, data suggests, *CBC News*, Retrieved from http://www.cbc.ca/news/politics/refugee-board-members-rulings-varied-widely-in-2014-data-suggests-1.3076080?cmp=rss

Gifford, S. (2013). To respect or protect? Whose values shape the ethics or refugee research? In K. Block, E. Riggs, & N. Haslam (Eds.), *Values and vulnerabilities: the ethics of research with refugees and asylum seekers* (pp. 41-59). Sydney: Australian Academic Press.

Jacobsen, K., & Landau, L. B. (2003). The Dual Imperative in Refugee Research: Some Methodological and Ethical Considerations in Social Science Research on Forced Migration. *Disasters, 27*(3), 185-206.

Jubany, O. (2011). Constructing truths in a culture of disbelief: Understanding asylum screening from within. *International Sociology, 26*(1), 74-94.

Humphreys, A. (2014, April 15). Refugee claim acceptance in Canada appears to be 'luck of the draw' despite reforms, analysis shows. *National Post*. Retrieved from http://news.nationalpost.com/2014/04/15/refugee-claim-acceptance-in-canada-appears-to-be-luck-of-the-draw-despite-reforms-analysis-shows/

IRB. (2014). Refugee Claims - Tribunal Statistics. from http://www.irb-cisr.gc.ca/Eng/res/stat/Pages/StatRpdSpr.aspx

Keung, N. (2011, March 4). Getting asylum the luck of the draw?, Investigation. *The Star*. Retrieved from http://www.thestar.com/news/investigations/2011/03/04/getting_asylum_the_luck_of_the_draw.html

Keung, N. (2012, March 12). Canadian refugee decisions hinge on presiding judge, says report. Retrieved from http://www.thestar.com/news/canada/2012/03/12/canadian_refugee_decisions_hinge_on_presiding_judge_says_report.html

Kynsilehto, A., & Puumala, E. (2013). Persecution as Experience and Knowledge. The Ontological Dynamics of Asylum Interviews. *International Studies Perspectives*. 1-17

Lipsky, M. (1980). *Street-level bureaucracy : dilemmas of the individual in public services*. New York: Russell Sage Foundation.

Lofland, J., Snow, D. A., Anderson, L., & Lofland, L. H. (2006). *Analyzing Social Settings: A Guide to Qualitative Observation and Analysis*: Wadsworth Incorporated Fulfillment.

Macklin, A. (2009). Refugee Roulette in the Canadian Casino. In Jaya Ramji-Nogales , Philip G. Schrag, Edward M. Kennedy (Eds.), *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform* (pp. 135-163). New York: NYU Press.

Manjikian, L. (2010). Refugee "In-betweenness": A Proactive Existence. *Refuge, 27*(1), 50-58.

McKie, D. (2009, December 17). Fluctuations in refugee rulings trouble critics. *CBC News*. Retrieved from http://www.cbc.ca/news/politics/fluctuations-in-refugee-rulings-trouble-critics-1.850874

Pierce, J. 1995, "Reflections on Fieldwork in a Complex Organization: lawyers, Ethnographic Authority and Lethal Weapons", in Rosanna Hertz & Jonathan B. Imber (Eds.), *Studying Elites Using Qualitative Methods* (pp. 94-110), London: Sage Publications

Rehaag, S. (2008). Troubling Patterns in Canadian Refugee Adjudication. *Ottawa Law Review*, 39(2), 335-365

Rehaag, S. (2011). The Role of Counsel in Canada's Refugee Determination System: An Empirical Assessment. *Osgoode Hall Law Journal.* 49(1), 71-116.

Reny, M.-E. (2011). Authoritarianism as a Research Constraint for Political Scientists in the Field? The Case of China. American Political Science Association, *Comparative Democratization Newsletter*, Field Research under Authoritarianism: Where Methods Meet Regime Type. 9(2), 14-16

Rousseau, C., & Foxen, P. (2005). Constructing and deconstructing the myth of the lying refugee. Paradoxes of power and justice in an administrative immigration tribunal. In E. V. Donger & S. Fainzang (Eds.), *Lying and Illness, Power and Performance* (pp. 56-91). Amsterdam: Het Spinhuis.

Rousseau, C., & Foxen, P. (2006). Le mythe du réfugié menteur: un mensonge indispensable? *L'évolution psychiatrique, 71*, 505-520.

Sanders, C. (2013, December 14). When Hope Runs Out: The Luck of the Draw: Refugee Claims Opinion. *Winnipeg Free Press*. Retrieved from http://www.winnipegfreepress.com/local/When-hope-runs-out-235771601.html?page=all

Satzewich, V. (2014). Canadian visa officers and the social construction of "real" spousal relationships. *Canadian Review of Sociology*, *51*(1), 1-21.

Schoenholtz, A. I., Schrag, P. G., & Ramji-Nogales, J. (2014). *Lives in the Balance: Asylum Adjudication by the Department of Homeland Security*: NYU Press.

Sheppard, M. (2012, March 12). Refugee claims show inconsistent approval rates. *CBC Bews*. Retrieved from http://www.cbc.ca/news/canada/refugee-claims-show-inconsistent-approval-rates-1.1166533

Tomkinson, S. (2015). Doing Fieldwork on State Organizations in Democratic Settings: Ethical Issues of Research in Refugee Decision Making *Forum: Qualitative Social Research*, *16*(1), Art. 6. Retrieved from http://nbn-resolving.de/urn:nbn:de:0114-fqs150168

Wood, E. (2006). The Ethical Challenges of Field Research in Conflict Zones. *Qualitative Sociology*, *29*(3), 373-386.

MoVE (method:visual:explore): Marginalized migrant populations and the use of visual and narrative methodologies in South Africa

ELSA OLIVEIRA*



**Elsa Oliveira is a PhD student at the African Centre for Migration & Society (ACMS) at the University of the Witwatersrand, Johannesburg, South Africa. She is interested in the ways that research can support social justice issues, specifically in the areas of migration, sexuality, gender and health.*

Migration in South Africa

People across the globe move within borders and across countries for a wide variety of reasons. Some movement is forced—the result of political conflict, wars, and environmental disasters—but the majority of migration is linked to the search for improved livelihood from rural and peri-urban communities to urban centers. While the percentage of the world's population that are migrants has remained fairly steady[1], the World Bank estimates that the amount of remittances has greatly increased, from 132 billion U.S dollars in 2000 to 440 billion in 2014[2]. This increase highlights the fact that migration is a critical livelihood strategy for many people and families.

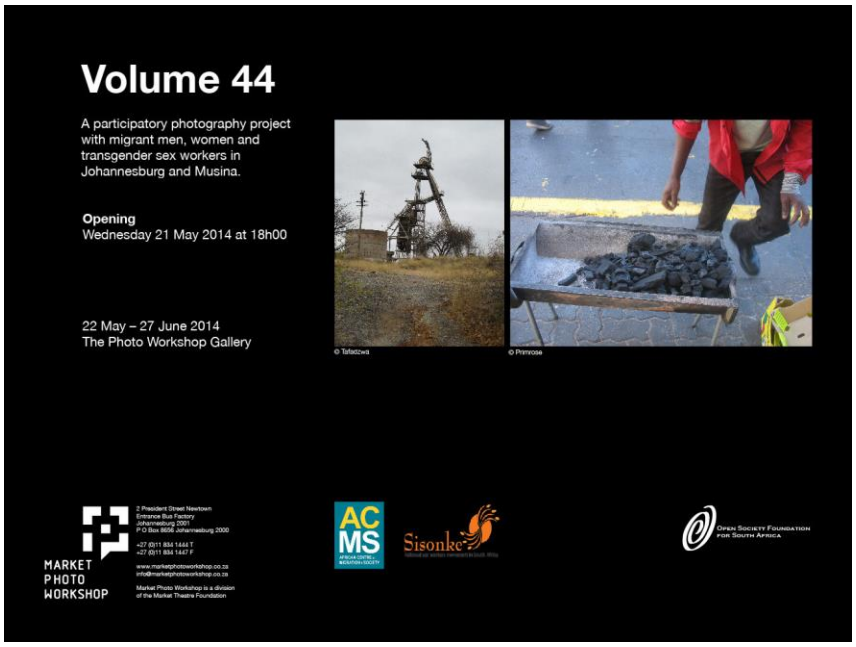
Recent census data in South Africa indicates that the majority of its migrant population

[1] According a report released by the International Organization for Migration (IOM) in 2012, there were 214 million migrants in world in 201. See International Organization for Migration (IOM). "Counter Trafficking and Assistance to Vulnerable Migrants." IOM Annual Report of Activities, 2011.
[2] Migration and Remittances: Recent Developments and Outlook Special Topic: Forced Migration. 2014. http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief23.pdf .

moves internally, with people primarily moving to urban centers in search of improved economic opportunity[3]. In line with global trends, South Africa's cross-border migrant population makes up approximately 3.3% of the total populace, with the majority of migrants living in Johannesburg, South Africa's largest and wealthiest city.

Research conducted at the African Centre for Migration & Society (ACMS)[4] shows that cross-border migrants face an increased risk of xenophobia in the form of police harassment, stigma, and discrimination[5] [6] [7]. As a result of an often hostile social, political, and economic environment, many cross-border migrants, especially those engaged in illegal activity such as sex work, choose to remain hidden in the city and are often under-represented in research and policy debates[8].

Research and Partnership through Visual and Narrative Methodologies: MoVE



Official Invitation to Volume 44 Exhibition launch

[3] Stats South Africa. Quarterly Labour Force Survey: Quarter 3, 2012. Accessed Jan 7, 2015. http://www.statssa.gov.za/publications/statsdownload.asp?PPN=P0211&SCH=5367.
[4] The African Centre for Migration & Society is an interdisciplinary African-based Centre dedicated to research on human mobility and social transformation. http://www.migration.org.za.
[5] Landau, Loren, "Living Within and Beyond Johannesburg: Exclusion, Religion, and Emerging Forms of Being," African Studies Review 68(2) (2009): 197-214.
[6] Richter, M, Chersich MF, Temmerman M and Luchters S, "Characteristics, sexual behaviour and risk factors of female, male and transgender sex workers in South Africa," *South African Medical Journal* 103(4) (2013) :246-251.
[7] Vearey, Jo, "Migration, urban health and inequality in Johannesburg". In: *Migration and Inequality* ed Bastia, T. (Ed). (Routledge: London, 2013), 121-144.
[8] Vearey, Jo, "Hidden spaces and urban health: exploring the tactics of rural migrants navigating the City of Gold," *Urban Forum* 21(1) (2010): 37-53.

Researchers at the ACMS that work with presumed 'hard to reach' urban groups, such as migrant sex workers, informal traders, and LGBTIQ[9] asylum seekers, have begun to search for innovative research methods that can facilitate increased insight into the complex lived experiences of individuals and communities.[10] [11] [12] Since 2006 the ACMS has explored the use of visual and narrative methodologies and projects alongside more traditional qualitative research methods.



***Primrose**: Many migrants left children back home. I came to Johannesburg so that I could earn money and send the money back home.*

These projects co-produce knowledge through the development of partnerships with migrant groups, especially those who are under-represented in research and public policy debates, and who often face multiple vulnerabilities. The ACMS has partnered with residents in informal settlements and hostels, with inner-city migrants, with LGBTIQ asylum seekers and refugees, and with migrant men, women and transgender persons engaged in the sex industry. These partnerships have culminated in a range of research and advocacy outputs, including community-based exhibitions, public exhibitions, and engagement with officials[13]. Furthermore,

[9] LGBTIQ is an acronym for: Lesbian, Gay, Bisexual, Transgender, Intersex and Queer.
[10] Oliveira, Elsa. "Migrant women in sex work: does urban space impact self (re)presentation in Hillbrow, Johannesburg" (MA diss, University of the Witwatersrand, 2011).
[11] Schuler, Greta. "At Your Own Risk: Narratives of Zimbabwean Migrant Sex Workers in Hillbrow and Discourses of Vulnerability, Agency, and Power" (MA diss, University of the Witwaterand, 2013).
[12] Vearey, *Hidden spaces and urban health*, 37-53.
[13] Several MoVe projects have been selected to participate in local, national, and international advocacy and research initiative meetings. These projects have been showcased in public spaces, at art festivals, and at local and international conferences as a tool to share information, ignite discussion, and promote reflection on issues otherwise not readily available for public consumption. Exhibitions have been displayed at NGOs such as the South African Human Rights Commission, and have travelled to Durban, South Africa; Kampala, Uganda; Rio de Janeiro

the outputs produced during several of the visual and narrative projects have been utilized in a range of reports[14], mainstream media publications[15], blogs[16], and popular media[17].

In 2013, Dr. Jo Vearey and I launched the MoVE project in order to begin to explore the efficacy of such methods and their resulting research and advocacy projects. MoVe[18] is a home for research projects conducted at the ACMS that utilize 'innovative methods' such as visual and narrative methods, and explore a range of issues including migration, sexuality, gender, and health. MoVE aims to integrate social action with research, and involves collaboration with migrant participants, existing social movements, qualified facilitators and trainers, and research students engaged in participatory research methods. This work includes the study and use of visual method—including photography, narrative writing, participatory theatre, collage, and other arts-based approaches—in the process of producing, analyzing, and disseminating research data.[19]



Tafadzwa: *My father came from Zimbabwe to work at this mine, and now the mine has been closed and my father has since passed away. I too came to Musina to look for employment just like my father.*

---

and Minas Gerais, Brazil; Amsterdam, Netherlands; Portland, Oregon/USA; Buenos Aires, Argentina; Bogota, Colombia, and Kolkata, India, to name a few.

[14] Oliveira, Elsa and Lety, Diputo "A short Story about being a sex worker in Hillbrow: Living with HIV and how I treat myself" in *Hospice Palliative Care Association of South Africa Law Manual* Chapter 10 (2012), accessed on March 10, 2015. http://www.hpca.co.za/Legal_Resources.html.

[15] Tormey, Jane. Cities and Photography. (Routledge. 2012). http://www.routledge.com/books/details/9780415564403/.

[16] African Sex Worker Alliance (ASWA) Website, October 2012. http://africansexworkeralliance.org/stories/working-city-experiences-migrant-women-inner-city-johannesburg-pictorial-narratives-migrant-.

[17] Kreutzfeldt, Dorothee and Malcomess Bettina. Not No Place. Jacana Press. 2013.

[18] http://www.migration.org.za/weblog/move.

[19] *Ibid*, 2015.

Researchers that utilize visual and narrative methods are often interested in direct engagement with social justice issues/movements where the research project involves, "communicating information about the experiences associated with differences, diversity, and prejudice"[20]. These researchers often work closely with community-based organizations and under-represented groups of people in marginalized settings[21] [22] [23]. The nature of the methodology of work results in the creation of an 'artifact' during the research process—a poem, photograph, exhibition, drawing or performance. These 'artifacts' are often shared in multiple platforms, reaching beyond traditional academic practices of dissemination to reach a greater diversity of audiences. O'Neil argues that, "renewed methodologies can transgress conventional or traditional ways of analyzing and representing research data."[24] As media and cyber platforms continue to be developed and made available to global audiences, researchers interested in visual and narrative methods increasingly have more opportunities whereby they can share the work, knowledge, and practice that emerges from such projects.[25]



***Timzela**: Train tracks near the Musina mall. The drivers have been loyal customers for years*

[20] Leavy, Patricia, "Method Meets Art: Arts-Based Research Practice' (The Guildford Press, 2009), 13.
[21] O'Neil, Maggie, 'Renewed methodologies for social research: ethno-mimesis as performative praxis', *The Sociological Review*, 50.1, pp. 69-88. 2002.
[22] Vearey, J, Oliveira, E., Madzimure, T and Ntini, B, "Working the City: Experiences of Migrant Women in Inner-city Johannesburg," *The Southern African Media and Diversity Journal*, 9 (2011): 228-233.
[23] Wang, Caroline and Burris, Mary Ann, "Photovoice: concept, methodology and use for participatory needs assessment," *Health Education & Behaviour* 24 (1997): 369-387.
[24] O'Neil, Maggie, "Renewed methodologies for social research: ethno-mimesis as performative praxis," *The Sociological Review* 50 (1) (2002): 69.
[25] Leavy, Patricia, "Method Meets Art: Arts-Based Research Practice', 2009.

Researchers that utilize visual and narrative methods also 'capture' data that emerges during and after workshops, usually in the form of narrative interviews, to explore the specific issues and areas of concentration that pertain to their research study. For example, the Working the City project, which formed the basis of my MA study, sought to explore how migrant sex workers who lived in inner-city Johannesburg (re)presented themselves during their transition to an urban space. The primary phase of my data collection took place via observation during the workshop process, photo storytelling, and group discussions. When the project was completed, I conducted semi-structured narrative interviews where the images were used as prompts to further narrative inquiry, otherwise known as 'photo-elicitation'[26]. Collier and Collier suggest that images invite people to take the lead in inquiry, making full use of their expertise. They also propose that "psychologically, the photographs on the table perform as a third party in the interview session"[27], whereby researcher and study participant can explore the images together. During the photo-elicitation phase of my research, important insights into issues of power and group dynamics became evident.



***Skara**: Foreigners accused of selling at a low price.*

Some participants chose not to share certain information about their personal lives and/or the internal dissonance that they felt regarding their line of work with the group, but they felt comfortable speaking candidly about these issues during the one-on-one interviews. Sbu, a cross-border migrant from Zimbabwe stated:

[26] Oliveira, E. "Migrant women in sex work: does urban space impact self (re)presentation in Hillbrow, Johannesburg", 2011.
[27] Collier, John and Collier Malcom, "Visual Anthropology: Photography as a Research Method" (University of New Mexico Press 1986), 105.

> I don't like to speak too much about my work. I am not proud of what I do. I am a Christian and I don't think that what I do is ok but it is what I do for my family. If I speak too much with these people [other participants] then they will know too much about me and that is not necessary. I like the workshop too much but I have my way of working in this space that is for me okay (Sbu, 2010).

This multi-method approach, I believe, offered me insights into the issues that I was exploring that other traditional qualitative methods alone might not have been able to offer. The photo-elicitation phase of my study highlighted the importance of interrogating the data collected during group work. In many ways, the workshops offered me an important understanding of the broad and often shared experiences of participants, but it was during the narrative interviews that I gained the level of insight into representation that I was hoping for. I don't believe that I would have been able to delve into the array of feeling and complexity had I not used both methods: participatory visual methods and photo-elicitation interviews.



Participants in Musina writing on the 'Wall of Words'.

