OXMO

OXFORD MONITOR OF FORCED MIGRATION

Oxford Monitor of Forced Migration

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

Editorial Board

Disclaimer

Table of Contents

Artistic and Creative Expressions

Foreword

Dear Reader,

In this issue, we feature twenty contributions from thinkers around the world on issues cutting across policy, law, and research in the field of forced migration studies. Continuing OxMo's long-standing tradition of offering space for critical and oft-neglected perspectives in the global discourse on displacement, several of this issue's authors contribute their personal critiques, insights, and policy recommendations from their own experience of displacement.

In the first hand section, two resettled refugees in the UK make the case for scaling up resettlement, while a resident of Kakuma refugee camp urges us to rethink self-reliance strategies in Kenya and beyond. Together, they reflect on the role and potential of policy in enabling displaced individuals to shape and reconstitute meaningful lives in and beyond displacement. Contributors to the Artistic and Field sections further explore themes of integration, bureaucracy, and discrimination from the perspective of researchers who have experienced asylum and integration first hand. While the photography taken by a Kyrgyz researcher during his personal journey through the British asylum system explores the materiality of bureaucracy and everyday life, another contribution reflects on the positionality, practice, and experiences of a refugee-researcher addressing bottom-up integration in Europe.

This issue's contributions speak to varied geographical, as well as historical, contexts: from competing forms of colonialism in Mozambique to contesting power at the British-French border zone; they offer broader theoretical insights into the displacement, contestation, and injustices to which coercive practices of colonialism and border enforcement have given rise. The issue further shines a new light on long-standing challenges, such as the statelessness of Syrians and the protracted suffering of refugees on Greek islands. Throughout the volume, our contributors continue to expose gaps and challenges in the current protection regimes for displaced individuals, whether it be the legal limbo of refugees in Hong Kong, protection challenges of North Koreans in China, limitations of the legal framework on indigenous migration, or the pending fate of the refugee regime in Central America.

The issue also considers nascent themes in the study of forced migration, in particular focusing on climate-induced displacement. Encouraging an understanding of environmental displacement both from 'below' and 'above', our authors in turn explore the link between water scarcity and mobility in southern Iraq - urging for greater understandings of local perspectives on climate-displacement - and share their reflections on the use of satellite imagery to overcome methodological challenges in studying this form of displacement. These different perspectives contribute to a burgeoning conversation on environmental displacement and provide avenues for better understanding and responding to environmental distress.

As in our previous issue, we are proud to feature artistic and creative expressions and to publish pieces in different languages. This time, we would like to draw your attention to poetry featured in both English and Tigrinya written by an Eritrean refugee in Ethiopia, as well as English-language poems drawing on themes of displacement, migration, and family.

Finally, we would like to thank everyone who has worked tirelessly over the past months to put together OxMo's Volume 8.2, not least the editors and authors without whom this issue would not have been possible. We would also like to express our gratitude to the staff and faculty of the University of Oxford for their continued and strong support of OxMo.

We hope you will find joy, inspiration, as well as food for thought and action in engaging with the ideas, images, critical reflections, and personal stories of OxMo's Volume 8.2.

Enjoy reading!

Chloe Marshall-Denton & Lena Kainz
Co-Editors-in-Chief
Oxford Monitor of Forced Migration

Why Resettlement?
Heba and Nour[1]

We are Nour and Heba, Syrian refugees who resettled from Jordan to Wales in August 2018. We have been refugees for seven years. The war destroyed everything in our lives, our houses, our jobs, and our dreams. We lost some of our relatives. The war has scattered our siblings across the world and we lost the simplest right to live together as a family. Two of our brothers are in Saudi Arabia and we have not seen them for nine years. Our other brother is in Germany. We still feel the impact of war, especially during Ramadan, which we cannot celebrate as before because it should be celebrated with family. Nonetheless, we are fortunate for the UNHCR resettlement programme, which transfers refugees to a country that has agreed to admit them and provide permanent protection, and to relocate to the United Kingdom (UK).