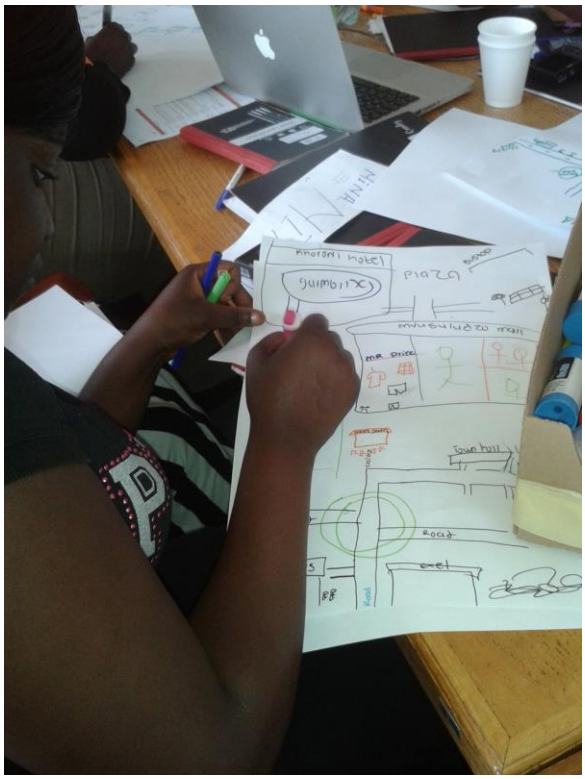
Challenges Facing Those in the Sex Industry

Sex work is currently illegal in South Africa. According to section 20(1A)(a) of the Sexual Offences Act, Act 23 of 1957, all parties engaged in the buying and selling of sex are committing a crime. The Act reads as follows:

> 20. Persons living on earnings of prostitution or committing or assisting in commission of indecent acts. (1A) Any person 18 years or older who …. (a) has

unlawful carnal intercourse, or commits an act of indecency, with any other person for reward…shall be guilty of an offence" [28]

Despite the fact that the sex industry provides an important, albeit informal, livelihood strategy for many adult men, women and transgendered individuals, existing research clearly shows that the current legal framework negatively impacts the safety and well-being of involved individuals. [29] [30] [31]



This image shows a participant completing a 'mapping exercise.' During this exercise, participants were asked to reflect on a series of themes (e.g. family, danger, health, fear, happiness, etc.) and how the themes connected to the places/spaces that they occupied (or not).

Much previous research has focused on the experiences of female sex workers, and indicates that the challenges experienced range from difficulties in accessing public services, including healthcare, to police brutality and violence at the hands of clients[32] [33]. Whilst estimates

[28] SAFLII. South African Law Commission. 2010.
[29] Richter et al. *Characteristics, sexual behaviour and risk factors of female, male and transgender sex workers in South Africa*, 246-251.
[30] Scorgie, F, Nakato, D., Harper, E., Richter, M., Maseko, S., Nare, P., Smit J., Chersich M.F. "'We are despised in the hospitals': Sex workers' experiences of accessing health care in four African countries," *Culture, Health and Sexuality* 15(4) (2013): 450-65.
[31] Vearey, *Migration, urban health and inequality in Johannesburg*, 2013.
[32] Richter, et al. *Characteristics of behavior,* 2013.

of the numbers of individuals engaged in the sex industry in South Africa are lacking, existing research shows that the industry is composed of both South African nationals and foreign-born migrants. In a study conducted in 2010 across four sites in South Africa—Cape Town, Sandton (northern Johannesburg), Hillbrow (inner-city Johannesburg), and Rustenburg (outskirts of Johannesburg)—51.9 percent of sex workers surveyed identified as cross-border migrants. [34]



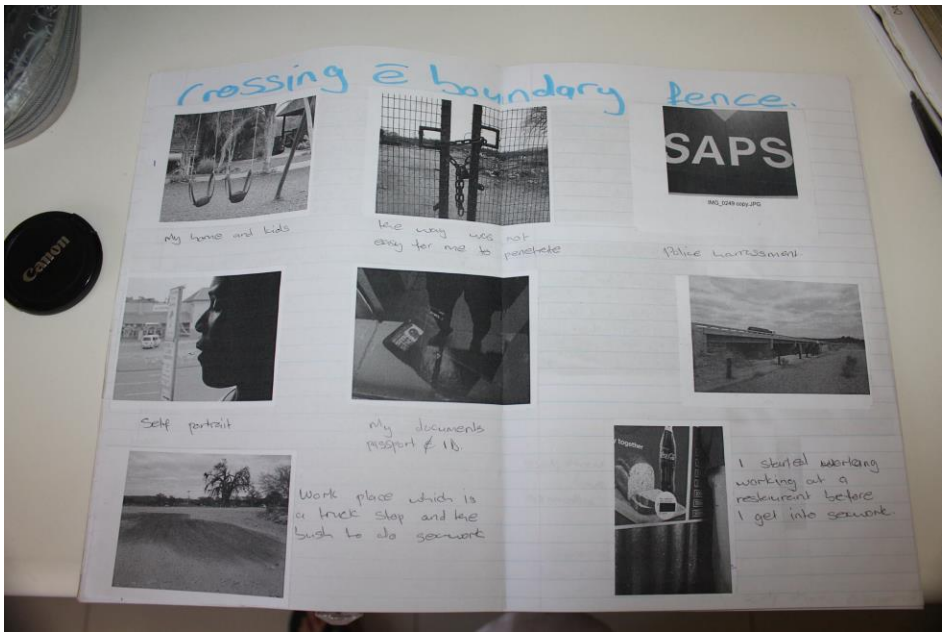
Images that were taken and selected by participants were printed each week so that participants could engage with the images as they worked on their stories.

The Project: Volume 44

In 2014, the MoVE Project completed ***Volume 44***[35], a participatory photo project undertaken with migrant men, women and transgender sex workers living and working in South

[33] Scorgie, F, Nakato, D., Harper, E., Richter, M., Maseko, S., Nare, P., Smit J., Chersich M.F. "'We are despised in the hospitals': Sex workers' experiences of accessing health care in four African countries," *Culture,Health and Sexuality* 15(4) (2013): 450-65.
[34] Richter M., Luchter S., Ndlovu D., Temmerman M., Chersich MF, "Female sex work and international sport events - no major changes in demand or supply of paid sex during the 2010 Soccer World Cup: a cross-sectional study," *BMC Public Health*. 12 (2012); 12:763
[35] **Ethics Clearance:** The research study received ethics approval from the University of the Witwatersrand Ethics Committee, and all photographers signed a consent form for the use images by the African Centre for Migration and Society, Market Photo Workshop, and Sisonke Sex Worker Movement.

Africa. The project worked with nineteen internal and cross-border migrants from Zimbabwe who were selling sex in inner-city Johannesburg and Musina, a rural South African town on the Zimbabwean border. The project was supported via collaboration between the African Centre for Migration & Society (ACMS) at Wits University, the Sisonke Sex Worker Movement, and the Market Photo Workshop (MPW). The basis of this collaboration included the previous research conducted at the ACMS with both Sisonke and the MPW, as well as the shared interest in addressing social justice issues and exploring the ways in which the visual (photography) could make these issues 'visible.'

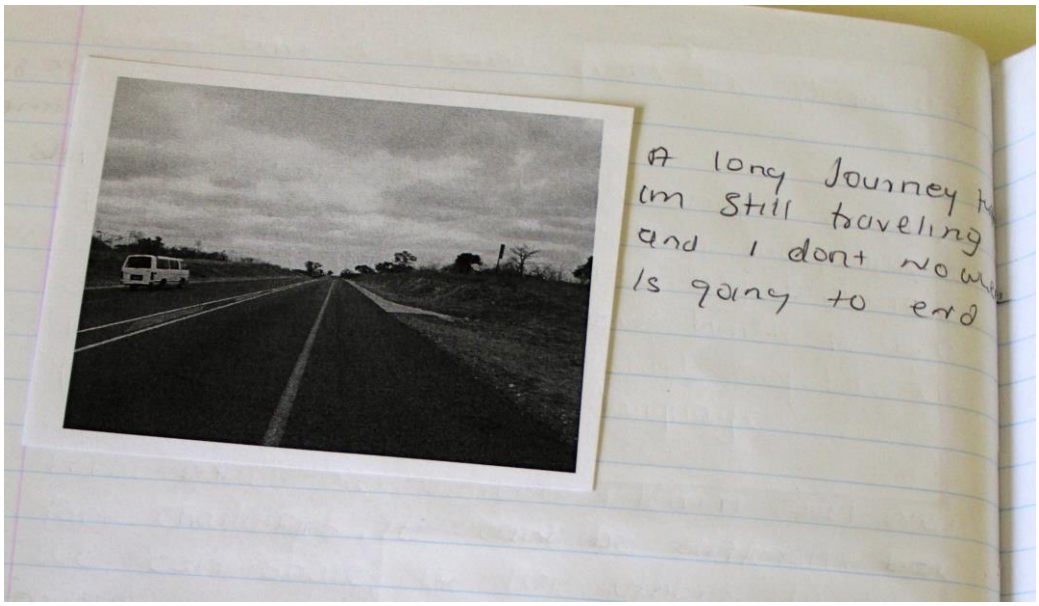


A storyboard created by a participant with images that she had taken up until this point of the workshop.

Volume 44 was informed by the former ACMS project Working the City (2010). After the Working the City project, the collaborating partners came together to discuss the strengths, challenges, and shortcomings of the project in order to inform future collaborative work. Sisonke highlighted the need to include a greater representation of sex workers in South Africa, the MPW stressed the importance of increasing visual literacy training for participants, and the ACMS believed that it was necessary to explore issues of migration and sex work outside of Africa's urban hub in order to gain a deeper understanding of the issues under investigation. In 2013, the Open Society Foundation of South Africa (OSF-SA) granted the ACMS, in partnership with the MPW and Sisonke, the funding to conduct a year-long project that involved migrant men, women, and transgender sex workers in the Gauteng and Limpopo Provinces of South Africa.

Prior to the commencement of the project, prospective participants were identified by

Sisonke and were invited to attend an initiation meeting with the research team. During this meeting, participants learned about the project and of the risks and benefits of their participation in the study. Information sheets that included contact details were distributed and an opportunity to ask questions was provided. Participants learned that they would be taught basic photography skills and that they would be asked to keep a daily journal that captured their reflections, stories, and narratives. They were also informed that the journals would be used as data for research, and that they would be given an opportunity to remove pages that they did not want included prior to the collection of journals at the end of the project. Additionally, participants learned that part of their involvement in the workshop meant that they would be guided, with the support of the facilitators and the research team, to create a 'photo story.' This story would consist of a narrative account and ten images, with accompanying captions, that would be shared with the general public. Individuals who were keen to participate provided verbal consent.



Participants glued their images onto their journals and wrote captions.

An important shortcoming identified during the Working the City project was that participants hadn't been offered the opportunity to create a 'private' visual story; a story that was possibly important for them to create, but that would remain inaccessible in the public domain. As a result, participants in Volume 44 were encouraged to produce a 'private story' that would be exhibited during the last day of the workshop. Many of these 'private stories' were similar to those that they had selected for the public, with slight variations such as a greater diversity of images, the absence of pseudonyms, and inclusion of identifying information. Others choose to tell a completely different story. In these cases, the stories tended to consist of highly traumatic events that had taken place in their lives, such as experiences of rape, loss of children, or issues that highlighted family distress. In the telling of these private visual stories we can begin to

unpack issues of representation and the ways that 'the public' is viewed by participants.

During the final phase of the workshop participants sat with the workshop facilitator individually to discuss their final image, caption, and narrative selections for both their public and private exhibitions. Although photographic techniques to address issues of anonymity were central throughout the workshop, increased attention to these concerns was given during the final editing phase, with special scrutiny paid to the information that was selected for the public. During this phase, the workshop facilitator made every attempt to identify information that could possibly negatively impact the participants or the sex worker community.



Opening Night Exhibition

Vearey insists that caution be implicit when using visual methodologies, and encourages researchers to be mindful when exposing individuals' 'hidden spaces' and their communities.[36] Kihato urges us to consider the camera as a 'disempowering tool' given the possible dangers of making migrant women's lives visible[37]. Therefore, in an effort to maximize the anonymity and safety of participants, images and text that included identifying information such as places of work and names of people, were altered, deleted, or replaced with other images or names. Lessons learned from the Working the City project also drove this level of editing interrogation. The project participants had been informed that their work would culminate in a public exhibition, but once the project ended and requests were made by various community organizations to showcase the work, many participants rejected the idea of displaying the exhibition in their communities out of fear of being identified as sex workers. While at times the

[36] Vearey, *Hidden spaces and urban health*, 51.
[37] Kihato, Caroline, "invisible lives, inaudible voices? The social conditions of migrant women in Johannesburg" *African Identities*, 5(1) (2007): 89-110.

editing process felt restrictive to participants of Volume 44, the participants' potential lack of understanding of what it means to 'go public' made this a necessary process for the research team.

The official Volume 44 public exhibition was held at the MPW in May 2014[38]. The exhibition highlighted the multiple layers of the project by featuring aspects of the multimodal visual and narrative approaches[39]. All nineteen participants attended this workshop and stated that they were proud of the work that they produced as individuals, and collectively. During the exhibition, Babymez, a migrant sex worker from KwaZulu Natal that currently lives in Johannesburg, expressed pride in witnessing the public engage with her work:

> This is too nice. I never think that anyone wants to hear my story but look—so many people are here to know what sex workers' lives are like. My story is not about sex work but it is important because it is my life and I don't think that anyone has ever asked me about my life.

Volume 44 is only one example of the various MoVE projects that support not only the production of powerful stories by a group of individuals who are both under-represented and highly marginalized, but also facilitate a space in which the participants[40] and the research team have the opportunity to reflect on their lives and the world around them. Although these types of methods are not always applicable to all research projects, and are certainly better suited for some research studies than others, what is evident is that they are afforded the time to think about what it means to tell and share stories.



A sneak peek into the curated exhibition

[38] http://www.marketphotoworkshop.co.za/exhibitions/entry/volume-44-exhibition2.
[39] http://www.migration.org.za/page/official-public-exhibition-vol44/move.
[40] **Anonymity**: Research participants in this study were anonymous, with the exception of two who opted to use pseudonyms. Therefore, the names that appear in the photo credits are not the actual names of the participatory photo project participants.

.

As a researcher, part of my job is to write 'stories' about 'others,' and in doing so I attempt to create knowledge about others' experiences and issues. These methods, for a range of reasons that have already been highlighted in this paper, offer the researcher an opportunity to engage in the 'feel' of events and lives. They offer the possibility to engage participants in the production of knowledge, and they support the production of materials that can be disseminated as non-traditional academic outputs. Equally important, however, is the fact that these methods, and projects like Volume 44, highlight the need to consider the subjectivity of knowledge and the power inherent in the production of knowledge: Who is producing knowledge and why? How does the production of 'knowledge' supports and/or limits what we 'know' and what we believe? The possibility of narratives being diluted when presented, or the potential for participants to intentionally select only stories that they want out in the world, are problematic when considering the benefits and drawbacks of many methodological practices, not solely with the use of 'innovative methods'. The interrogation of research, from inception to dissemination of findings and 'stories' that we as researchers produce, must 'live' in a more fluid space where knowledge is accepted as complex and where "the subjective is neither unified nor fixed" (Weedon 1987:22). Visual and narrative methodologies offer an opportunity to engage with various theoretical and epistemological frameworks. While utilizing these methods is not without incredible logistical challenges, what remains central is that participants seem to value their involvement in these projects.



Image of the Volume 44 *Publication.*

Teresa, a South African participant from Musina stated,

> *It's too good for me to be able to think about my life. I never think that someone want to hear my story. I mean--who am I to tell my story? But you come and now you want to know and I get to think about my story and my life and all of the things that I live to tell about. I want everyone to hear my story because I am not the only one who has these experiences. I am a person like everyone else and even though I face too many challenges because of the police harassment and violence and because I am not a South African, I am strong and I am alive and I think that this project has helped me learn more about who I am. I think about story so different now. I am too happy to be a part of this project.*

Chantel, a participant from Johannesburg, wrote in her journal,

> *Telling my story is so powerful for me. Everyday I look forward to writing or thinking about my story. I want to take images that show the way that sex workers are treated. That I am a person. This project let me do this. It helps me to take away stress and to know that I am not alone. I am so grateful.*

To learn more about Volume 44 and to download a free copy, please visit our online publication. For more information on past, current, and upcoming MoVE projects please visit us on our Weblobg [41] and follow us on Tumblr[42] , Facebook[43] , Twitter[44] and Instagram.[45]

[41] http://www.migration.org.za/page/official-public-exhibition-vol44/move
[42] www.methodsvisualexplore.tumblr.com
[43] https://www.facebook.com/themoveprojectsouthafrica
[44] www.twitter.com/movesafrica
[45] www.instagram.com/movesafrica

Compassion and Pragmatic Action: The Restoring Family Links Program

CHRISTA CHARBONNEAU KUNTZELMAN*

**Christa is currently an MA candidate in International Public Service at DePaul University, and will begin a PhD in Political Science at Northwestern University in autumn 2015. In both her education and her personal life, Christa has devoted herself to understanding the intricacies of the lived experience of forced displacement, and the resiliency of the displaced. She has served as the lead volunteer caseworker for the Restoring Family Links Program of the American Red Cross in Chicago for almost three years.*

Migration and the Restoring Family Links Program

Peace comes from being able to contribute the best that we have, and all that we are, toward creating a world that supports everyone. But it is also securing the space for others to contribute the best that they have and all that they are.
– Hafsat Abiola

The year 2014 was replete with examples of forced migration, massive internal displacement, and other large migrant movements. Whether it was children from Latin America fleeing violence and seeking safe haven in the United States, populations in Iraq, Syria and South Sudan fleeing war, or even individuals and families leaving their homes in Guinea, Sierra Leone and Liberia to avoid the Ebola epidemic, it is clear that tremendous amounts of people are on the move. The United Nations and its subsidiaries like the United Nations High Commissioner for Refugees (UNHCR) substantiate that this type of movement is not new, even if the present numbers seem shockingly high.

As a caseworker with the Restoring Family Links Program (RFL) of the American Red Cross, I am privileged to interact with persons who have been directly affected by forced displacement, as well as those who have migrated voluntarily. While many local and international organizations respond to displacement by caring for immediate human needs and the survival of the persons involved, the RFL Program is markedly different. Life-sustaining

interventions that provide food, water, proper shelter and healthcare are undeniably vital services, but there are still unmet needs. RFL seeks to restore communication between separated family members because we realize that when this communication stalls, people lose access to those who provide them with emotional and psychological support. These relationships give life meaning and depth. As caseworkers, we believe that we provide hope, empathy and compassion, coupled with pragmatic action.

RFL is a multi-faceted program that is committed to assisting all families in their pursuit to learn the fate of their loved ones, and to restore communication between survivors. The Red Cross/Red Crescent movement[1] has a national chapter in almost every nation, and therefore the organization has unique capacity to facilitate family tracing requests throughout most of the world. In the United States, this includes helping those in the U.S. look for family members abroad, and helping those abroad search for family members believed to be in the U.S. Family tracing cases can be opened in almost any nation in the world. The RFL Program has trained caseworkers to conduct interviews and searches, supported by a vast network of advocates and outreach associates that promote and educate other NGO partners and the general public on these efforts.[2] The outreach teams within the RFL program are instrumental to advancing the work and the mission.

Throughout my almost three years as a caseworker, many assumptions that I had about migrants and the migrant experience have been fundamentally challenged, expanded, and in some cases, completely shattered. In the media, one often hears heartbreaking stories of violence and war, but we also hear the condemnation of immigrants, including efforts to close borders and restrict entry. Instead of focusing on the individual migrant, we hear that immigrants are criminals that have crossed a border without the proper documents. In American society, we are largely not taught about the interrelated nature of international politics, history, economic development and other factors that have shaped the world as we see it today. Taken together, this reaffirms a false notion that all migration is simple, and that there is an equitable and fair legal process for anyone that wishes to come to the United States. However, I know that this is simply not true. The truth is that the more deeply I become involved in case work, the more I find that migration narratives are always more complex than I could have imagined.

De-Politicizing Migration

[1] The word *movement* is a piece of internal terminology and refers to the collective Red Cross/ Red Crescent societies.
[2] In addition to family tracing services, the Restoring Family Links Program also offers a diverse range of services, including assistance in obtaining certificates of detention, Holocaust and World War II documentation, and family records relating to the Bosnian Crisis, among others.

A primary reason that I love the RFL Program is because I am allowed to depoliticize migration issues in a legal sense. I do not have to inquire about the residence status of my clients. I do not have to probe for the deeply personal and often traumatizing reasons that they left their country, although I often become privy to these details. I do not have to decide if they are "deserving" of service, because everyone should be able to contact loved ones and family. Rather, I am able to focus solely on the person that is in front of me. I can see the person for who he or she is, an individual like me and like you.

We can dissect push and pull factors, we can argue about "hot button issues," and we can debate who is a migrant and who is a refugee. We can even heatedly discuss what we "owe" to migrant individuals and whether we should feel legal, moral, ethical or other obligations to do or give anything. However, I believe there is a shallowness to these arguments when they distract us from the underlying and innate human desire to leave a location where one cannot support themselves or their family and seek improved living conditions.

Further, arguments about legal terms often serve as mechanisms of cultural violence. By this I mean that we may use these labels to differentiate certain individuals from ourselves, and often do so with the implication that our humanity is of a higher status. The definition of a legal refugee is someone that was forced to leave his or her residence because of persecution or fear of persecution, but we often forget that the way that persecution is legally defined is very narrow. State and international protection of those in need fails often, whether due to a lack of desire or ability.

The RFL Program allows for a sort of re-humanization of clients. I emphasize that it is a "sort of" process, because anyone who approaches the Red Cross for help in locating a family member has never ceased to be human. However, the recognition of their expressed wishes, hopes, and fears regarding their family allows for a new expression of their humanity, and a reclaiming of their own individual agency. It is a reminder that individuals may be asking for a form of help, but that they are also actors.

Re-conceptualizing Agency

It is the client who contacts the caseworker to initiate a family tracing request, and the decision to initiate this request can be a difficult decision for individuals that have lost contact with loved ones. Some clients have expressed fears that the Red Cross will disclose their uncertain or undocumented legal status to authorities. As caseworkers, we have to build trust with the client so they understand that the Red Cross does not share information with the government, and that his or her records with us are confidential.

Beyond this concern, the choice to seek family tracing is an act of agency because to ask for reconnection is also an acknowledgment that the search may be unsuccessful, or that the seeker may encounter the unspeakable news that their family member has perished. These are not easy choices, especially when the inquirer knows it could take months, or even years, to locate those that are sought, if they are found at all.

An additional way that working with the RFL has helped me to re-conceptualize the agency of migrants is that refugees, migrants, and other displaced persons often do not use our program as the first attempt to find a family member. Many come and share how they've contacted fellow members of the refugee and diaspora communities, asking if anyone still has relatives or friends in the areas where they are searching for family members. They have checked the Internet, Facebook, social media, and have reached out to the UNHCR, to schools and religious institutions within their home communities. They have tried to leverage all connections and avenues, and are persistent in their search. Sometimes these channels are faster than the official Red Cross search attempts. However, when all other avenues have been exhausted, the role of the Red Cross in the search is crucial. Truthfully, it does not matter who is ultimately responsible for reconnecting a family—it is the connection itself that matters most. My role as a caseworker is ultimately to encourage and further this empowering search, but it is the client that has initiated and continues the process.

As a result of my work, I have reassessed the relational dynamic between myself and the 'clients'. We are all actors in the progress. My role is not what I had envisioned. I do not "give" anyone anything. I am not in a position of authority or hierarchy, but in our equal relationship, I am a facilitator in helping the inquirer to advance what he or she would like to do. I believe that this realization is beneficial to all practitioners and non-practitioners alike. We are all challenged to reassess the role we play, and what our relationship is to the communities that we serve. It is not enough to understand that we are a helper and facilitator; we must also understand that the relationship is not passive. The other person brings much to the table, and it is their actions that allow us, as caseworkers, to have a solid footing with which to move forward.

Methodology of Work and Obstacles to Reunification

To truly form an equal partnership means that we need to know the needs within our city and among our clients. Caseworkers, outreach workers, refugees, diaspora, migrants, and all others working through the RFL Program are concerned stakeholders, and we work together as a unified team. I am very proud of this.

It is also important to note that when we receive international requests to search for a person in Chicago (the branch at which I work), we use similar channels that the inquirers themselves have used. Restoring Family Links outreach team members work tirelessly to

establish connections to international communities in our city. By reaching out to non-profits, student groups and religious institutions that serve immigrant and refugee populations, we are building long-lasting relationships that will ensure those we seek to assist have both knowledge about and access to our services. In these ways, we try to anticipate the needs of communities and make sure we are available to respond whenever there is a need.

Despite the best efforts of our clients to provide the most complete and helpful information that is needed to find their family members, the work is often slowed and complicated by factors outside of our control.

In some cases, the ability to begin or continue a search is restricted by the reduced capacity of other national Red Cross or Red Crescent societies. Although the family tracing services is a mandatory service for all national societies, there simply may not be the human or other resources that are needed to accept new cases, or to handle the volume of existing tracing requests.

Sometimes work cannot proceed because the risks of physical harm to the Red Cross/Crescent volunteer or staff is elevated. For example, with the rapid spread of Ebola in several Western African nations, family tracing work was temporarily halted. We do not know and cannot advise when work will resume in these situations; this is further difficult news to deliver. When a caseworker cannot travel to a community, it is difficult to conduct the thorough search that is required. In some instances, this obstacle can be mitigated through utilizing technology (phone, email, etc). Even in our modern technological world, though, there are many areas that do not have stable Internet access, or where families have never owned a home phone. Furthermore, communication systems are often disrupted during conflict. Phone lines and power plants may be rendered unusable due to fighting.

The work of family reunification can also be limited because of public perception. With the recent rise of unaccompanied immigrant children in the United States, I have been shocked to see the reactions against the individuals and organizations seeking services and aid on behalf of these young people. Many have expressed outrage at “rewarding lawbreakers” and claimed that groups like the Red Cross, through its family reconnection services, are working to encourage migrants to come to the U.S. without documentation. This is a prime example of how, despite our efforts to depoliticize an issue and solely respond to a humanitarian need, we are always affected by politics.

Family Reunification: A Common Humanity

In sum, it is not just who is or who is not a refugee, or who has or does not have legal documentation. I believe this work is about family and relationships and holding each other to

mutual accountability that when one has suffered, we can all contribute to the amelioration of that suffering. It is quite unlikely that I myself will become stateless, internally or externally displaced, or that I will need to migrate voluntarily to another nation to sustain my or my family's livelihood. Even so, I am unable to distinguish a humanitarian difference between those who have migrated and those who are fortunate enough to be settled and secured in regard to the importance of family reunification.

In writing this practitioner report, my goals are not to pass judgment upon anyone who may feel politically different than I do. Rather, my goal is to challenge us all to re-think the degree to which categories of migration matter when seeking to reunify families. I challenge us to find commonality in the humanity that surrounds us. Even if one does not feel that another person is due the legal right to remain in a country, perhaps we can universally declare that everyone should be able to speak to a family member, a close friend or a loved one. There is not any situation I can envision where one should be denied this. Restoring Family Links is a vehicle to express this common humanity.

While practitioners with more skills, expertise, and experience than I are working on the bigger picture to promote stability and end displacement, the rest of us can continue by responding to the basic needs that present all around us. In offering a service to another, one is not encouraging any type of behavior other than a compassionate acknowledgement of basic human needs.

The Jesuit Commons: Higher Education at the Margins Program: *An Ongoing Community Project Report: Reflections On Higher Education In A Refugee Setting*

THEOGENE BARAVURA*

**Theogene Baravura is among the first graduates of the Jesuit Commons: Higher Education at the Margins (JC: HEM) program, having completed a three-year diploma in liberal studies with a concentration in education. Since graduating, Theogene has gone on to become Lead Academic Tutor for the program in Malawi, supporting the next wave of refugee, asylum-seeker and host community students in their studies and developing an approach to student support which is rooted in Theogene's own experience as both a student and a refugee. Theogene's research interests include community development, pedagogy, and personal growth and development.*

Introduction

Over the last decade, the number of refugees and asylum-seekers trapped in situations of prolonged displacement around the world has risen. The individuals caught in these situations are often portrayed as 'victims' or defined by their status as recipients of aid from humanitarian agencies. These displaced people and their communities can and should be re-conceptualized and instead defined as self-reliant and capable of contributing to their own development. However, in reality, there are many legal and political restrictions faced by refugees in host countries and these re-conceptualizations have not readily taken place. One important way to change this is through providing opportunities for refugees to access higher education. With such education, individuals defined as refugees can become more self-reliant and further develop the capacity to determine and make decisions affecting their own lives.

This report reflects on the Jesuit Commons: Higher Education at the Margins (JC: HEM) diploma program, which is delivered through a partnership with the Jesuit Refugee Service (JRS), in Malawi, Kenya, Myanmar, and Jordan since 2010. The JC: HEM higher education program's official motto is 'Transform Thinking…Transform the World,' and its aim is to bring together local and global teachers, learners, and ideas through a collaborative and participatory online learning experience between instructors and students. The JC: HEM distance learning program is one among a handful of international initiatives that provide opportunities for higher

education to people located 'at the margins' of societies, predominantly refugees, who would not have access to it otherwise. Among the goals of JC:HEM are increasing refugee capabilities and shifting how refugees see themselves and their life situation.

This paper looks specifically at Dzaleka refugee camp in Malawi as a case study to explore the practical challenges and accomplishments in the implementation of higher education in Dzaleka. There has been little formal research or social data collected about the program, and about the camp site in general, despite it being operational in Malawi since 1991. A handful of international volunteers and student researchers have formally explored some social issues in the camp, but there remains much more to be done in the community.

As a practitioner, I see education as a community project. Education ultimately helps address community issues such as poverty, child rights and protection, and leadership challenges. Although the academic achievements of students become the main tool to assess the effectiveness of the learning program, educational achievements should also have social and moral merits. For a refugee community, such social and moral merits are very much needed in order for refugees to survive and thrive in new communities and within the new cultures and traditions of host communities. Therefore, this report centers on two main findings: 1) Planning ahead for academic and individual growth helps students prepare for a different online-based education and academic achievement; and 2) Helping students to understand the outside world, their refugee situation, and the challenges they will face as they prepare themselves to return to their lives that will make a difference for the betterment of their communities. Education, particularly in the area of liberal arts, is a key tool for the development of individual and community resilience in camps; developing one's potential as a democratic human being along with promoting social justice.

Dzaleka Refugee Camp

Dzaleka refugee camp, located in the central region of Malawi, hosts approximately 18,800 registered refugees and asylum seekers, from a total of 14 different countries[1]. These displaced persons originate almost exclusively from the Great Lakes and Horn of Africa regions, namely the Democratic Republic of Congo (DRC), Rwanda, and Burundi, with smaller populations from Somalia and Ethiopia. With very few exceptions, refugees are forbidden from working in Malawi and must rely on diminishing food aid from international donors. This situation means that many refugees are forced to find informal work opportunities outside of the camp to support themselves and their families. Therefore, there is also a role for JC: HEM in contributing to building the livelihoods of refugees, particularly if the host country environment is favorable.

[1] UNHCR. "UNHCR Operation in Malawi: Fact Sheet." Malawi, 2013.

The Jesuit Commons: Higher Education At The Margins Program

Jesuit and other mission-aligned universities and professors provide online courses for a three-year Diploma in Liberal Studies[2] administered under the umbrella of JC: HEM and awarded by Regis University. Each course takes eight weeks to complete and the diploma program requires completion of fifteen courses in total. Students choose either business or education as their concentration for the last five courses. Since the JC: HEM program began its three-year distance learning diploma in 2010, more than 40 students have completed it, with almost 60 students currently enrolled and completing courses. Some graduates are working informally as English as a Second Language teachers in the camp, or facilitating trainings for others based on their learning through JC: HEM. For example, two Business concentration graduates facilitated a three-week Business Skills Training for more than 100 camp residents last year. These types of activities should continue to be supported to ensure that JC: HEM remains connected with the communities it serves.

Educational Challenges For Students

Distance learning within the camp environment presents students with a number of challenges, many of which are particular to the unique learning environment within a refugee camp. Students initially struggle with understanding the effectiveness of the learning experience and approach at JC: HEM, unfamiliarity with technology, using the internet for academic purposes, and the language of instruction. Processing large amounts of information when reading, exposure to new online learning materials and experiences, the use of English as a third or fourth language, and critical thinking differences that are highlighted by intercultural communication are significant challenges.

Most of the academic challenges that students face have been observed to be more acute in the online learning environment; in particular the critical and creative use of information. These challenges can range from plagiarism to passive learning, and can negatively affect students' progress. For the majority of students, their past education was centered on reproducing others' perspectives/theories as their own ideas and giving back what an instructor has taught them, without acknowledging the source. To overcome a focus on memorizing and the extremely limited access to academic resources the students had throughout their primary and secondary learning, individual tutoring support and mentorship are necessary. Other academic challenges include developing soft skills such as time management, reading, research, writing, and communication skills. These challenges have a direct effect on the students' academic

performance, making it difficult for them to meet the American and Jesuit educational standards and fully realize their learning journey at JC: HEM in general.

Students are also exposed to new online learning materials and experiences, and are presented with straightforward access to information on any topic they may need for their assignment on the internet. However, students face challenges when selecting suitably academic articles or information, and when deciding how to use them in papers. For example, writing a paper in an APA format and following citation and quotation rules is particularly not easy for students because these concepts are entirely new.

English communication is another big challenge for students, whether in reading, researching, writing or general understanding. Many students are exposed to a large volume of reading materials in English each week, which often takes time to adjust to. In my case, which is not unique amongst new diploma students, I had a low level of written English upon entering the program. It took strong individual commitment to personal development in order to understand and apply new knowledge in this fourth language.

Responding To Challenges

There are multiple ways of responding to such student challenges. The strategy of planning ahead is a student support strategy I developed as the Lead Academic Tutor after noticing an increase in academic writing issues and a decrease in students' motivation for learning. I believe this was due to the new learning style used by JC: HEM that was not addressed directly by online JC:HEM tutorial support. The strategy provides a face-to-face learning opportunity for students. As students complete online coursework, online instructors and tutors regularly communicate students' learning needs with on-site tutors. On-site tutors then plan, organize, and deliver necessary support for students, and communicate the progress and outcomes to online instructors. On-site academic tutors are JRS staff or volunteers working within the JC: HEM program who are committed to assessing students' academic needs. Students are also encouraged to help each other.

The planning ahead on-site support process deals both with students' academic needs (English, computer, research/reading/writing, communication skills) as well as with questions related to improving their life in the refugee community more broadly. This on-site learning experience highlights the importance of forming a community of learners, which gives students an opportunity to develop skills in communication and form relationships while working on their assignments. This strategy supports students to meet deadlines with their strongest work, while developing the knowledge and skills needed for a multicultural community. In addition, students meet the daily challenges encountered in their community with confidence and pride, and we can

see progress made by students through improvements in their online contributions and paper submissions.

In addition, the planning ahead strategy allows for the organization of service learning activities that can get students involved in community work to develop their social, emotional, mental, and intellectual abilities. Students develop personal abilities and capacities along with their critical thinking abilities when they engage in service learning activities, which are a key element in the liberal studies curriculum at JC: HEM. Through service learning activity, students are able to consider and discuss existing issues in the refugee camp. Tutors facilitate this work after having identified specified objectives to be achieved. One important, recurring refugee community issue that worries many students is poverty and its effects, which will be discussed further in the following section.

Using Education For Understanding Poverty And Moving Beyond The Refugee Life

JC: HEM helps students to better understand and navigate some of the particularities of life as a refugee that affect their academic performance in ways that may not always be expected. Helping students understand their refugee situation, its challenges and opportunities, will not only make them happier about who they are, but will also help them to move on with life by perceiving new options and new horizons, pushing the boundaries of what it means to be a 'refugee'.

One major problem in refugee situations is poverty. However, many refugees, including students in the JC: HEM program in Malawi, misunderstand poverty. In turn, this may lead to short-term focus on basic needs like food, water, clothes, and shelter. For instance, while it is true that refugees in Dzaleka do not receive enough food to feed their families for a whole month, as the ration should, the monthly distribution is not the only means through which to gain these necessities. When faced with the challenges of poverty, students are uniquely positioned to find and develop new strategies to deal with the situation. They are able to draw on their leadership and critical thinking skills to try out pathways and options that other refugees often see as risky or sometimes irrational.

What is the meaning of poverty? And why do tutors look at it as a very important topic to analyze together with their students? Poverty is anything that can contribute to the shrinkage of one's access to material or non-material resources, beyond simply a lack of financial well-being to which refugees often limit their understanding. However, with education about current realities, it is possible to re-conceptualize how resources can be regained through developing knowledge and skills in interpersonal and intercultural communication, through logic and knowledge, leadership, and psychology. Addressing poverty issues in an educational environment is absolutely crucial to students' motivation. Consequently, refugee students'

academic performance, perspective on life, and overall success may be highly dependent upon how effective they are in resolving problems of poverty.

A student can place priority on education and personal growth in a situation where there are limited job opportunities and where educational values are seen as unlikely to help one meet his or her basic needs of food, shelter, and the like. Such life goals, or values that support lifelong learning, development and ethics are not easily understood to have utility in a refugee camp survival context. Students need a strong heart to balance all the aspects of their lives, especially when they also have to commit to their daily household chores, sometimes also acting as the breadwinners for their families. At the same time, they also need to stay committed to the JC: HEM program. If their family and community pressures are too much, their academic performance can be affected. The specific challenges related to maintaining a strong performance in their studies must be recognized. In some cases students come to receive their online higher education without having had any breakfast, and they may be unsure if they are going to get anything else to eat when they return home.

A liberal studies education equips JC: HEM students with the knowledge and skills to enable them to know where their community is heading or what they are experiencing. Courses like *Person and Conduct; Logic and Knowledge; Leadership Theory;* and *General Psychology*, alongside service learning practice, give students a strong basis to not only understand what their communities are struggling with, but to discover and understand their abilities and responsibilities towards the refugee community. The discovery of one's ability and responsibility goes along with the discovery of one's life mission. However, the knowledge and skills students receive through courses is not normally enough to enable them to be conscious of their abilities. For some, it is difficult to develop a thorough understanding of critical thinking from scratch in just a few days. However, for others, critical thinking is like a lifestyle. This is where tutors can help students apply the knowledge and skills received from courses in the community.

The main role of on-site JC: HEM Tutors at Dzaleka is to help students connect the theories and concepts learned in class to their communities. Tutors put students in closer contact with their community and its unique problems to their great learning advantage. They help students develop their critical thinking abilities through service learning activities, where students can select community learning activities relevant to their interests and realities, such as volunteering at the schools, joining committees in the camp such as those working against Sexual and Gender Based Violence (SGBV), interpreting for different organizations around the camp, and connecting with the wider community to change their preconceptions of refugees. On-site tutors sometimes have to focus on a very controversial topic or specific challenges facing the refugee community, researched and studied with students. There are no clear answers on addressing poverty as it is seen in a refugee camp, for instance. However, JC: HEM tutors and the liberal studies can make a difference in suggesting to students some of the various and possible alternative approaches to such situations. After completing and reflecting on these

experiences, students consciously grow as leaders and learn more than through being lectured or simply reading a book.