We are involved in the VOICES Network, which is a network of refugees and asylum seekers in the UK. As VOICES Ambassadors we are happy to share our experience with the hope that our stories will inform policies and services, influence news stories to portray the realities of refugees and counteract negative and politicized sentiments about refugees in countries of resettlement. We want to share our experience of resettlement which is very important for the international protection of refugees.

Life in a host country

In 2013, we moved to Egypt to seek safety. But after a few months, a political coup in Egypt meant that we had to move again, this time to Jordan. We thought that if we worked hard in our host country, we could rebuild our life there. However, it was difficult to support our living costs since our legal status did not permit us to work.

Nour: In Jordan, I was lucky to continue my university education in accounting. Most Syrians without any identity documents were not allowed to go to school. It took three years to get my ID and enroll in school, which is a huge amount of time in a person's life. I was lucky because my brother was able to financially support my university attendance since I had to pay for the university each term.

Heba: Even though I already have experience and certificates in accounting from Syria, it was illegal for me to work as a refugee in Jordan. I was frustrated and felt that this rule is unfair. Most refugees who tried to work illegally were exploited by really low salaries and long working hours. If the government caught them working, they would be sent back to their home country.

We joined a volunteering group which provided services and aid for refugee families at the Jordanian border. We thought that we were in bad circumstances until we met refugee families in those poor camps. The camps didn't even have the basic necessities for life. There was no electricity and not enough space to sleep inside the tents. The worst time was the winter when it rained and snowed. People had no choice but to stay in tents or risk their lives. How could they have a normal life while finding themselves in this horrible situation?

Later, we volunteered in a psychological support centre. The children we worked with were not only suffering from the war

[1] The authors prefer only using their first names.

and their resulting trauma, but they were also negatively affected by their parents' own war trauma. They could not treat their children the way they should.

Heba: An eight-year-old girl's experience was particularly heart-breaking to me. She did not speak to anyone except her mother. The mother would record a video of her child asking questions about homework and then send the video to her teacher. Since I met that girl, I have twice had dreams in which she spoke to me.

Deciding to resettle to the UK

In Jordan, we were told that we would be safer if we applied for UNHCR refugee status and no one could send us back to Syria. Three years after applying, UNHCR told us that we would be resettled to the UK. The resettlement process was not easy. We had many questions about the implications of moving to another country. If we left Jordan, we would not be allowed to come back. We had mixed feelings about going to the UK. We were not sure if life in the UK would be good or bad. There would definitely be challenges because each time we moved from one country to another, it took us a lot of time and effort to get used to the new place.

The resettlement process started with a short course provided by UNHCR about the life in the UK including culture, laws, education, work, and rights. It helped us imagine possibilities for our future. We became happier and were persuaded that resettlement would turn out very well. We knew that Jordan was not the right country for us to rebuild our lives; we felt like prisoners since Syrians were neither permitted to work nor leave the country. The uncertainty and lack of opportunities in Jordan helped us make our decision to resettle to the UK. The resettlement option appeared to be a great one for us, even though we heard that many refugees drop out due to the unknown and the fear of starting again.
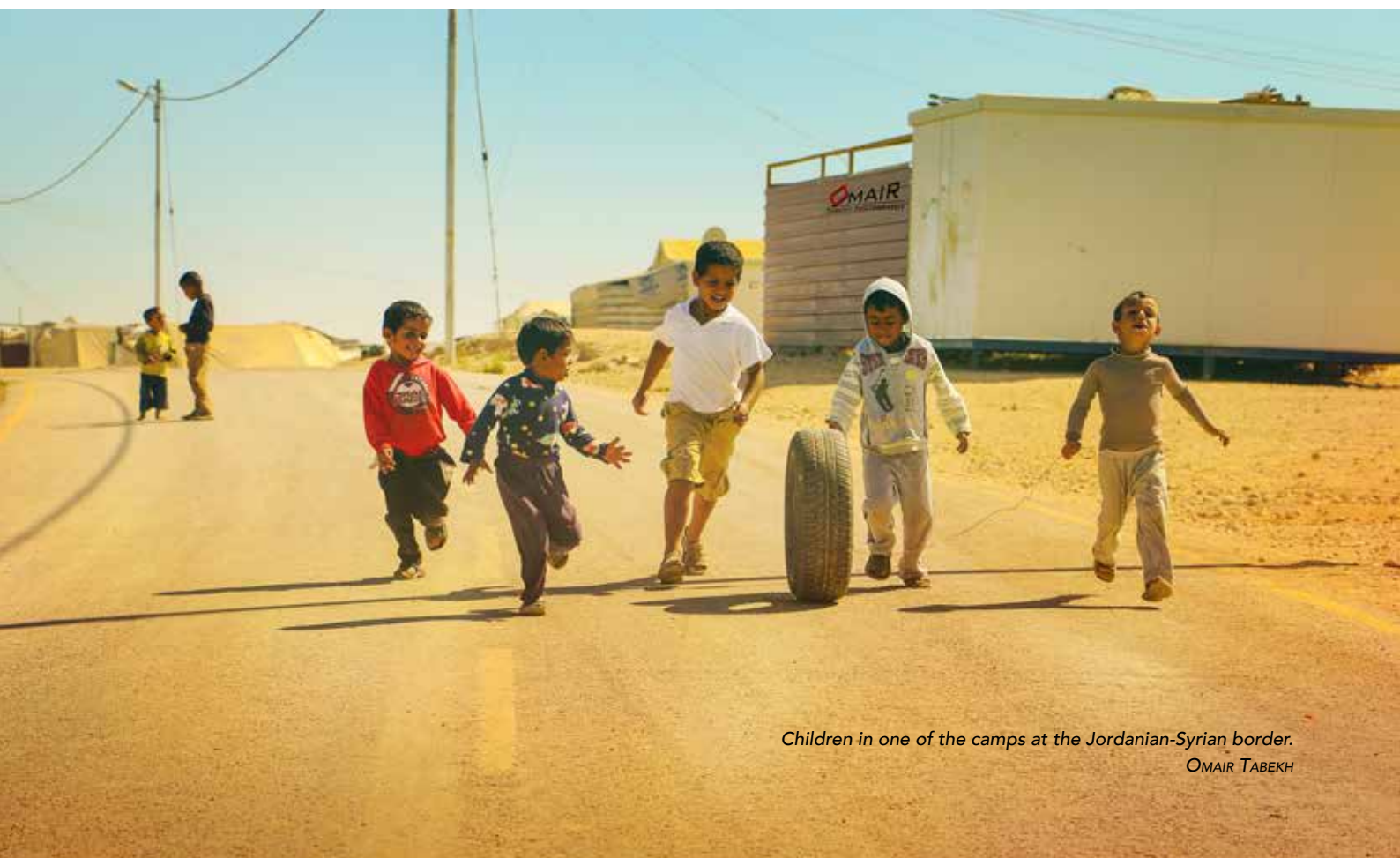
Children in one of the camps at the Jordanian-Syrian border.
OMAIR TABEKH

Life as a resettled refugee

We were anxious when we first arrived in the UK because we did not know much about the society or how British citizens would treat refugees. It did not take long after we arrived for us to see that the UK respects human rights, equality and diversity. For us, seeing both a church and a mosque in the same area illustrated the coexistence of religions.

The Welsh government assigned us a support worker who helped us from our very first day in the UK. Before we arrived, they had furnished and cleaned our house. They also provided a short course on living in the UK. More than one year after our arrival, they are still helping us settle in Wales.

Nour: For me, resettlement means starting over. I had attended three years of university in Jordan studying accounting. I had excellent grades during my studies, and I expected that I would only need to take one more year of university in the UK and then I could graduate. But this was not the case. I had to start from the beginning. Resettlement is not an easy decision because every time we move to another country, we start over. I have been improving my English for the past year, and am now enrolled at a local university in accounting and finance. I still have to pay tuition fees in the UK, but unlike in Jordan, at least I can get a loan to continue my education.

Heba: As a resettled refugee, I have a right to work. I can choose what I want to do, and train myself in that sector. We are treated as citizens in the UK with the same rights as British people. We are not treated as foreigners which is crucial in helping me to move on with my life. I am eager to learn new skills and I am interested in volunteer work to help people and give back to the community. I tutor a

secondary school student in Arabic and recently started volunteering to befriend elderly people.