Shifting Power To Refugees

The JC: HEM distance learning program is designed for people physically located at the margins of society who cannot access higher education, with refugees currently making up the majority of students[3] in the diploma program. The objective of this program is to provide students access to tertiary education while simultaneously supporting positive social development for individuals within the camp environment. JC: HEM students may expect to only develop intellectually because of the online learning experience, but the liberal studies education is intended to be transformative, with students developing problem-solving skills, experiencing collaborative learning and teamwork, and achieving individual growth and development. .

On-site tutors need to find out which issues are particularly challenging for students and may affect their academic performance and success after graduation. Students bring in cultural, socio-political, and moral perspectives and concerns to their learning activities, and most of the time these factors are what inform their educational motivation. It can therefore be a great advantage for the tutor to know them on a deeply personal level. From there, tutors will be able to develop motivating learning activities which are particularly relevant to students' personal and social development. Poverty is not the only issue to be addressed by students in a learning setting. Simply understanding community issues is also not enough. Liberal arts education enables refugee students to gain the tools to adapt to any socio-political and cultural challenge in whatever host country or community. If successful, they will be able to proactively and independently make decisions about what they need to make their lives better. It is important for refugees to achieve change in how they live and how host communities see them, which can ease tensions over resources and cultural differences.

The re-conceptualization of refugee life through higher education is closely based on the refugees' social and cultural ability to live with different people. Refugee situations are different based on host countries and communities. The re-conceptualization of refugee life should shift more power to refugees to cope with cultural diversity, poverty, and a number of other social issues found within the refugee community itself. As refugee situations become more prolonged in nature, the popular conceptualization of 'refugee' needs to evolve. As the JC: HEM program expands beyond its 3-year pilot phase to include more sites such as Kenya, Jordan, and Myanmar, and other higher education distance learning programs emerge in refugee situations

[3] A small number of students are also from neighboring communities in the host country of Malawi.

globally,[4] new knowledge is being created and capabilities are being supported in these long-term refugee camps.

A large gap remains between host and refugee communities in terms of access to work and social integration. One reason for this may be because host communities have not yet recognized that the majority of refugees in Malawi cannot return to their countries of origin and are therefore in protracted refugee situations. Limited freedom of movement and almost no possibility of employment in the host country can affect refugees' rights to live as dignified human beings.

There are a number of emerging questions that need further attention to ensure higher education programs in refugee contexts are relevant to students' life contexts and cultural backgrounds. How can these individuals effect change within their refugee and host communities and apply these valuable skills productively in the long term? What role will distance learning programs like JC: HEM have in changing constraining legal and political frameworks that limit self-reliance and livelihood possibilities for refugees? The implications of having increased numbers of highly educated refugees remaining contained in camps must be considered. Advocates for refugee education must push for refugees themselves to be at the centre of decision-making and community development.

REFERENCES

Bronson, Amy. *Gender and Recruitment in the Jesuit Commons: Higher Education at the Margins Diploma Course* (Unpublished). Malawi: Jesuit Refugee Services, 2013.

Carlson, Sharon. *Contesting and Reinforcing Patriarchy: An Analysis of Domestic Violence in Dzaleka Refugee Camp* (RSC Working Paper No. 23). Oxford: University of Oxford, 2005.

Donald, Heather. *Preparing for Uncertainty: Access to Higher Education for Refugees in Dzaleka Refugee camp, Malawi*. Unpublished Master's Thesis. Toronto: York University, 2014.

UNHCR. "UNHCR Operation in Malawi: Fact Sheet." Malawi, 2013.

[4] See for example the Borderless Higher Education for Refugees (BHER) Project, which offers tertiary education to refugees. The BHER project's goals are three fold: "(1) improve the equitable delivery of quality education in refugee camps and adjacent local communities through university training opportunities which will prepare a new generation of male and female teachers; (2) create targeted, continuing opportunities for young men and women in university programs that will enhance their employability through portable certificates, diplomas and degrees; (3) build the capacity of Kenyan academic institutions that already offer onsite/on-line university degree programs to vulnerable and marginalized groups." (For more, visit: http://refugeeresearch.net/ms/bher/about-bher/).

ESPMI Network's Discussion Series

How is the Situation of Seaborne Migrants and Asylum Seekers Re-conceptualizing Refugees and Forced Migration in the 21st Century?



Participants in this discussion series include (clockwise from upper left) DR. MELISSA PHILLIPS, BAYAN EDIS, SOPHIE HINGER, CHIARA DENARO, KEEGAN WILLIAMS, and OLIVIA TRAN.

Introduction: Seeking Safety on the High Seas

HILLARY MELLINGER*

** Hillary's involvement in the ESPMI Network was sparked when she contributed a piece to the journal's second discussion series. She is thrilled to be part of such an active group of scholars and practitioners, and was honored when the ESPMI Network asked her to help facilitate their third Discussion Series.*

The ESPMI Network's *Discussion Series* strives to create a forum in which advocates, scholars, practitioners, and students can shed light on prominent global issues and questions. In our third *Discussion Series*, we focus on state responses to seaborne migrants and the conceptualizations of these migrants over time and in various locations.

This *Discussion Series* is particularly timely in light of the increasing number of tragedies concerning seaborne migrants traversing the high seas. Although migration across bodies of water is not historically uncommon, the last few years have shown a significant global spike in the number of migrants traveling by sea in search of safety or improved circumstances. Aggregate statistics concerning this form of migration are difficult to attain, but state and regional migration statistics indicate increasing numbers of migrants are being interdicted at sea or, as it too often the case, perishing at sea.[1]

The friction between state sovereignty and international law has become more pronounced with the post-World War II emergence of a robust global human rights regime girded by international law, treaties, and a plethora of judicial entities at the state, regional, and supranational level. This has meant that states' responses to seaborne migrants are subject to both domestic and international scrutiny. How do states assert their sovereignty over migration flows in a world increasingly characterized by international law and human rights norms, and what does this mean for those who seek safety via seaborne migration?

Seaborne migrants represent a complex policy predicament for states, as they enter a territory through irregular means, but may not be irregular migrants. Irregular migrants are often negatively characterized as illegal economic migrants and criminalized, whereas forced migrants fleeing conflict zones may merit protection under international law. When these two strands of

[1] The U.S. Coast Guard publishes statistics on the number of seaborne migrants it interdicts each fiscal year. Page thirteen of a September 2014 report by Amnesty International provides a comparison of the increased volume of Mediterranean seaborne migrants since 2009. Similarly, the UNHRC has documented the rising number of seaborne migrants from the Horn of Africa as well as in the Mediterranean and other regions of the globe.

migration intersect, states must accomplish the competing objectives of maintaining national security and protecting human security.

The young scholars contributing to this edition of the *Discussion Series* place the various tools that states utilize to assert their will over migration flows in stark relief against the role of international law, protection frameworks, and debate on national versus human security. Phillips offers a perspective of seaborne migration in the Horn of Africa and Edis focuses on seaborne migration to Australia. Hinger and Williams position their arguments within the context of the Mediterranean Sea, Denaro looks at Western Europe as a whole, and Tran provides a view of collaborative Western responses to seaborne migrants. Although they focus on different regions of the world, they all scrutinize how seaborne migration is labeled and cite a number of contemporary reference points.

The authors also map the uncertainty and changing nature of seaborne migration and state response in a number of important ways. As Phillips writes, migrants are frequently placed along a "sliding definitional scale" such that they can be considered a refugee at one stage in their journey and an irregular migrant or trafficked person at another. Denaro charts uncertainty by drawing upon a metaphor, where the current refugee protection framework is like a door that can either open or close on aroom that contains various protections and rights. She laments states' diverging interpretations of the 1951 Refugee Convention and urges us to consider a "revitalization of the right to asylum." Edis urges states not to sacrifice human security and the protections afforded by international law on the altar of state sovereignty. Hinger similarly questions whether state security is taking precedence over the human security of seaborne migrants in a Mediterranean context. Williams provides a sobering statistical snapshot of the number of lives lost at sea compared to the financial cost of Search and Rescue (SAR) operations and extraterritorial interdiction measures. Finally, Tran concludes by asking why state approaches to and the public opinion of seaborne migrants may have changed since the Indochinese boat crisis, noting the differences that may account for contemporary struggles to provide coordinated relief for those that migrate by sea.

REFERENCES

Amnesty International. 2014. "Lives Adrift: Refugees and Migrants in Peril in the Central Mediterranean." September. Available at: http://www.amnesty.ch/de/themen/asyl-migration/europa/dok/2014/verantwortung-fuer-fluechtlinge-in-seenot/bericht-lives-adrift-refugees-and-migrants-in-peril-in-the-central-mediterranean-.-september-2014.-88-seiten (Accessed May 11, 2015).

UNHCR. 2014. "2014 Becomes the Deadliest Year at Sea Off Yemen." October 17. Available at: http://www.unhcr.org/544103b06.html (Accessed April 30, 2015).

UNHRC. 2014. "UNHCR Urges Focus on Saving Lives as 2014 Boat People Numbers Near 350,000." December 10. Available at: http://www.unhcr.org/5486e6b56.html (Accessed April 30, 2015).

U.S. Coast Guard. 2015. "Alien Migrant Interdiction." May 1. Available at: http://www.uscg.mil/hq/cg5/cg531/amio/FlowStats/FY.asp (Accessed May 11, 2015).

Conceptualizing 'people on the move' in the Horn of Africa and Yemen

DR. MELISSA PHILLIPS



Dr. Melissa Phillips works for the Regional Mixed Migration Secretariat for the Horn of Africa and Yemen. She is also an Honorary Fellow in the School of Social and Political Sciences at the University of Melbourne. Melissa has over 15 years experience working with refugees and asylum-seekers in Australia, Ethiopia, the United Kingdom, Libya and South Sudan. Her research interests include transit migration, multiculturalism and the role of diasporas.

In a region strongly associated with large refugee camps, the issue of seaborne migrants and asylum seekers is forcing many in the Horn of Africa and Yemen (HoAY) to re-think the nature of displacement both spatially and temporally, to re-consider definitional approaches and to review ways of providing protection.

The phenomenon of seaborne migrants and asylum seekers occurs in two ways in the HoAY. Firstly migrants, mostly Ethiopian, and refugees from Somalia, cross the Red Sea and Gulf of Aden in the hope of reaching Yemen and moving on to Saudi Arabia. In 2014 almost 91,592 people made this journey, with 250 drowning or dying at sea and thousands more being abducted before they arrived.[1] The HoAY is also the starting point for many who seek to go from Ethiopia through Sudan and into Libya, where they take boats across the Mediterranean. Eritreans and Somalis comprise a significant proportion of asylum seekers using this sea route.

Contrast this picture of dynamic movements and mixed populations with the clear and bounded spaces offered by refugee camps such as Dadaab or Kakuma in Kenya. Putting aside the

[1] For more details and figures, see RMMS Mixed Migration Monthly Summaries and RMMS (2014), *Abused & Abducted: the plight of female migrants from the Horn of Africa in Yemen*.

limitations and multiple problems associated with camp-based responses, camp populations can be defined as refugees and their status often remains fixed in time, just as these refugees are fixed in place. In comparison, the hyper-mobility displayed by migrants and asylum seekers as described above is typified by lengthy periods of time and immense distances. The definitional status of people on the move, be they refugees or migrants, is also less clear. For instance an Ethiopian woman who leaves her country irregularly in search of better employment opportunities may start her journey as a migrant, going on foot to Djibouti, only to find herself held by smugglers for ransom. If she finds sufficient funds to pay for a sea journey to Yemen, there is a real risk that she will be abducted and abused by criminal gangs operating off the coast of Yemen, and possibly even trafficked.

Such a sliding definitional scale, spanning the continuum from migrant, trafficked person and, in other cases, to refugee, is linked to the nature of irregular journeys made by sea and land and the use of smugglers and brokers to facilitate journeys. Labels such as 'mixed migrants or 'people on the move' have become convenient catch-all phrases in such contexts, but could they jeopardise the protection space carved out for refugees and asylum seekers?[2]

At a practical level, providing protection to people en route may make it harder to enforce rigid distinctions between refugee, migrant and asylum seeker.[3] For example when a boat is sinking in open seas or police round up and detain a group of people trying to cross a border without documents, there are grave protection concerns for all. [4] In the years to come, as this issue grows in scale and scope, the phenomena of seaborne migrants and asylum seekers will likely stretch and challenge our conceptions of refugees and forced migration even further. Contending with the reality of mobility in the HoAY region is one way to ensure a grounded approach.

[2] Melissa Phillips (1 July 2014), "The effect of negative labeling – Why are we still talking about 'migrants'?", Guest Post for Migrants at Sea available at http://migrantsatsea.org/2014/07/01/guest-post-the-effect-of-negative-labelling-why-are-we-still-talking-about-migrants/ .

[3] For more on this see Roger Zetter (2014), *Protecting Forced Migrants: A State of the Art Report of Concepts, Challenges and Ways Forward*. Bern: Federal Commission on Migration FCM and Melissa Phillips (2014), *Protecting People on the Move: Mixed Migration in Volatile Contexts*, Danish Refugee Council Evaluation and Learning Paper No. 3 available at http://drc.dk/about-drc/publications/evaluation-and-learning-briefs/ .

[4] In this regard, recent efforts to promote the human rights of migrants at international borders are to be commended; Office for the High Commissioner of Human Rights (2014), R*ecommended Principles and Guidelines on Human Rights at International Borders* available at http://www.ohchr.org/Documents/Issues/Migration/A-69-CRP-1_en.pdf .

Seaborne Asylum Seekers in the 21st Century: An Australian's Perspective

BAYAN EDIS



Bayan Edis is a Bachelor of Laws & Bachelor of Arts student at the University of Western Australia. During the course of his studies he has focused on international human rights law, as well as refugee and Indigenous legal issues. He also has experience working in the United States and Australia with migrant populations as part of a grassroots youth empowerment initiative. His current research explores how contemporary Australian migration law contradicts the international obligation of non-refoulement and how such law might be recast to reflect a more robust and universally acceptable conception of human rights.

"'Tragic' outcomes are best repaired before they become a settled rule of the Constitution."[1]

On December 5, 2014, the Australian parliament passed the controversial *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act* (Cth) (the Act). The Act paves the way for a series of substantial changes to the way asylum seekers will be handled in Australia, with particular implications for seaborne migrants. Some relevant changes include:

- The empowerment of the Minister for Immigration and Border Protection (the Minister) to, without review, order the detention of asylum seekers at sea and their transportation elsewhere, including 'just outside' another country's border.[2]
- The introduction of a requirement that border protection officers remove 'unlawful non-citizens' from Australian territory, even if they seek asylum and irrespective of any breach of Australia's *non-refoulement* obligations. [3]

[1] Former High Court of Australia Justice Michael Kirby, Al-Kateb v Godwin [2004] HCA 37.
[2] *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload)* Act (Cth) 2014, Section 75C, D, F, H.
[3] *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload)* Act (Cth) 2014, Section 197 (C).

- The limitation of recourse to merits review for asylum seekers arriving irregularly, principally by boat.[4]
- The removal of most references to the 1951 Refugee Convention (the Convention) in the *Migration Act* 1958 (Cth) and the introduction of a new framework that establishes Australia's own interpretation of its protection obligations under the Convention.[5]

The provisions of the new Act have come under scrutiny for undermining Australia's international human rights obligations from a number of organizations, including the UNHCR, the Law Council of Australia and the Parliamentary Committee into Human Rights. The apparent disregard for international law, including the law of the sea, human rights law, and refugee law suggests that Australia is diverging from international norms in regards to the prohibition on arbitrary detention and the principle of *non-refoulement*.

Asylum seekers detained at sea have no access to legal advice and limited chance to be heard. Granting the Minister the power to detain and transfer people on the high seas enables the possibility of indefinite detention and thus the prospect of contravening international obligations under human rights treaties.[6] Arbitrary detention dehumanizes asylum seekers through the application of an industrialized solution to complex human challenges. Undermining human rights, as a means to an end, is not an appropriate way to conceptualize refugees in the 21st century.

Upholding the principle of *non-refoulement*[7] is another issue arising with the new Act. The principle has an extraterritorial application and applies to those whose refugee status has not yet been determined. It is a principle so universally accepted that it has become international custom. Yet the provisions of the Act grant the Minister maritime powers of removal, which essentially diminishes any imperative to consider the obligation of *non-refoulement* and violates the notion of good faith implementation of international law established in the Vienna Convention[8].

While the notion of good faith may be subjective, Australia's decision to limit access to merits review for irregular arrivals and to remove references to the Convention from the *Migration Act* suggest a move away from a good faith effort to implement the principle of *non-refoulement*. When a vital principle and international custom like *non-refoulement* is negotiated

[4] *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload)* Act (Cth) 2014, Schedule 4.
[5] UNHCR Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 31 October 2014, http://unhcr.org.au/unhcr/images/2014-10-31%20UNHCR%20Submission%20Inquiry%20Migration%20and%20Maritime%20Powers%20Bill.pdf .
[6] For example, article 9 of the *International Covenant on Civil and Political Rights.*
[7] 1951 *Convention Relating to the Status of Refugees* as amended by the 1967 *Protocol*, Article 33.
[8] *Vienna Convention on the Law of Treaties (*1969) 1155 UNTS 331, Article 26.

in domestic law, Australia's broader commitment to customary international law becomes questionable, and 'slippery slope' arguments can be made. Furthermore, discriminating against asylum seekers based on their mode of arrival directly contravenes Articles 3 and 31 of the Convention.

In some ways, the passing of the Act represents not so much a reconceptualization of the challenges posed by seaborne asylum seekers but rather a stricter interpretation of absolute sovereignty and an endorsement of collective approaches to the interpretation of international law that have been used by receiving countries the world over.[9] Under the absolute sovereignty approach, Australia's concern becomes one of actively preventing asylum seekers from reaching its borders, rather than consistent policy regarding the welfare of asylum seekers and the facilitation of refugee determination. By simultaneously embracing a collective approach, Australia is able to draw on regional states and redistribute asylum seekers. Seeing no affirmative obligation to admit seaborne asylum seekers under article 33 of the Convention, it looks to third countries for detention and processing, as is done on Manus Island in Papua New Guinea and Nauru. The laws in the Act are reflective of an extreme application of these approaches. While such a stance may have lessened the flow of seaborne asylum seekers to Australia in the short term, questions remain about the adequacy of such solutions to resolve the human rights intricacies of seaborne migration in the 21st century.

Does Australia not lose credibility in the international community with such a navigation of established international law? What is the extent of Australia's 'good faith' responsibility to the international community? What long-term use is there in widening the gap between domestic migration law and international obligations? The challenges arising from increasing numbers of seaborne migrants are undoubtedly complex. Settling upon simplistic solutions made possible by circumventing international legal obligations, however, is a dubious way to respond and could lead to tragic outcomes.

[9] See D'Angelo E.F., 2009, 'Non-Refoulement: The Search for a Consistent Interpretation of Article 33,' Vanderbilt Journal of Transnational Law 42(279).

How to Re-Frame? European State Reactions to the Situation of "Seaborne Migrants" in the Mediterranean

SOPHIE HINGER



Sophie Hinger is currently working as a research assistant and teacher at the Institute of Migration and Intercultural Studies (IMIS) at the University of Osnabrück, Germany. She is pursuing a PhD with a focus on local migration regimes and the inclusion/exclusion of asylum seekers. Sophie is a member of the Berlin group of Borderline Europe and of the Watch the Med Alarm Phone initiative. She completed a master in migration studies in Amsterdam, Bilbao and Osnabrück.