We have been spending our time here by attending regular classes to improve our English skills. We both engage in community activities like the VOICES Network to portray positive images of refugees. Starting over and building a new life is not an easy task, but we are full of hope that the best opportunities are out there, and that they are yet to come.

Resettlement matters

Regardless of their country of origin, most people want to advance and create meaningful lives for themselves. Becoming a refugee does not make these aspirations go away. Refugees are often seen as exploiting the benefits of western governments even though many who come to the UK and Europe contribute to the economy and help others in their new communities. People who want to rebuild their lives are not the problem. The problems are the terrible circumstances which cause them to flee and the difficult life of a refugee.

There are many people who risked their lives crossing the Mediterranean Sea who deserve the same chance that we have in the UK. That little girl who cannot speak to anyone but her mother, whose smile we cannot forget, deserves to live a good life. Those families left to live in tents deserve enough space to sleep and warm winter clothes. Our family should be together to share good and bad times. Refugees are no different from any other people and we want to have a meaningful life as much as anybody else. We hope that new initiatives like the Global Compact on Refugees will encourage the UK and other countries to continue or start to resettle many more refugees so that they can have a safe and good life like us.

The authors

Heba is a Syrian refugee, and she resettled with her family from Jordan to the UK in 2018. She has a degree in accounting from Damascus University. In Jordan, she worked as a volunteer in a charity called Happiness Again, providing psychological support for children who suffer from trauma from the war. She also volunteered for an organisation called Milad, providing aid and shelter to Syrian families. Here in the UK, she attends ESOL classes to improve her English skills and is doing some volunteering work to help people and to give back to the community.

Nour is from Damascus, the capital of Syria. She moved with her parents and sister to the UK in August 2018. Before then, she finished high school in Syria, and completed her studies when she moved to Jordan. There, she did some volunteering works with different volunteer groups to support and help other refugees. She studies Accounting and Finance at the University Of South Wales. She loves trying new things and having new experiences, meeting new people and learning about other cultures. She also enjoys reading and listening to music.

Self and Self-Reliance
GERAWORK TEFERRA

According to the United Nations High Commissioner for Refugees (UNHCR), there are more than 70.8 million people who are displaced.[1] This figure, out of which 25.9 million persons are refugees, accounts for more than the total population of France. As prolonged temporary humanitarian aid has created dependency and hopelessness among large parts of this population, the international community has shifted its focus toward strengthening the ability of refugees to live independently from humanitarian assistance (i.e. self-reliance).[2] The current self-reliance programming, however, has its own risk as it mainly focuses on creating jobs that don't go beyond temporary lifesaving economic gains; it also neither fully considers specific contexts nor addresses it strictly at an individual level. Understanding the challenges of achieving self-reliance in view of individual rights and capabilities is vital to successfully facilitate the process. This essay discusses self-reliance through the lens of a refugee, seeing her or him as an independent and dignified human being. As such, I critically explore the existence of 'group-reliance' or 'group dignity' in a situation where individual self-reliance and identity is in question.

The intended goal of self-reliance programming to me, as a refugee, is to make sure we refugees stand for ourselves and continue to thrive and meet our own needs so that we are not reduced to a mere burden of humanitarian aid agencies and host nations. If one tries to define 'self' in self-reliance focusing on the fundamental conditions of a human being, this definition might comprise only ones' physical nature and basic physiological needs. Consequently, this leads to common attributes (e.g. a physical needs like food, health, and water) being considered over individual differences (e.g. being a farmer, a social worker, an artist, mother, etc), or metaphorically speaking, on the forest rather than the trees. As a result, the scope of self-reliance mainly captures the essential needs of an individual and overlooks their specific life experiences, talents, and capabilities. If a person is only able to satisfy those essential needs (food, water, etc.), it does not mean that the self truly exists and can be relied upon, even if that person appears physically well. Instead, facilitating self-reliance must start with recognising that self, whose potential can then be utilised and strengthened in order to proactively start being relied upon. A development intervention should, therefore, focus on channeling individual capabilities to where they are most productive; just like a diligent teacher focuses on teaching or a farmer on farming. In short, strengthening self-reliance should ideally involve creating space to freely utilise already existing capabilities – and ultimately ensure that a refugee maintains his or her agency and dignity.