European State Reactions to the Situation of "Seaborne Migrants" in the Mediterranean

Images of seaborne migrants in leaky boats attempting to cross the Mediterranean Sea to reach Europe are ubiquitous in the European media and within public discourse. They dominate the European imagination and conceptualization of migration, especially from North Africa. These images are often accompanied by an emergency rhetoric and warnings of waves of irregular immigrants "invading" Europe. Such a perspective is not only reductive and de-humanizing, but it also neglects the fact that unauthorized sea-crossings of migrants represent only a small fraction of the many migrations and mobilities of the transnational space that stretches across and beyond the Mediterranean Basin.[1]

It is not only the "high tide" of seaborne migration but also the deaths at sea that are increasingly a matter of concern.[2] The shipwrecks off the coast of Lampedusa in October 2013, in which more than 600 persons died, and the boat tragedies in spring 2015 with more than 1,000

[1] Moreover it reduces the experience and identity of the subjects of seaborne migration to that of "seaborne migrants".

[2] The real number of deaths in the Mediterranean is unknown. In 2014, the UNHCR spoke of 3,400 deaths, and in the first quarter of 2015, at least 1,700 migrants have lost their lives. One register on "the fatal policies of Fortress Europe", compiled by the Dutch NGO *United* since 1993, lists 20,587 migrant deaths. According to official statistics, for the first time brought together and published by researchers of the *Vrije University Amsterdam*, 3,188 "border deaths" have actually been registered by the authorities between 1990 and 2013 (information retrieved in April 2015).

deaths within a few days, have especially put the human tragedy in the central Mediterranean into the spotlight. However, what are the reactions of European states to the deaths in the central Mediterranean, and upon what conceptualizations of seaborne migration and migrants are they based?

The War Against Unwanted Migration

In 2013, following the Lampedusa boat tragedies, the Italian government launched the sea rescue mission *Mare Nostrum* (Latin for 'Our Sea'), which is said to have saved the lives of more than 150,000 migrants within one year.[3] However, *Mare Nostrum* ended in November 2014, because the mission was not supported by other EU member states. This was supposedly due to a lack of resources, as the costs amounted to €9 million a month. In addition, *Mare Nostrum* was also believed to have created a "pull-factor" for migrants. The EU member states thus agreed to discontinue *Mare Nostrum* and to launch a new joint operation of the EU border agency Frontex, *Triton*, with a main focus on "border control and surveillance," a smaller budget, and a very limited area of intervention.[4] In spring 2015, after increased sea crossings and renewed tragedies with high death tolls, the EU did not renounce the Frontex *Triton* mission, but instead decided to expand it. Moreover, with the goal to preserve life at sea, the EU now plans to fight migrant smuggling networks from Libya, including the destruction of smugglers' vessels in Libyan territorial waters and possibly on Libyan territory.[5]

This short chronology of recent EU state reactions to seaborne migration in the central Mediterranean underlines the absurdity and hypocrisy of what has been discussed as a securitization approach to seaborne migrants. Unauthorized sea-crossings of migrants are handled as a security concern and as unlawful invasions of sovereign territory, which must be countered with military means. At the same time, control and border defence operations like *Triton* are adorned with a humanitarian discourse, which paints the refugees as victims, the smugglers as perpetrators, and allegedly serves to protect the lives of the former by fighting the latter. This is absurd, not only because the destruction of smugglers' vessels means the destruction of refugee boats, but also because rather than presenting a solution, they are part of the problem. In the absence of safe, legal ways of accessing protection in the EU, and in the face of militarized and extra-territorialized European borders, migrants choose ever more dangerous

[3] Numbers are taken from the website of the Italian Navy: http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx
Even though *Mare Nostrum* was more of a sea rescue mission than its follow-up *Triton*, it was also a military operation with a focus on "combating human trafficking" and thus can also be read as part of the securitization approach. For a critical account of the *Mare Nostrum* operation see Judith Gleitze's contribution to the Hinterland Magazine: http://www.hinterland-magazin.de/pdf/Hinterland27_Klein.pdf (in German)
[4] Frontex website: http://frontex.europa.eu/news/frontex-launches-joint-operation-triton-JSYpL7
[5] Two EU strategy papers for military intervention against "refugee boats" were published on wikileaks in May 2015 https://wikileaks.org/eu-military-refugees/

ways to travel, and they may resort to the assistance of professional and often exploitive 'passage makers'.

Ferries Not Frontex! How to Re-Frame State Reactions on Seaborne Migration

A critical analysis of the effects of militarized border and securitization approaches, and a different conceptualization of the subjects of seaborne migration is necessary. This is to ensure that seaborne migrants are not seen as criminals or victims of criminal smugglers, nor as products of push-and pull-mechanisms, but as individuals who "actively try to transform their social space"[6] along the tracks of the transnational *underground railroad.*[7]This could present points of departure in the search for more humane reactions and long-sighted solutions to the dire situation of migrants in the Mediterranean and elsewhere. In other words, thinking of migration in all its complexity can help to re-frame and deconstruct de-humanising narratives that portray subjects of seaborne migration as a threat rather than as fellow humans seeking different futures. Concerning the crisis in the central Mediterranean, several networks and initiatives like Watch the Med/ Alarm Phone Initiative have proposed the establishment of a humanitarian ferry line to evacuate persons from Libya.[8] In an otherwise suffocating debate with little room for political imagination, such demands are an attempt to open up alternative ways to think and react to seaborne migration. In the long term only the opening of legal paths for migrants will end their deaths at sea.

[6] Papadopoulos, D., Stephenson, N., Tsianos, V. (2008). Escape routes. *Control and subversion in the 21st century*. P. 211

[7] The 'underground railroad' is a metaphor used in activist circles in the EU to refer to the multiple individuals and overlapping networks/initiatives that are engaged in the border-crossing of refugees/migrants into the EU. Its original reference was the network of routes and safe houses used by slaves in the southern United States to flee to the northern U.S. and to Canada.

[8] More information on the demands of Watch the Med Alarm Phone "to really end the deaths of migrant at sea" under: https://www.youtube.com/watch?v=Vf48Ywi04Ys

How To Re-Conceptualize The Right To Asylum In The Lethal Sea-Crossing Age?

CHIARA DENARO



Chiara Denaro is a social and legal assistant with several years of experience working in the immigration field in Rome. She is PhD fellow in Sociology and Applied Social Sciences at the University of Rome La Sapienza and in Sociology at the Universitat Autonoma de Barcelona, holding a degree in Conception and Management of Social Policies and Services. Her work focuses mainly on forced migration in the Mediterranean Sea, and on evaluation of reception systems implemented in the Southern European countries and migratory policies. She is currently doing research on the reconfiguration of the migratory routes after the conflict in Syria and analysing the coping strategies implemented by Syrian asylum seekers to realize their migration projects.

One of the fundamental issues in the current debate on mobility and forced migration is the high "human cost" that the construction and fortification of borders has produced. The Mediterranean Sea, as a crossroads of multiple migration routes, has been identified as the most dangerous border in the world.[9] Since 2000, more than 32,000 people have lost their lives crossing this sea. Currently, the majority of migrants who risk their lives at sea are asylum seekers.[10]

The "virtual impossibility" of legally accessing Europe forces asylum seekers to cross borders illegally and entails their transformation into "irregular migrants".[11] The politics of the externalization of asylum implemented by the EU shifts the weight of asylum seekers' reception outside Europe, thus keeping them far from the places where they could find protection.[12]

What does the right to asylum mean today?

[9] IOM (2014) *Fatal Journeys. Tracking lives lost during migration*, IOM: Geneva.
[10] Amnesty International (2014) *The Human Cost of Fortress Europe*, Amnesty International: London.
[11] Castles, S. (2014), 'International migration at a crossroads', *Citizenship Studies*, 18:2, pp.190- 207.
[12] Campesi, G. (2014) 'Frontex, the Euro-Mediterranean Border and the Paradoxes.
of Humanitarian Rhetoric', *South East European Journal of Political Science*, II, 3, 2014, Pp. 126-134, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2519410 (accessed 5 November 2014).

If we imagine asylum as a door, which should give access to a room of political, civil and social rights, we are witnessing the process of that room emptying today.[13] This happens firstly through the politics of the externalization of asylum to so-called "safe third countries," which are often characterized by a structural lack of protection and hosting systems. This "emptying process" also occurs through regulations, such as the Dublin Regulation, aimed at preventing "asylum shopping" by stopping people in Southern European countries where the welfare state is weaker and stressed by prolonged economic crisis.

The configuration of refugee status as defined by the 1951 Refugee Convention, and the prescriptions included in Chapter IV (Welfare)—namely access to housing, education, relief, labour legislation, and social security—are not sufficient to give universal meaning to the concept of asylum, especially due to the possibility of each State adhering to the Convention "with reservations." For Syrian refugees, a residence in Malmö (Sweden), the Zaatari Camp's tents (Jordan), an apartment in Berlin, a container in Harmanli (Bulgaria), the "Umberto I" reception centre in Siracusa (Italy), and the "6 October" neighbourhood in Cairo (Egypt) are all places of asylum, but they may not have comparable realities.[14] The Syrian citizens who live in these places are indeed linked by the fact that they are called refugees, but this does not automatically imply the recognition of common rights. Moreover, the (frequently debated) homogenization of European standards for granting asylum, as witnessed in the Common European Asylum System, seems to be escalating. The realisation of these standards is very troubling, especially because of the evident disparities between the welfare systems and socio-economic conditions of Member States.

These structural differences contribute to the blurring of the contours of the asylum experience, because the ability to determine the content of asylum remains with each State. The refugee's will to reach Europe at all costs is perhaps an attempt to fill the room of asylum options with different content than that which is currently available in countries of externalization, such as Jordan, Egypt or Turkey. This filling process further develops through migrants' "second escape," namely the abandonment of first reception countries such as Italy, Spain or Greece to reach Northern Europe.[15] There, the detachment between human rights and citizenship is less evident. [16]

[13] Sciurba, A. (2014), 'Dopo Lampedusa: la nuova sfida del diritto d'asilo allo spazio europeo e mediterraneo', paper presented at *"Le frontiere mobile del Mediterraneo" – Convegno Internazionale*, Università di Palermo, November 3-4.

[14] UN High Commissioner for Refugees (UNHCR), *Syrian Refugees in Europe: What Europe Can Do to Ensure Protection and Solidarity*, 11 July 2014, available at: http://www.refworld.org/docid/53b69f574.html (accessed 10 February 2015).

[15] Denaro, C. (2015) 'The endless flight of Syrian refugees. Focus on Catania and Milan', paper presented at the XII SeSaMO Conference, *Beyond the Arab Uprisings: rediscovering the MENA region*, Ca' Foscari University in Venice, January 16-17.

[16] As underlined by Agamben (1996), the refugee is a limit-concept, able to challenge the universalism, which the declarations of human rights are based on, because "he breaks the connection between man and citizen becoming, from a marginal figure, a decisive factor in the modern nation-state crisis". Agamben, G. (1996) *Mezzi senza fine*, Bollato Boringhieri: Torino.

In parallel to this, new opportunities seem to emerge in civil society, where we can observe different forms of activism aimed at supporting migrants in their dangerous travels and self-determined paths. The monitoring of seaborne migration and search and rescue operations is being realized by individuals (such as Nawal Soufi or Father Mussie Zerai) who receive an SOS by sea and transmit it to the coast guard. This monitoring is also performed by associations such as Watch the Med – Alarm Phone, which is ready to react in the case of a lack of rescue, and is something completely new. The Alarm Phone's observations are not only focused on the respect of human rights, but also on border patrol operations. As such, their work represents the opposite side of the coin: the monitoring process of seaborne migration provides a good vantage point for grasping the paradoxical coexistence of securitized and humanitarian operations which Frontex missions, for example, are built upon.[17]

Nowadays the right to asylum seems to be uncomfortable, inconvenient and high-priced for many countries, and its potential re-configuration highlights contradictions in our societies. Consequently, asylum seekers' and civil society's challenges to the current scenario, through the multiple relationships that they build, are interesting and attention-worthy because they enable us to partially view possible paths toward the revitalization of the right to asylum.

[17] Tazzioli, M. (2014), 'The desultory politics of mobility and the humanitarian-military border in the Mediterranean. Mare Nostrum beyond the sea', paper presented at the conference *Migration and Law*, Birbeck College, London 28 March 2014.

Changing State Responses in the Central Mediterranean: Search and Rescue, Interdiction, and Externalisation

KEEGAN WILLIAMS



Keegan Williams is a research and teaching assistant in the Department of Geography and Environmental Studies at Wilfrid Laurier University. He is also a lecturer at the Balsillie School of International Affairs and works for the International Migration Research Centre (IMRC). Keegan is currently Ph.D. (a.b.d.) in the Waterloo-Laurier Graduate Program in Geography. His research focuses on international migration, global governance, and statistical methodology. He is currently working on his thesis, which explores how states are reconfiguring spaces at sea to manage the movement of people and shift borders in the Central Mediterranean Sea. Keegan's supervisor is Dr. Alison Mountz.

Frontex, the European Union's coordinating border agency, reported that 109,055 migrants on 581 boats were intercepted en route to Italy or Malta from North Africa in operations between 1 January and 31 October 2014.[1] While nearly 85% of these migrants likely came from Libya, another 10% departed from Egypt or Tunisia. Eritrea (24%) and Syria (20%) were the most frequent sources of the over 40 nationalities reported, with increasing numbers originating in West Africa from Mali (5%), Nigeria (4%), and Morocco (2%).[2] This piece examines how states have coalesced and externalised their responses to these seaborne asylum-seekers in the Central Mediterranean using search and rescue operations.

Italy and Malta, in conjunction with the European Union, are extending their sovereignty beyond traditional territorial limits at sea using search and rescue regions.[3] These spaces, created

[1] *European Agency for Management of Operational Cooperation at the External Borders* (Frontex). (2014a). Re: Total Migrants and Boats Detected, Intercepted, and Turned Back during JO HERMES, 2007; 2009-2014. Freedom of information request made through Ask the EU. Retrieved from http://www.asktheeu.org/en/request/re_total_migrants_and_boats_dete#outgoing-3141 .
[2] *European Agency for Management of Operational Cooperation at the External Borders* (Frontex). (2014b). Concept of reinforced joint operation tackling the migratory flows towards Italy: JO EPN-Triton. Retrieved from http://www.avvenire.it/Cronaca/Documents/JOU%20Concept%20on%20EPN-TRITON%20%282%29.PDF .
[3] See Coppens, J. (2013). The Lampedusa Disaster: How to Prevent Further Loss of Life at Sea? *The International Journal of Marine Navigation and Safety of Sea Transportation*, vol. 7(4): 589-598 and Gammeltoft-Hansen, T. (2008). The Refugee, the Sovereign and the Sea: EU Interdiction Policies in the Mediterranean. *DIIS Working Paper*

by the International Maritime Organization, obligate contracting states to organise and render assistance to ships in distress at sea.[4] Owing to the lack of legal consensus on terms like 'distress', 'rescue', and 'place of safety', the EU has wide discretion in which to interdict migrant boats inside these spaces. Supplements to the Schengen Borders Code, which define operational rules for Frontex during search and rescue, allow member states to board, stop, redirect or even seize ships suspected of carrying irregular migrants.[5] These same rules give priority to disembarkation of all boats in the third state from which the ship originated.[6] By reconceptualising seaborne asylum-seekers as persons in distress in search and rescue regions, over 80% (or 87,613) of migrants in the Central Mediterranean were intercepted outside of EU territory in 2014.[7] Their fates remain unknown.

The management of seaborne asylum-seekers in the Central Mediterranean has been externalised in the past 15 years to prevent their arrival in Europe. Italy and Malta have signed treaties enabling joint search and rescue patrols and the return of interdicted migrants in Tunisia, Libya, and Egypt.[8] The EU funds member state operations and third state projects in North Africa.[9] Tunisia, for example, accepted 200 million USD in 2011 to readmit nationals deported from Europe.[10] Member states also helped to finance 53 International Organization for Migration (IOM) projects worth more than 40 million USD in the region since 2000 to manage migration before it reached Mediterranean shores.[11] Over 5 million USD, for instance, has been spent since 2006 on the ongoing Prevention and Management of Irregular Migration Flows from Sahara Desert to Mediterranean Sea project[12], which seeks to prevent irregular migration flows from

---

no 2008/6. Retrieved from http://subweb.diis.dk/graphics/Publications/WP2008/WP08-6_Refugee_Sovereign_Sea_EU%20Interdiction_Policies_Mediterranean.pdf .

[4] Pugh, M. (2004). Drowning not Waving: Boat People and Humanitarianism at Sea. *Journal of Refugee Studies*, vol. 17(1): 50-69.

[5] *The Council of the European Union*. (2010). Council Decision 2010/252/EU supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Annex Part I, article 2. Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0252&from=EN .

[6] *Ibid*, Annex Part II, article 2.1.

[7] *Supra* note 1.

[8] See Ronzitti, N. (2009). The Treaty of Friendship, Partnership, and Cooperation and Libya: New Prospects for Cooperation in the Mediterranean? *Bulletin of Italian Politics*, vol. 1(1): 125-133 and *Supra* ii, pg. 3.

[9] The EU, for instance, funded 90% of the costs of Italy's 2014 Operation *Mare Nostrum*. See *ENPI CBCMED*. (2014). Integrated Coastal Zone Management Implementation Overview: Mare Nostrum Project. The European Union. Retrieved from http://marenostrumproject.eu/about/overview .

[10] *Eubusiness.com*. (2011, April 12). EU to aid Tunisians' readmission: Barroso. Retrieved from http://www.eubusiness.com/news-eu/immigration-tunisia.9ja .

[11] These numbers were collected from all IOM Programme and Budgets during 2000-2014. For more information, see *International Organization for Migration*. (2014a). Governing Bodies: Council. Retrieved from http://www.iom.int/cms/en/sites/iom/home/about-iom-1/governing-bodies/council.html.

[12] The given reference states that the project is suspended, but this is no longer true. It was suspended from 2011-2013 but was reinstated for 2014 (see http://www.iom.int/files/live/sites/iom/files/About-IOM/governing-bodies/en/council/103/MC_2380.pdf, pg. 114 - IV.3.1).

entering or transiting through Libya. As the influx of West African migrants shows, however, tighter border controls secured by externalisation have also led migrants to take longer and more dangerous journeys to enter Europe. The cost of reconceptualising seaborne asylum-seekers, then, is likely much higher than the IOM's estimate of 3072 lives lost[13] and the EU's spending 21 million USD on operations in 2014 suggest.[14]

[13] *International Organization for Migration*. (2014b). Fatal Journeys: Tracking Lives Lost During Migration. Retrieved from http://publications.iom.int/bookstore/free/FatalJourneys_CountingtheUncounted.pdf .
[14] *Supra* ii and ix.

From "Boat People" to "Irregular Maritime Migrants": A Re-conceptualization of Seaborne Refugees after 40 Years

OLIVIA TRAN



Olivia Tran is a graduate candidate in Globalization and International Development at the University of Ottawa. Her parents came to Canada as Vietnamese refugees during the Indochinese exodus following the Vietnam War.

In the 1970s and 80s, over a million Indochinese refugee boat people were resettled following the end of the Vietnam War. Comparatively, today's "boat people"—or, as they are more commonly termed, irregular maritime migrants--are faced with increasingly difficult odds of being granted asylum and being resettled. Why have state and public opinion towards refugees changed in the past 40 years? I believe there are three main reasons for the shift in reactions to seaborne asylum seekers: a different political climate, the growth of compassion fatigue, and the rise in fear of terrorism.

The "Golden Age" of Refugee Protection

The fall of Saigon to the Communists on April 30, 1975 and the withdrawal of the United States from Vietnam sparked an exodus of Indochinese refugees[1], many of whom fled their country on small, ill-equipped boats. In response, coordinated state collaboration and burden-sharing, as part of the Comprehensive Action Plan,[2] resulted in an unprecedented surge in refugee resettlement. By the end of 1988, over a million Indochinese refugees had been resettled.[3] The collaborative international response towards the Indochinese "boat people" has not been repeated in modern times during seaborne refugee crises, such as the crossings of the Mediterranean or to Australia.

[1]The influx of Indochinese fleeing post-Vietnam War was so great that refugee determination processes were stretched beyond capacity. The reason for their escape was evident and thus, as a group, they were recognized as refugees *prima facie* until further processing at first country asylum camps.
[2] The Comprehensive Action Plan did not purely promote resettlement. It was an agreement between South East Asian states, including Vietnam, and Western states to comprehensively manage the Indochinese refugee crisis. A combination of first country asylum, third country resettlement for genuine refugees, repatriation and departure prevention was implemented.
[3] Betts, Loescher, Milner, 2008, 46.

From "Boat People" to "Irregular Maritime Migrants"

Unlike the Indochinese who were declared refugees *prima facie* and were considered political agents, seaborne asylum seekers today are portrayed with less agency, as victims of trafficking, war, or terrorism, or with more agency, capable of acting as threats to domestic security and social stability. Many states have reacted to the swelling number of asylum seekers with increasingly strict policies of containment and deterrence, framing certain asylum seekers as illegal, irregular, and a threat to the social, political, and economic stability of the state.[4] The "problem" with refugees is not merely their growing numbers, but also the way in which they are categorized and interpreted.[5]

In Australia, for example, irregular maritime migrants are portrayed and treated as illegal invaders on Australian shores.[6] One action of the Australian government has been to sign an agreement with the governments of Nauru and Cambodia stipulating that all legitimate refugees in Nauru would be offered the chance to resettle in Cambodia, but barred from settling in Australia.[7] This reaction is in stark contrast to the 1970s and 80s when Australia accepted nearly 160,000 Vietnamese boat people.[8]

What Changed?

The political climate in the years surrounding the Vietnam War was highly polarized and shaped by the Cold War. The world was already divided by the Iron Curtain, creating a sharp dichotomy of East versus West and Democracy versus Communism. When the United States withdrew from Vietnam in 1975, the Communist government took over the southern part of the country. Based on humanitarian and geopolitical interests, the United States and other Western countries promised resettlement for those who "voted with their feet."[9] As one magazine writer at the time noted: "If this nation [the United States] was willing to commit billions of dollars and 55,000 young Americans it should be willing now to offer its precious soil as sanctuary to those who are left behind."[10] This political climate, which worked in favour of refugee resettlement, no longer exists for most current refugee situations.

In addition, the compassion of governments and the public towards refugees was located in a different political context. The Vietnam War had ended only twenty-six years after the Second World War and the Holocaust. Guilt over international inaction was still fresh and many people drew parallels between the Holocaust and the Indochinese refugee crisis. An American newspaper commentator in 1979 noted: "Every generation knows what

[4] Shacknove, 1993; Nyers, 2006.
[5] Nyers, 2006, 3.
[6] Jupp, 2002, Nyers, 2006.
[7] UNHCR, 2014.
[8] Robinson, 1998, 20.
[9] Betts, Loescher, Milner, 2008, 41; Chetty, A.L., 2001; Zucker, N.L, Zucker, N.F., 1996, 28.
[10] Chetty, A.L.., 2001.

the previous one should have done about its refugees. Who is not ashamed in hindsight of the world's feeble response to the Nazi persecutions nearly half a century ago? Will our own children be any prouder of our response to Indochina's holocaust?"[11] During the Vietnam War, desperate scenes of war and escape were also publicly televised for the first time, spurring a wave of sympathy from the general public.[12] For the past 40 years, however, there have been a growing number of refugee crises that have appealed for public and government funding and support. The seemingly never-ending pattern of refugee crises has resulted in "compassion fatigue" and a weakening of concern for the plight of refugees.

Finally, the rise of terrorism and the attack on the Twin Towers on September 11, 2001 have had an immense impact on the actions and reactions of states. A fear and mistrust of outsiders, including asylum seekers and refugees, was perhaps inevitable. Many refugee claimants today are from Middle Eastern or Muslim countries, and many countries are limiting asylum and linking their response to asylum seekers to terrorism. As the High Commissioner of the UNHCR reminded state representatives: "Don't confuse refugees with terrorists."[13] During the Indochinese crisis, fears around religious extremism and terror attacks were not factored into resettlement decisions.

Conclusion

In contrast to the time of the Indochinese crisis, states today are less inclined to support resettlement and focus their efforts instead on repatriation to manage asylum migration flows.[14] Many states have framed asylum seekers negatively in an effort to dissuade migration attempts and to persuade those who have already made the journey to return to their country of origin. Policies of self-protection are being implemented in a climate of fear to the detriment of human rights and the rights of asylum seekers. This piece does not argue for the full-scale resettlement of refugees to Western countries, but it does seek to broadly explain and draw attention to the worrying shift in refugee discourse and asylum approaches. Recently, the European Union (EU) Commission has discussed plans to redistribute migrants and ease the burden of offshore migrants reaching Italy and other member states, along with a proposal to resettle more Syrian refugees and offer opportunities for high-skilled immigrants to move to the EU.[15] Given the current political climate and context surrounding seaborne asylum seekers and refugees, however, it is uncertain whether a commitment to burden-sharing and crisis resolution can be actualized, and if it is, how it will change the discourse the surrounding seaborne migrants.

REFERENCES

Betts, A., Loescher, G. & Milner, J. (2012). *UNHCR: The Politics and Practice of Refugee Protection.* Global Institutions, second edition. New York: Routledge.

[11] Chetty, A.L., 2001.
[12] Hallin, 1989.
[13] UNHCR, 2005.
[14] UNHCR, 2006, 130.
[15] Thomson Reuters, 2015.

Chetty, A.L. (2001) 'Resolution of the Problem of Boat People: The Case for a Global Initiative. *ISIL Year Book of International Humanitarian and Refugee Law*, Vol. I, L. Jambholkar (ed). Indian Society of International Law.

Robinson, W.C. (1998). *Terms of Refuge.* United Nations High Commissioner for Refugees. Zed Books: London.

Hallin, D.C. (1989). *The Uncensored War: The Media and Vietnam.* University of California Press: Berkley and Los Angeles.

History Learning Site. "The Holocaust." *History Learning Site, World War Two.* Retrieved on May 10, 2015 from http://www.historylearningsite.co.uk/holocaust.htm

Jupp, J. (2002). *From White Australia to Woomera: the Story of Australian Immigration.* New York: Cambridge University Press.

Maley, W. (2001). 'Security, people smuggling, and Australia's new Afghan refugees.' *Australian Defence Studies Centre*, Working paper no. 63.

Shacknove, A. (1993). 'From asylum to containment.' *International Journal or Refugee Law*, 5(4), 516-533.

Thomson Reuthers. (2015) "Migrants to Europe will be redistributed among countries under proposed EU plan." *CBC News World.* Retrieved on May 11, 2015 from http://www.cbc.ca/news/world/migrants-to-europe-will-be-redistributed-among-countries-under-proposed-eu-plan-1.3069038

UNHCR. (2005). "'Don't confuse refugees with terrorists,' says Guterres." *UNHCR.* Retrieved May 4, 2015 from http://www.unhcr.org/42e0df204.html

UNHCR. (2006). "The State of The World's Refugees 2006: Human Displacement in the New Millennium." *Chapter 6, Rethinking Durable Solutions.* Retrieved on May 10, 2015 from http://www.unhcr.org/4a4dc1a89.html.

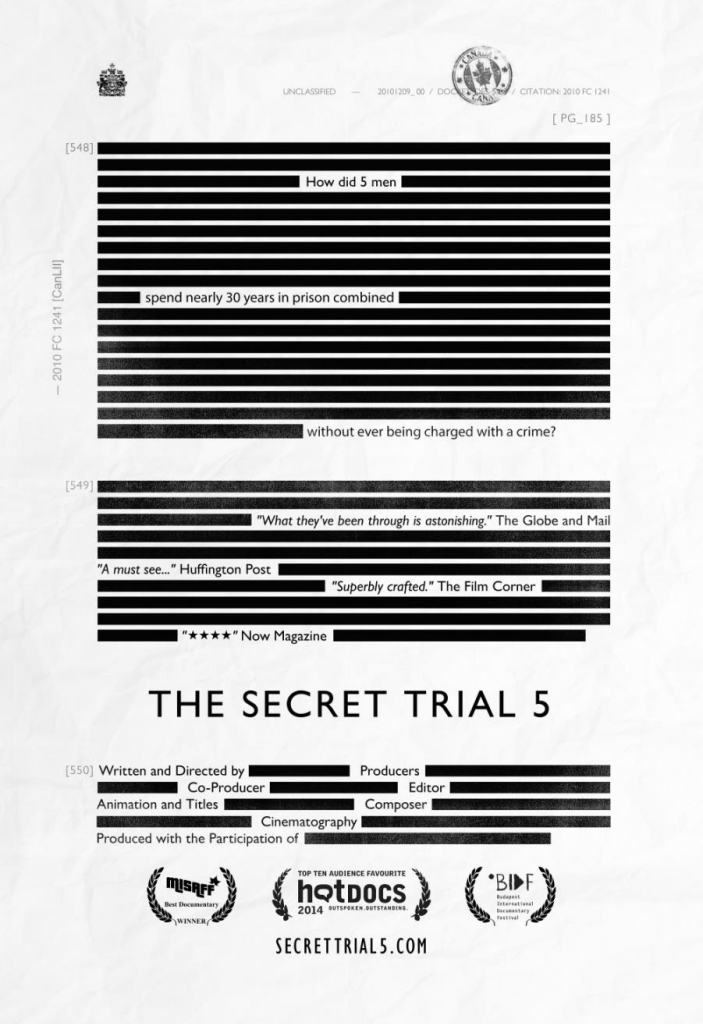
UNHCR. (2014). "UNHCR statement on Australia-Cambodia agreement on refugee relocation" *UNHCR.* Retrieved May 6, 2015 from http://www.unhcr.org/542526db9.html

Zucker, N.L., Zucker, N.F. (1996). *Desperate Crossings: Seeking Refuge in America.* M.E. Sharp: New York.

Secret Trial 5: Interview with Director Amar Wala[1]

"How did 5 men spend nearly 30 years in prison combined without ever being charged with a crime?"

Secret Trial 5 *is a fascinating film which explores the use of a problematic provision in Canadian immigration legislation. Security certificates are a tool that allows the Canadian government to deport non-citizens it deems a threat to national security. The security certificates process is one in which the allegations and evidence held against the detainees are never fully revealed to the accused person, and significant parts of their trials are held in secret.*



Secret Trial 5 *explores the impact of this provision on the lives of 5 men: Adil Charkaoui, Hassan Almrei, Mahmoud Jaballah, Mohamed Harkat, and Mohammad Zeki Mahjoub.*

The Director and Producer, ***Amar Wala,*** *is an emerging filmmaker based in Toronto, Canada. He was born in Bombay, India, and moved to Toronto with his family at the age of 11.* The Secret Trial 5 *is Amar's first feature film. In November 2014, Amar Wala sat down with ESPMI's Petra Molnar to discuss the film and its wider implications.*

[1] A shorter version of this interview has been published by *Rights Review*, a journal of the International Human Rights Program (IHRP) at the University of Toronto Faculty of Law.

Amar, what inspired you to make the *Secret Trial 5*? Was there a particular person or a story that inspired you to pursue this issue further?

I made a short film about one of the families while I was in film school. Around the time I was editing this film in 2007, the Supreme Court of Canada came out with the decision that deemed the security certificate program unconstitutional. As a result, the Canadian Government introduced Bill C-3 in 2008 and the men were moved to house arrest from detention.

Everyone including myself thought this was much better and that it was the beginning of the end of the system. Unfortunately it was not and in 2009 one of the subjects, Mr. Mohammad Zeki Mahjoub, actually asked to be returned to prison, stating that the house arrest conditions were unbearable. This is what piqued my interest and I felt like I needed to know more about these house arrest conditions. Mr. Mahjoub was in prison for a long time and fought really hard to get out. For someone like that to actually willingly go back to jail made me wonder how bad the house arrest conditions actually were. That is what I had to look into. This was the trigger point for the film.

In the film, you state that Mr. Majoub was the one subject that did not want to participate in the project. Why do you think this is?

We filmed with him quite a bit early on in the process and he always reserved the right to not make his final decision until he was ready to bring his story forward. And in the end he chose not to be in the film because perhaps he felt like this was not the best way to tell his story. The men are all different and very unique people. Their cases are not connected, and for Mr. Mahjoub, perhaps presenting all of their stories together was not the best way to proceed. We wanted him in the film quite badly, but in the end it was his choice and we respected that.

I understand that you were crowd-funded for this film. How did this come about?

This came out of necessity. We started filming in 2009 and we basically pitched the idea to everyone, including the Canadian Broadcasting Corporation, The Canadian Film Board and every documentary outlet you could think of. At that point, the recession was hitting everyone pretty hard and documentary funding had been cut quite dramatically in Canada. For a first time filmmaker to be making a film about quite a controversial topic, the odds were not in our favour.

We had to look at alternative means and crowd-funding was just beginning at that point. A film called *The Age of Stupid*, which was a British documentary about climate change, had done this quite successfully. They had created a website and encouraged people to donate, and were very successful with it. We thought that we could model ourselves after them and do something like that with a human rights issue. The gamble worked and it got us the first $20,000, on which we shot a lot of the film.

Your film deals with a fairly controversial topic and yet you managed to get quite a lot of support for it. Why do you think this is?

When you break the topic down for people, it's really not controversial. It's controversial if you simply look at it from a "he said/she said" or a "terrorist/not a terrorist" point of view. What we did was try to appeal to basic principles in people, such as the principle that a person should never be in prison without a charge and not have access to a defense under any circumstances. People agreed with this. We explained how convoluted and crazy the process was and that this was happening here, in our country. We never talk about these issues as a nation, and I think that resonated with people.

Your film was a very interesting portrayal of some of the tensions in Canada today. There is tension between the notion that Canada is a welcoming place with all sorts of higher values yet at the same time, since 9/11, there has been increased securitization and the closing of borders. How do you see the security certificates regime fit into this framework?

I think it's definitely rooted in immigration policy as a whole. The problem is that immigration issues are not something that we talk a lot about as a nation. We have marketed ourselves and convinced ourselves that we are definitely this welcoming and multicultural society that works hard to integrate new immigrants, but that is not always true. We do a very good job of hiding the ugly side of immigration.

For example, deportations overall are on the rise. We deported somewhere around 15,000 people last year, which is a very high number for a country the size of Canada. We also do not acknowledge our own colonial history and the fact that this is a country built and sustained on immigration. Also, we have not made amends with our indigenous peoples. These are all part of the same colonial history of Canada. We are all really immigrants here, unless you are an indigenous person. We all arrived at some point. Unfortunately, this is a conversation that is just beginning.

These issues that are raised in the film are not easy to get people to care about. It is not easy to get people to care about immigrants. We often pretend that we are a thoughtful and caring community but our history says otherwise. Getting people to care about refugees and people in detention is a very difficult fight but it is a fight that we need to have.

Ultimately, migration and movement are not seen as human rights. That hopefully will come one day but we have a history as a planet in which certain part of the world have been ravaged and certain parts have thrived. We haven't really come to terms and acknowledged this yet. This profound inequality, in a way, is at the root of all of these issues. It is not a coincidence that every single one of the Secret Trial 5 was a Muslim man. This did not happen by accident. You are seeing particularly this Conservative Government engage further with these issues of identity and who is allowed to be Canadian, going as far as to strip people who have been born here of citizenship.

Do you think that 9/11 was a catalyst for these more draconian measures or would they have been introduced anyway?

9/11 certainly sped up some of the more draconian measure that you are seeing in western society for sure. 9/11 made the regime a lot worse. For example, Mr. Mahjoub and Mr. Mahmoud Jaballah were both first arrested before 9/11. However, the first time Mr. Jaballah was arrested on a security certificate, he won his case and was in jail for only 7 months. Then 9/11 happened after the second time he was arrested and he remained in jail for 7 years. 9/11 definitely had an impact in exacerbating the issue but it is not the root cause. However, the root goes much deeper than that.

How do you try to work against some of these discourses that go so much deeper?

This will happen slowly over time. I think the problem is that these discourses happen in academic settings and don't reach out to the general public. However, the general public is full of thoughtful, caring people. Unfortunately, it is sort of difficult to shake them out of a certain sense of apathy. If you speak to them on a human level, they do respond to the issues that you are presenting. I think the film is proof of this. The vast majority of people who see the film did not know about this regime in any way and yet they are angry about how this was allowed to happen. That's something that we are not good at as Canadians – getting angry. I think we need to get better at this.

Where do you see the role of the judiciary and the courts in all this?

This is tricky. I was quite disappointed in the recent Supreme Court of Canada decision this year [the case of Mohamed Harkat, which reaffirmed the constitutionality of the security certificate regime, with the use of special advocates, top-secret, security-cleared, private lawyers who are independent of government. These lawyers have access to part of the file against the accused, but who are still not allowed to communicate the basis of the charge to the person against whom the security certificate is enacted]. The lawyers who actually argued the case and the people in the academic community expect these kinds of decisions because they see the history of the judiciary deferring to parliament on these issues. Unfortunately, judges don't want to deal with national security issues. This is a problem, because they should be dealing with precisely these types of issues and they have to deal with the rights of these people.



Security certificates in particular will be on the books for some time now. I don't think anyone is going back to the Supreme Court anytime soon. However, the government is not using security certificates anymore as a tool. They are problematic from an efficiency standpoint, apart from all the human rights problems. I don't know if this is a good thing or if it is a direct result of judicial decisions that gave more protections to the individual person.[2] I don't know that judicial decisions have helped as much as time has helped. However, I do think that I would have preferred that the judges and in particular the SCC would have been more aggressive in their decision making. They found the regime unconstitutional in 2007, and they should have read the law as stating that this regime should no longer be on the books.

Often the judiciary and the law move at a slower pace than we would like. Why do you think this is?

The question I have always had is: "Is this historically the kind of decision that Canada makes when it comes to its citizen/non-citizen record?" There is nothing in the Charter of Rights and Freedoms about having to be a being a citizen to have access to basic rights. There are at any given point in Canada millions of people who are immigrants and not technically citizens yet. When you have a county that is built like this, does it make sense to have a law that is not sympathetic to such a significant portion of the population? That is something that the Supreme Court did not even address, which was very disappointing.

Law often operates on a national level instead of looking at issues in a global way. How do you see these more global regimes governing the flow of people playing out?

There needs to be more information provided to the general Canadian public about issues like this. My skills as filmmaker help in that sense. I think that these stories and issues are complex and sometimes you have to break them down to a more basic level and use the power of art to really understand why this is important to get people emotionally engaged in some way. I think this is why Secret Trial 5 is having an impact, even though it is a very small impact.

I think people are seeing the actual pain that is caused to the individual person. We have gotten to a point where the principle on its own doesn't engage people anymore. Everyone is going to agree that we shouldn't illegally deport people to Somalia but we don't seem to get engaged about it. I think English Canada in particular is not very good at political participation beyond the general

[2] The judicial history of the constitutionality of security certificates is long and complex. In 2002, the Supreme Court of Canada upheld the security certificate process as constitutional in Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 SCR 3, 2002 SCC 1. However, the court did recognize that deportations to situations of torture do violate a person's Charter rights, except in "exceptional circumstances." Adil Charkaoui, Hassan Almrei and Mohamed Harkat all launched further challenges to the constitutionality of the security certificate regime. In 2007, the Supreme Court of Canada in Charkaoui v. Canada (Citizenship and Immigration), [2007] 1 SCR 350, 2007 SCC 9 unanimously held that the security certificate review process which prohibited the accused from accessing the evidence against him was unconstitutional. Most recently, however, the Supreme Court upheld the security certificate against Mohamed Harkat.

parliamentary voting structure. I think that we have lost the ability as a country to get involved in issues and we actually scoff at people when they do get engaged. We see that as a weakness. I don't know if this has always been the case in Canada but it is something that we need to shake ourselves out of, because political apathy is a very dangerous thing.

Was there anything that surprised you when you were making this film?

There were a few things. It definitely surprised me how thoughtful, intelligent, and funny the men were. I was expecting to have a much harder time to break through walls to establish rapport but they really retained their sense of humanity and they were smart and funny. I was continually amazed at the strength of people who go through something like this. It certainly changed them, it certainly had an effect, but for the most part, they are still incredibly funny people. This is so strange to me, to go through an ordeal like this and still maintain your sense of humour. They have very little anger and bitterness which is remarkable.

The other part that surprised me, now that the film is done, is how little pushback we are getting about the film. We get almost no criticism about the film when it comes to the actual issue itself, because we presented it in a way that was very basic, and fundamentally there is no justification for a process like this. I am surprised how even more conservative people are approaching us saying that this process is crazy.

How did you go about building rapport with the men profiled in the film?

It was just about trying to spend time with them, and not always bringing the camera. I wanted to actually let them know that we were there for them and that they would have an opportunity to share their story because we believe that it is an important story to tell. Being upfront with your goal as a filmmaker and an artist is also really important. These are people who have been in the spotlight a lot in a bad way, so we had to show them that the spotlight was theirs and it was their story to tell. It just took time to earn trust, as it is a constant process

Ultimately was this about returning agency to these men?

Certainly. We have heard a lot from the other side, the government side, but what about the voices of the men? The government has its side heard every day and has opportunities to go about things the way it wants. Every day the government puts a tracking bracelet on Mr. Mohamed Harkat without charging him with a crime; it is having its say. Every day that Mr. Hassan Almrei spent in solitary confinement without being changed with a crime, the government was having its say. In our opinion the imbalance existed in real life, and the film was an attempt to correct this imbalance.

Did you get an opportunity to speak with any of the Special Advocates? What do you think about the Special Advocate system?

Who the Special Advocates are is public knowledge, but what they will tell you is restricted. We did have insight about how they feel and about what it's like to actually go through the process on a very basic level. However, they are not allowed to reveal any specifics about the cases.

The Special Advocate system feels like a very strange compromise that the government and the Supreme Court agreed upon. These half-measures do not address the principle of the issue. The principle is that a person accused of a crime should have access to the evidence against them. There is no substitute for a knowing the case against you. This is important even from a psychological standpoint, if you think about it as one of the people going through it. There may be a lawyer that sees the secret evidence, but you are still in the dark about the case against you. There is no actual solace for you in this process. The Supreme Court did not address this in its decision and I think this half measure does not address the fundamental issue that we need to be talking about.

What is next for you? Where do you hope to take this film and this issue?

Our goal is to get the film out to as many Canadians as possible, one way or another. As hard as we worked to get the film made, we have to work just as hard to get the film distributed widely. Not just in schools and theatres but in small communities across Canada.

After we feel that the film has had its exposure in Canada, we will think about where to take it next. I think we will always work around these issues of identity and immigration. There is still a long way for the film to go. It does need to be seen widely and it helps inform the conversation that we are having.

A preview of **Secret Trial 5** is now available for free on the website http://secrettrial5.com/



Liberia: Past, Present, Future
An Interview with Laura Berlinger, William Jacobs and Garretson Sherman

Laura Berlinger and I[1] *met while volunteering with a new after-school initiative at African Refuge on Staten Island, New York, in 2009. The non-profit, created to provide community support and resources to immigrants, refugees, and other marginalized groups in the area, focuses on community engagement, social justice, community health, and youth development. African Refuge is located in an African-American community that, following the First and Second Liberian Civil Wars (1989-2003) and the Sierra Leone Civil War (1991-2002), also began to include a large enough number of resettled refugees to be nicknamed "Little Liberia."*

Laura would go on to be employed by the organization as the Program Coordinator for the Youth and Family Center at African Refuge. Previously, she completed her BA in Religious Studies at the University of California, Berkeley and volunteered with the Liberian Dance Troupe (now One Dream Liberia) in Ghana and Liberia. Laura now lives in New Orleans, where she works within the Orleans Parish Drug Court and is a Licensed Master of Social Work (Tulane University).

She and I reconnected to talk about the work we had done some years ago and what we are focusing on now. We did this as a way of getting at the question this edition of the journal asks of practitioners, scholars and all those who work with issues around forced migration. In this case, the subtext of the questions I asked Laura was: How can we look at our past to re-conceptualize our line of thinking for the sake of all that lies ahead?

We realized quickly that, as good as our conversation was, there was something missing when we went about transcribing it for a public audience. Our memories had left gaps in the past that we thought would best be filled by reaching out to those who made our work possible. We also decided that the conversation should be wider, and we began to hope it could include some of the influential people that Laura had met and been inspired by over the years. Thus the conversation you are about to read is one between four people, rather than just two.

Laura invited someone we both knew, Garretson Sherman, to the conversation. Garretson has volunteered and worked at the African Refuge Youth Center as a youth mentor for many years, soon after he arrived in the United States from Liberia. Laura also invited William Jacobs to the conversation. William is the Executive Director One Dream Liberia, Inc., initially a group of Liberian traditional dancers and musicians who entertained refugees in Bududuram Refugee Camp in Ghana in the early 1990s. He was also the facilitator of Laura's work in Ghana and Liberia.

[1] Brittany Lauren Wheeler, Co-Coordinator of The ESPMI Network.

***Refugee Review*: Can you set the scene of coming to work on Staten Island, Laura and Garretson? Who you were then, and what brought you to this work?**

***Laura Berlinger*:** My experiences in Ghana and Liberia gave me a glimpse into the struggles of Liberian refugees and internally displaced people, as well as the incredible potential for community mobilization and empowerment during recovery from these struggles. Although I had imagined that my internship there would be focused primarily on dance instruction and facilitating workshops, I had the immense privilege of witnessing community outreach that included counseling and basic needs assistance among parents and children involved in the program. I had volunteered with a dynamic grassroots organization in Bududuram[2], a Liberian refugee settlement in Ghana, and upon my return to the U.S., I felt inspired to continue working with children and families. I sought work with organizations with values that emphasized community-driven solutions. African Refuge offered just this kind of experience, along with an opportunity to continue working with, and learning from, Liberians.

***Garretson Sherman*:** If I should take a moment to reference my thoughts as to what drew me to African Refuge as a Volunteer, I must begin by quoting the scripture from the Bible, Psalms 97:11. *Light is sown for the righteous and gladness for the upright in heart.* As a Liberian and a victim of the 21 years of civil conflict headed by the former President Charles G. Taylor (who is now serving a 50-year prison sentence in a British prison for crimes against humanity, Thank God), our struggles began with my father, who was a member of the Liberian Armed Forces during the late President Samuel K. Doe era. His position within the military created person[al] hate that directly affected not only him but all his families. Due to such a threat, I also suffered direct pain, which resulted in my being shot at several times, but I was always blessed to come through. Today I really don't talk about this a lot because I don't dwell on any negative but all positive chances that can help me forge ahead.

In 2006, I fled Cuttington University as a junior student in Gbarnga, Bong County for safety in Monrovia. In early 2007, I was blessed to obtain a visiting visa to the United States of America, but couldn't travel until November because I needed to distract my enemies/perpetrators. When I finally made the trip, it happened that I encountered a family friend who was already a resident of Staten Island. She hosted me and worked with me as I transitioned into a stable and reliable person. It was during my transition period that I observed a small, red small car perform a drive-

[2] William writes, "Bududuram is a small Ghanaian village 35 kilometers away from the capital of Ghana, Accra. The area on which the refugee camp is situated had been a rehabilitation center that was said to have being run by a "spiritual leader" for purposes that made the government close it down long before the arrival of the refugees in 1990. As the influx of Liberians became overwhelming, the government of Ghana, in collaboration with the host community, traditional chiefs and elders, agreed and allocated over 140 acres of land to host them. While Ghana is also an English-speaking country, the citizens give priority to their local vernaculars particularly the "Twi" language when they communicate. This initially became a problem for most Liberians who prefer to speak English. However, the refugees made friends as the years passed and the war prolonged. A large number of the refugee population assimilated well and life went far beyond the refugee camp to work places, school campuses and major towns and cities in Ghana."

by on Bowen Street, Staten Island and three people were victimized, but survived. I was stunned and surprised to know of the three victims; two were children. At that moment my life changed and I wondered what difference it would make if I could work with these children, and tell my stories of encountering bullets and why I preferred for them to think positively. The question that disrupted my thoughts was what [alternative] to offer in exchange. It was then I understood that African Refuge did exist, but was guided by principles which allowed [the organization] to select the beneficiaries of the program (a particular age range, a particular kind of kid). But their mission and goals spoke of them working with low-income and immigrant families.

RR: I wonder how much you knew about the resettlement of refugees within the African-American community at the time you worked with African Refuge, Laura, and upon your arrival, Garretson. What was your perspective of working with different communities that were living in the same neighborhood, and how did it affect the work you were doing or hoped to do?

LB: The history of conflict in the community between Africans and African-Americans was presented to me at my interview at African Refuge as a key component to working with the community. I remember being told that promoting understanding among the children could be instrumental in promoting more peace and understanding in the community as a whole. I know I also came in with a preconceived notion that this is often what happens when marginalized populations intersect. One piece of literature that strongly influenced my perspective on this, prior to any personal experience, was Luis J. Rodriguez's memoir *Always Running: La Vida Loca: Gang Days in L.A*. I remember being struck by the author's description of truce efforts among Latino and African-American gangs of Los Angeles, and how quickly these efforts could be thwarted and deteriorate due to both internal and external factors. These factors included, I would argue, societal repression of already marginalized groups that became associated with violence, which encouraged increased tension and more violence.

During my time at African Refuge, I'm sure this initial perspective informed much of the way I saw community interactions. But continued experience lent a lot to this, too. The most serious conflict I ever witnessed in Park Hill was actually between a group of teens—whether African or African-American, I'm not sure; I didn't know any of them—and an older Latino man. This was during a time of hypervigilance in the Port Richmond community, about a fifteen minute drive from Park Hill, over a wave of violent attacks against Mexican immigrants. I had just arrived at the bus stop to go back to the ferry [which travels from Staten Island to Manhattan], and saw the end of a fight that looked like this man was jumped by the group of teens. The man finally pulled away and ran, leaving his shoes behind on the sidewalk. I have no idea how his shoes came off, but I remember that image so strongly. The boys lingered awhile, talking to those who had stopped to watch, and then left shortly before the police arrived. Everyone around me appeared pretty unfazed, except for one woman with me at the bus stop who told me how she used to live in Park Hill but had moved uptown [to Harlem or the Bronx] to get away from this kind of foolishness. She commented on how the community had become so volatile towards the Mexican population in the area, and how those (Mexican) men needed to stop walking through the neighborhood because the violence wasn't going to stop. This conversation caused me to take a

step back and think about a larger radius of community and with it, a broader impact of division and misunderstanding.

GS: I realized that there was a problem and it needed to be addressed. I politely discussed my observation and interest to the manager of Africa Refuge at the time, but nothing positive came out [initially]. Knowing how blessed I was to have survived those brutal hands of Former President Taylor and his gang, I had to do something and not wait until another child got shot at or murdered. I visited the same building where those children got shot at and spoke to the building Security Management about hiring me as a security guard. In three weeks it paid off. I worked the night shift to study all the transactions that occur at night and who was involved. In December of 2008, my phone rang and it was the manager of African Refuge on the other end, asking for my help. I was once again stunned, but excited that he called. I immediately ran to the office of African Refuge and my volunteering began, and I love every moment of it.

With sincere honesty, I must say I had no knowledge of the resettlement of Liberian refugees within the African-American community in Staten Island until I became one, and such a transition never affected my services at African Refuge in a negative way, but rather a positive way. My beginning at African Refuge was voluntary. Having you all[3] join our community and perform the services you did was awesome and timely.

RR: Both of you mention an event that occurred in the community shortly after your arrival that profoundly affected you, and both of these events involved a community that was new to you and not your own. There has been a lot of discussion recently about coalition building between refugees, asylum seekers, immigrants or other 'marginalized' people. I wondered if you believe that type of coalition can be a possible positive coalition builder, or whether it might be comparing people and situations that actually need their respective differences built in to be effective?

GS: Before speaking of any coalition(s), I'll speak of us separately, the types of immigrants. A refugee travels very quickly against their will, leaving everything behind, most often without any personal identification to identify their country of origin. This leaves them with one option; wait on international aide coming. Asylum seekers come with their personal identity, but are afraid for their lives and need help to regain some sense of personality and human dignity. Most of the time they are granted only work authorization, a condition that prevents them from furthering their education because they are not qualified for financial aid. Based upon my real life experience, I deeply believe that the focus should be placed on the needs of their respective differences, with education for all and not the few. Whenever I look at this term re-conceptualization, I see one thing: Educate everyone regardless of borders. If we are educated, we hold and owe our total loyalty. Remember, even though we are safe…we are not free. About 35% of all immigrants' income is wired by Western Union or Money Gram to support, aide, and maintain our relatives and friends we left behind. This is something difficult to keep living with, when we need to survive, we ourselves.

I went to African Refuge to work as a teacher, to teach our children morals and values as we help

[3] Laura, Brittany and other volunteers

them with their school work. I was denied the teaching position because they needed a college/university graduate with a degree in a specific discipline. I wasn't a graduate, but had had a 2 year and 8 month stay in college, and dropped out due to my opportunity to travel to the United States (the reason I'm still ALIVE). However, I was called back to perform the difficult task of outreach, a job that I volunteered to do for free. I then brought up activities like graphic design, self-video recording and t-shirt printing, sketching and canvas painting. These were activities African Refuge admired but never sponsored—I did them anyway using my own resources. Let me state this: the arrival of Laura just blew it up...with dancing for the girls. So having you people join African Refuge just eased most of the tensions and hate that was built up for all African immigrants over the years.

LB: Overall, I think there are extremely meaningful overlaps, and I think collaboration is crucial. This is not to discount the value of cultural groups advocating for themselves within the large community; in Park Hill, the Liberians must have their voice, and the African-Americans must have theirs as well. I believe they also must be able to meet in separate spaces when needed or wanted, to embrace and celebrate their differences and their uniqueness, without feeling pressure to assimilate or compromise their values. But when people in a community are concerned about similar issues, such as safety in the immediate community, or discrimination outside of the community, their voices might be better heard when joined.

One primary goal with the youth in Park Hill at African Refuge was practicing respectful language. Derogatory terms related to African heritage were used not just by African-American kids to tease those kids that had arrived from Africa, but among those African children who wanted to show a greater distance from Africa than the rest. Kids would be teased for being born in Liberia versus America, or for having spent more of their childhood there. Toning down the language was a huge factor in decreasing conflict among the children, and made a big impact (at least within the youth center) once they started to get in the habit of holding back certain insults.

RR: Laura, I wanted to make a connection between the differing Liberian situations that you worked in, first in Liberia in the Bududuram refugee camp, and then in New York, where some Liberians resettled.

LB: One thing I noticed both in Park Hill and Bududuram is that people are very hesitant to discuss any violent role they played in the war, including as a child soldier. Aside from avoidance as a possible reaction to trauma, this also stemmed from fear of being ostracized by the community. Refugee communities blended people from different tribes and regions of the country, people who fought one another during the conflict.

I was privileged to visit a home in Voinjama, Liberia for young men and women who had been child soldiers and were living together to finish school, learn employment and general life skills, and engage in spiritual and peacebuilding activities. That was a beautiful experience, to observe the close and tangible support in this community. I was also invited to help out with a couple of sexual health discussion groups for preteens and teens in the area. Although I didn't hear many stories of conflict during this time, the discussion groups prompted a lot of proactive communication about moving forward and rebuilding life after the war. Through this experience

I also got to know a former commander of child soldiers, who was later my guest in New York during a visit. What he had to share was how committed he was to the peacebuilding process, and to helping young adults rebuild their lives after spending years fighting. His dedication to this process, coming directly out of his firsthand participation in the conflict, was so humbling to me and was truly my first encounter with restorative justice, although I wouldn't have called it that at the time.

The stories of conflict I have heard firsthand from Liberians are more about what was witnessed than any more direct experiences. Those who I had been told had committed violent acts would listen and nod, but often didn't share. And truthfully, Liberians are such a resilient, proactive people that even when I got to know someone well, most of the discussion was about the here and now, what needs to be done, what possibilities the future might hold. Not to minimize the impact that severe trauma had truly caused in so many of the people I met, but I think it's important to note that the day-to-day struggles are just as real, and often more pressing. I heard more details about current community violence, the woes of ongoing hunger, or the desperate search for funding for positive programming than I did about war crimes.

In Park Hill, I didn't hear many war stories either, although I am now reading Little Liberia, featuring many stories about Jacob Massaquoi, the Executive Director of African Refuge during the time I was there. Jacob's is an incredible story of survival and resilience, and gives such depth to his commitment to serving the Liberians of Park Hill. However, the children I worked with, for the most part, didn't see the war; they were children of those who had fled. Along the lines of what I described earlier—the sense of pressing day-to-day struggles—I noticed a difference in the tension among Liberians settled in Park Hill and those I met in Buduburam or Liberia. In some ways, there are more resources in the United States, more jobs or benefits for some. I heard less talk of hunger in Park Hill than Buduburam, although I know it exists in both places. At the same time, the Liberians of Park Hill walked into a community already struggling with violence when they arrived in New York, and I felt among them a guardedness and a weariness that I hadn't noticed in Ghana.

Now that I'm working in a more clinical role, I hear more detailed stories about traumatic experiences with violence in New Orleans, and in part this is because I'm asking different questions. Sometimes these stories stick with me a bit longer than I'd like or always think is healthy, but I think that I've continued to focus as much as possible on the here and now, and perhaps this is due to my experiences with Liberians and what they taught me about moving forward. I'm not a trauma therapist, and right now I'm involved in the legal struggles of clients, so I like to focus on what's in front of us: what can we control right now.

RR: William, could you introduce us to Liberia by first telling us about the Liberian Dance Troupe, and the environment in which you were organizing it?

WJ: The Liberian Dance Troupe (LDT), now One Dream Liberia, Inc. (ODLIB) was formed in Buduburam Refugee Camp, Ghana in 1992. It started with a group of Liberian traditional dancers and musicians who used old buckets, wooden benches and other scrap metals as instruments to provide entertainment. Some of the artists themselves were ex-combatants. In the evening, they would come together to sing, drum and dance away their painful past. As the war

back home showed no signs of ending, the artists mobilized themselves to give birth to the Liberian Dance Troupe. To the nearly 7,000 refugees living in the camp in those days, these evening performances were not just entertainment, but also consolation and therapy in their difficult circumstances.

The need to reconnect Liberians back to their cultural heritage was pivotal and profound to the LDT. The reason was simple. The inception of the gruesome war in late 1989 broke down the social structure and destroyed the economy of the country. Worst of all, the culture of the nation was now badly desecrated. We needed to mend the broken pieces, revive our culture and preserve it. Youth and children became combatants and families were displaced during the war. There was a painful loss of relatives and lack of cohesion in the family, among other grievous psychological problems, that haunted everyone living as a refugee in Buduburam Camp. Respect for elders was an integral aspect of Liberian way of life, but this too was no more because of the traumatic experiences young children suffered in the war. I knew that we needed to help everyone overcome the trauma that they were experiencing. We also wanted our hosts to know that Liberia, like other West African countries, has a very unique way of life. What I didn't know was how to do it in the midst of the insurmountable problems that we were faced with as refugees.

In February 2003, the answer came. The LDT entered an agreement with the Canadian charity War Child Canada to establish a Trauma Recovery and Cultural Awareness Program. The aim was to help war-affected children and youth reconfirm their identity, dignity and restore Liberian cultural values and national pride. Consequently, emphasis was placed on unifying the community that was basically comprised of people from all political sub-divisions of Liberia – a country that was now hugely divided by what many termed "tribal conflict." There were five components to the Trauma Recovery and Cultural Awareness Program: Health Education, Peace Education, School Fees payment, Information and Communication Technology (ICT) and the Cultural Awareness programs. We were also doing psychosocial counseling. The project was conducted in five primary schools where trainers were sent to teach Liberian traditional dances, songs, drumming and history[4]. Over 150 children both from the target schools and the community benefited from the program. The LDT looked at real issues that were relevant to the larger community, such as HIV/AIDS, teenage pregnancy, and drug abuse. By 2007, the LDT became a household name recognized by the United Nations High Commissions for Refugees (UNHCR), Ghana.

The Liberian Dance Troupe became the sole custodian of Liberian culture in exile, prompting a United Nations representative from Geneva, Switzerland visiting the camp to describe the community as a "small Liberia in exile". The LDT project was rather a cultural revivification theatre program that promoted Liberian traditional dances and songs to audiences that only knew

[4] William writes, "Within the groups of young people in Buduburam, formal or informal, ethnic affiliations were unimportant. They often blamed ethnicity and ethnic divisions as reason for the war. While we were teaching about the tribes in Liberia and their songs, dance, names and sometimes their meanings, we never tried to ask anyone entering the cultural center doors, *What tribe are you from?* In collecting data on the beneficiaries, the focus was only on name, age, sex and date of birth. We only asked for parent and guardian names, if there were any, for the sake of record keeping."

Liberia as a country that did western things or were Americans. Prior to our arrival, many Ghanaians only knew Liberia as a country where Americo-Liberians that live American life-styles belonged. The LDT changed that mentality when it began reaching out to various Ghanaian communities, mounting performances that were infused with important social messages.

RR: I want to ask a question about working with particular people on an individual basis, within the context of working with a community. How do you balance these particular relationships with your more 'general' work? What does it mean to know someone, and to better understand larger situations as they affect that individual over time? How do individual people affect how you advocate (or don't)? What have these relationships taught you to do differently?

LB: When you ask about relationships, I think about relationships with colleagues who might also be part of the community I am working with. For example William facilitated my work in Ghana and Liberia, and along with that was my continuous cultural instructor and liaison. I can't imagine what I would have done without him! He taught me how to be respectful, how to approach difficult topics, how to stay safe, and what was delicious to eat (….everything!). We spent so much time focusing on the youth and families in the program that I would often forget that he, too, had fled the war and had his own struggles. He also really took on a paternal role with me, which I'm grateful for, and so personally and professionally this is a bond that has lasted. Similarly, Garretson was my coworker at African Refuge, and we frequently spent a long time talking after the kids would leave for the day, and developed a great respect for one another. I know that he used to vouch for me in the community, when I was new and no one knew me nor knew whether to trust me. He also commanded the attention of the kids when they were restless and I had lost them; I never could have competed with this strong community leader they looked up to, nor would I have wanted to. Garretson and I liked to debate our differences in opinions, and these conversations were invaluable for opening my mind to the realities and possibilities before me. To me, it's incredible how these relationships can continue to develop, both professionally and in terms of friendship, over time and despite difference.

William Jacobs: Let me start with the balance between personal and professional relationships with particular reference to my relationship with Laura. I guess I was very protective of Laura. She was the first "outsider" to volunteer with the Liberian Dance Troupe (LTD), so giving her the necessary support and protection was an obligation of the group and me. I did not want anybody to take advantage of her and I made sure she understood that. That does not mean to say that she was not allowed to mingle with whosoever she wanted to befriend. In fact when we decided to give a Liberian traditional name to her I made sure it was my mother's name: Gorma. Personally, our relationship became clear that we were like father and daughter. On a professional note, we had to encourage each other to do something to prepare for the future and at the same time achieve our goal of ensuring that the children get the best out of what we were imparting.

For all of us at the LDT in Ghana, Laura was like Heaven's sent. She might have discovered us

on the Internet[5]. Then she and I started emailing each other back and forth. I imagine at first her parents were not comfortable with her decision to come to Africa, especially in a refugee camp comprising committers of some of the world's worst atrocities. But my intuition kept telling me at that time, *You need her here*. Then I decided to link her with our sponsors at the time, War Child Canada. And then she came to Bududuram. Initially, things were not moving as fast as one had hoped. We didn't know what assignment to give to Laura. As time went by I began to encourage her to come up with something. Well, we all soon saw that she had something in her to offer. She introduced the Ballet Dance and eventually got her own fantastic boy and girl dancers. It was fun and the children were excited. After a while Laura mobilized some funding from her friends and family back in the States and created a health and sanitation awareness campaign in the community. She also began participating in almost everything that we were doing.

When I moved back to Liberia, Laura and I remained in communication. It was not too long for her to also come back to Liberia. I was then actively working with some former child soldiers in Voinjama, Lofa County, which borders Guinea in northern Liberia. So she went with me there on a trip. Experience tells me that having a genuine relationship with different people can yield a better and long-term result. And, if you keep it that way, nothing can change what is possible and you could remain in it forever. I was so happy to visit with Laura in New York and to see that she was still connected to the Liberian community in Staten Island. The first time that I visited Staten Island and met with Jacob Massaquoi at African Refuge was in 2007.

RR: Can you both talk about your personal relationship with dance, and the way it has helped you connect with communities, Laura and William? What were the barriers to using dance in your work?

LB: Working with the LDT greatly influenced my understanding of using dance as an intervention. Prior to this experience, I had worked as a dance instructor with children, with the primary objectives being technique and recreation. Aside from emphasizing an atmosphere of acceptance and empowerment, by encouraging positive body image for example, I had never used dance to address deeper needs. When I saw how much the LDT was able to accomplish using music and dance, I was blown away. For example, they performed a dramatic representation of HIV attacking the human body, using traditional Liberian tribal dances, performed as an educational public health event for the community. That piece was performed onstage, but they also brought dance and drumming out into the community. One day we embarked on a community cleanup project, during which the drums were played as a procession to encourage people to come out of their homes. Then they would stop at major intersections and common spaces to perform, and the scenes depicted in the dancing, along with signs and banners

[5] Laura writes, "I had recently graduated from college and I was interested in working abroad in order to study and practice another language. As I was researching work opportunities, I came across some volunteer and internship opportunities. I came to the Ikando website, which doesn't seem to be operational anymore, which had a posting for an internship with the LDT, and specifically talked about performing arts skills and cultural exchange. I had been so focused on language that I hadn't thought of other forms of exchange, and the thought of collaborating and learning though dance instead was so exciting to me that I dropped my other searches and began applying and preparing for this possibility instead."

displayed, expressed the importance of the community working together to keep the streets clean and stay healthy. As we processed, we also picked up trash and swept.

Working with the kids at African Refuge, I didn't feel I had the capacity to do as much with dance as the LDT did, but I did start a Saturday morning dance class there and strove to emphasize getting in touch with your body, taking care of it/protecting it through responsible stretching and posture, and finding your own expressive movement. Teaching dance in this way stems from my own appreciation for what dance has done for my self-esteem and body-love/appreciation. I'd say using dance as a practitioner has happened more as a natural application, or has been conscious only insofar as I think, *How can I combine these things that I love: working with people and dancing?*

Now that I'm practicing social work more clinically, and within agencies that have a lot of structure, I'm not able to incorporate art and movement as much as I'd like to. I dream of finding new ways to bring it back into my work! I am aware that dance and movement therapy can be very effective in working through trauma, but I haven't had any training in this or opportunities to use this knowledge in a practice setting.

WJ: As an—I hate to use the word—"indigenous" Liberian, born in the countryside, I have always been in touch with our Liberian traditional way of life. My elder sister was a traditional dancer and so was my mother. Although my mother did not belong to a group, I am told that when she was a young girl she danced beautifully with her peers when the moon was bright – a time when the girls would usually flirt as the young boys and the village looked on with admiration. At some point in my life, I also hummed to traditional songs. Though I do not sing or dance, I have the gift of knowing when a dance or sound is not right. With the Liberian Dance Troupe, my colleague who is a natural dancer and choreographer depends on me to do the critiquing.

That we successfully established a cultural awareness program in Buduburam and provided a sense of identity in a strange land, involving everyone including Christians and Muslims who ran away from the war in Liberia, is indicative of the fact that no obstacle is too enormous to overcome. We used the dances from all 15 counties of Liberia that reminded people of their country of origin when they could not understand the cultural practices of the host nationals. These dances often send out messages of peace and unity. We placed on the walls of the culture center a huge map of Liberia, a list of all the various ethnic groups, the national anthem and the national pledge. The doors of the center were also always opened to anyone who wanted to use it for any occasion including weddings, religious and other entertainment programs.

It seems the war may have changed everything. There was a thing called national identity and transnational identity in the camp, as shown in one study of Buduburam[6]. [In this study, it was noted that] the "elders appear less attached to their national Liberian identity than most youth, but many still give considerable emphasis to sub-national ethnic groups". By contrast though, youth "commonly adopt cosmopolitan, transnational forms of identity. These multiple identities are usually dominated by complexly intertwined Liberian and black American components".

[6] Social Resilience and Coping Among Young Liberian Refugees in the Buduburam Settlement, Ghana.

Another misconception that was within a segment of the religious community in Liberia was that all traditional dancers are alcoholics and drug users. We dispelled that view by instilling in our young members a real sense of discipline, discouraging the use of drugs and alcohol among them and emphasizing their education as well as engaging them to participate in activities that were good for their growth and development. By giving ownership of the Liberian Dance Troupe to the community, it was soon realized by all that there was a need to change one's thinking.

It was, then, a tasking responsibility. The LDT`s main strategy was to "catch" them young. We started working with children 5-14 years old. The trainers would do their teaching during school days and then bring the children at the cultural center on Saturdays for further training and assessment, where others and I were involved. We would teach and discuss "civics for Liberian Schools". With this lesson, the children learned about their rights and responsibilities as citizens. We then created a cultural troupe for the participants at each of the schools. The children who were allowed by their parents to participate in the program performed during gala day and other programs of their school. Many school principals took interest, followed by the parents who thought their kids were equally talented, and formed a part of the group. When the parents got interested, we organized a PTA (Parent Teachers Association). The intention was to make the parents understand and appreciate the significance of our program as well as allow them to get involve and to tap into their knowledge of the Liberian way of life without discrimination. I guess this is how we made it.

RR: We represent emerging scholars and practitioners, and often ask people how they came to meaningful work and for advice to others, based on their own path. Maybe you can return to the first question and think about your own evolution of life and work, Laura. Can you talk about your own progress as a person working with these issues, and how you may have begun to re-conceptualize your life work, William?

LB: My initial thought is that this is a great conversation to be having, and wonderful to be attempting to pull from multiple disciplines. It would be amazing to pull from as many individuals from within refugee/forced migrant communities as possible to get some critical analysis of what has and hasn't worked for people, firsthand—from people like William and Garretson, who are scholars within their communities—but also from critical thinkers within communities that haven't made their way to becoming scholars. I suppose researchers and practitioners are channeling those voices, in part, but it's important to get some responses from community members themselves!

As far as "re-conceptualizing," that makes me think of "broadening." I think I've spent most of my early career in practitioner mode, but I'm increasingly part of data monitoring and evaluation in my field, to help us emphasize evidence-based practice and good outcomes. I'll say that the hardest part of that practitioner/academic divide is that evidence-based practice seeks to find that which works the best for the most, and someone is always going to fall through the cracks that way. When practitioners are involved in that process, we can continuously remind ourselves to provide alternatives for unique cases and avoid unbendable hard lines. But when you have an agency that is being told exactly what they have to do, perhaps based on numbers that come from a different place or culture, with no flexibility, that ties practitioners' hands in a way that I feel can be incredibly detrimental to doing positive work. On the flip side, if you don't follow the

evidence, you are risking letting individual practitioners' subjectivity and bias come through far too much in their assessments of need and appropriate intervention. So, it's tough. This makes it even more important to involve community members and/or clients in any process of re-conceptualizing, and not just the majority, but the individuals, too. Their feedback will aid and challenge both practitioners and researchers.

I often think that the more I do this kind of work, the more I'm hit in the face with what I don't know. Every time I think about how much less I knew years ago, I am surprised that this is possible! Which makes me hopeful that working in a diversity of settings really has increased my competence and will likely continue to do so. It's important to read and contemplate and analyze, but it's also so vitally important to get out and get yourself into uncomfortable situations where you allow yourself to be humble and learn. I think humility is key, when thinking about evolving as a social work practitioner working within a community, or outside of one's culture—really, honestly, even when working within one's own culture.

WJ: It was a gloomy October morning when we embarked on the long journey sailing on the vast Atlantic Ocean without any knowledge on my part of where we were going. I hadn`t planned to leave Liberia when the war started. It took me ten and a half months to make that decision. But, what's deep is the psychological and physical traumas one had to run away with, such as not knowing the whereabouts of an entire family, and, in my case, the clicking of a deadly weapon that would have ended my life. As a victim living in a refugee camp, I came face to face with the true reality of war. During the early years (1990 – 1992), I usually engaged in hours of conversations with fellow refugees talking about three things—the past, present and the future. The past for many was a time when they had everything - strong family support, wealth, well-paid jobs, as well as the college or university degrees that they were about to receive when the war disrupted it all. Some of us reflected on the peace and harmony that we had in the past. In talking about the present, it was all about the situation that we were experiencing daily, living under life-threatening and prison-like conditions. Years later, I came to realize how confident and positive we were about the future – a future that we did not know. Some of us would say *when the war comes to an end, I will return home and join the police force or become an immigration officer*. Others dreamed of going to America, Canada or Australia so as to improve their situation. I guess these were talks of nothing else but self-assurance. Today, it's true that some of our friends lived to see their thoughts come to reality, while for others those dreams remain mere fantasy.

It is possible that most people who leave their home country by force and stay away for more than two decades will always find it difficult to return. In that situation, one cannot know what to expect if one should choose to go home. When I took that decision [first to re-locate to another city in Ghana, later to return to Liberia], I had already found answers to some of the terrifying questions that became years of nightmares for me. First, I worked toward overcoming my personal trauma, understanding that I needed to heal in order to put my life back together. Second, if I heal, I needed to help others heal. One night as I sat in a gathering of fellow refugees in the "Gap,"[7] hooked on drugs and alcohol, I began to sing. I was high, under the influence of

[7] William writes, "At Bududuram refugee camp, the youth lived as a group supporting one another because they could not rely on their parents or elders to provide their material needs. The bulk of them lived in the 'Gap,' an area of the camp notorious for drug peddling, alcohol and prostitution. It is a space in which normal rules in camp behavior do not apply and it's occupied by mostly

marijuana and some shots of local gin. I remember the song, by Michael Jackson: "Man in the Mirror". The fellow sitting opposite me, remarked, "Damn, my man, you can sing that song." Whether right or wrong, at least I took it as a compliment. We were young and ignorant, not seeing how the war had stolen away our future. We took solace in the most notorious part of the refugee camp, depending on one another by doing what the others did – drugs and alcohol. But on the night I sang "Man in the Mirror," something strange happened. I went to sleep with the wordings of the song still playing in my head. The line that says "make that change today" continued to repeat itself. The following morning, I took a stone in my right hand, spun it around my head and threw it away saying, *This is not my life. I did not come this far to die*. This was the beginning of my process of healing. And, in order to succeed in that process, I had to take advantage of every opportunity. One was the chance to re-migrate, if you like, from the refugee camp to another city in Ghana.

In December 1991, I left the camp and came back four years later with a qualification to work as a newspaper reporter. After working for three years, I voluntarily left the paper and immersed myself in social work. It was a crazy initiative with no link to any organizations. I would just take my camera, pen and paper and go out in the bushes documenting the daily drudgery to survive of children and their single mothers. Out of the huge population, this group was the largest. The reward for my work with single mothers and their children in the camp was to come later. The Liberian Dance Troupe, with support from War Child, selected me to be their leader, and together as a team, we succeeded in meeting the group's objectives.

RR: How do you think you would have answered this question about re-conceptualization five or ten years ago? What did you, or do people today, fail to realize or focus upon when they think about working with issues surrounding forced migration?

LB: It's hard for me to say how I would've answered the question about reconceptualization five or ten years ago. I think I would've said relatively the same thing, but maybe I just want to think that. I do know that I grew up very sheltered from many of the realities of forced migration, and traveling internationally is what opened my eyes wide. So, from that moment forward, I've known that I don't understand the nuances of these realities, and I think I've always felt that the more compassionately informed the insight, the better. Maybe the thing that has changed the most is my understanding of just how vital the voices of those directly affected by a given issue are, and how important it is to avoid making the assumption that anyone, no matter how experienced or even how much they listen, can adequately express another's reality.

WJ: I think that if people begin to understand and appreciate why so many people decide to leave their country of birth because of disasters, whether natural or man-made, then it will be easier to find a solution to some of the issues that arise from forced migration. The way some migrants are treated by citizens in different countries varies. In my case, I suffered some levels of xenophobia when I worked at a newspaper in Ghana. There were times when some Ghanaians felt their government was paying refugees with taxpayers' money. This was far from the truth, though. There were health and other social problems in what was initially a prison-like refugee

unaccompanied youth."

camp, infested with snakes and all kinds of creeping animals. Job opportunities were non-existent for even the most skilled and professional refugees. There was huge language barrier, even though Ghana is an English-speaking country. The issue of trust was there, since many of the host nationals saw every one of us as rebels and killers. The few that sympathized with us in our time of grief and distress could not convince the majority about why we had come to their country. I think that we as intellectuals need to re-think how to address issues of forced migration so that those that do not understand why people run away from war and the like can begin to understand, work, and develop better relationships with migrants.

Perhaps, ten or more years ago, I still would not have been able to answer the question of re-conceptualization. I think that issues surrounding forced migration should be discussed with intensity. My idea is that leaders of countries that receive influxes of people affected by war and other natural disasters should educate and help improve the understanding of their citizens of the situation of migrants entering their country. It is true that the most vulnerable refugee groups are usually at greatest risk of displacement. Consequently, there will always be health hazards, cultural disruption, loss of livelihoods and loss of social support networks. People in authority, political opposition leaders and local stakeholders should begin to rethink and work closely with those who are forced to migrate and wanting to survive, to make host nationals understand the nature and dimensions of social relationships experienced by migrants so as to identify potential strategies for improving social resilience.