As stated in the UNHCR Handbook, when an individual case has been taken into account, livelihood interventions can be better tailored around the individual initiatives of refugees, and better focus on alleviating barriers, such as rights related to free movement, property,

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[1] Out of this 70.8 million displaced people, 41.3 are internally displaced people, and 3.5 million are asylum seekers. UNHCR, 'Figures at a Glance', accessed 27 October 2019, https://www.unhcr.org/figures-at-a-glance.html.

[2] The UNHCR handbook defines self-reliance as 'the social and economic ability of an individual, a household or a community to meet essential needs (including protection, food, water, shelter, personal safety, health, and education) in a sustainable manner and with dignity. Self-reliance, as a programme approach, refers to developing and strengthening livelihoods of persons of concern, and reducing their vulnerability and long-term reliance on humanitarian/external assistance.' UNHCR, Handbook for Self-reliance' (Geneva: UNHCR, Reintegration and Local Settlement Section, August 2005), https://www.unhcr.org/44bf7b012.pdf.

getting permits, etc.[3] On the contrary, if livelihood interventions focus on, for example, the availability of resources or ease at which they can be deployed (supply-driven approach),[4] achieving self-reliance becomes more unlikely. A good example of associated challenges of this supply-driven approach is the short training that various organisations have been aggressively offering here in Kakuma refugee camp – so far it has provided us with a bunch of certificates. Such training helps to keep hope alive but so far doesn't go far beyond that. There are a good number of entrepreneurs who have been trying to do businesses but failed because of obstacles related to restrictions on free movement, permits, equipment, access to market, etc. There are also many high school and post-secondary graduates who are competent enough to be employed in different organisations, but they lack such paid opportunities and are only offered volunteer positions.

Instead of creating a fashion of 'volunteerism' or group support, organisations should focus on individual support that considers what each person requires to overcome barriers even within similar group contexts. For example, the barrier of one refugee farmer may take shape in the form of a deep-water well that he relies upon to develop his farmyard throughout the year; but for the other farmer it may be the lack of good quality seeds instead. Similarly, for one trader the barrier may be related to movement restrictions

whereas the other may require support with strengthening the supply chain to get better products and reach more customers.

In order to follow such an individualised approach, humanitarian actors must look beyond the patronising 'refugee' label: a refugee is also a teacher, farmer, barber, translator, etc., and developing these identities further catalyses their progress towards self-reliance. If such actors ignore this fact and pursue a supply-driven support model instead, it forces those at the receiving end of the intervention to give up part of their identity (e.g. everything beyond what the term refugee can capture), or even to create and adjust to a new, pseudo identity. In terms of self-reliance, the question then is 'how can you rely on yourself without being yourself?'

Humanitarian aid workers should also program a relevant intervention with due consideration (and use) of the specific context of the intervention and the individual at the receiving end. In short, when organisations try to understand the context and individual needs, they themselves rely on the active involvement and information provided by refugees; a starting point where refugees become their own agents. Such approach, for instance, reduces 'recycling' projects and programmes in a situation where needs are continuously changing. Maintaining those considerations can help transform an intervention from a 'top-down' (supply-driven) process easily to a 'bottom-up' (self-reliance) one.

The UNHCR self-reliance framework also indicates that the successful design and implementation of an intervention is a continuous long-term process that incorporates refugees' self-reliance in the overall development planning and implementation process.[5] Starting this process by recognising the existence of a self (beyond the refugee term) in turn helps humanitarian workers to capture

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[3] UNHCR, Handbook for Self-reliance' (Geneva: UNHCR, Reintegration and Local Settlement Section, August 2005), https://www.unhcr.org/44bf7b012.pdf.

[4] This describes an approach whereby an organisation brings support that is available and easily implementable without necessarily considering the context, background and interest of individuals. From personal experience, those at the receiving end of this type of assistance often see a mismatch between our needs and interests and the support that is provided through an intervention. The underlying belief appears to be 'something is better than nothing'. Still, we often make use of this support because of the same belief; however, it does not bring any significant change and often makes us more dependent on support (rather than self-reliant).

[5] UNHCR, Handbook for Self-reliance' (Geneva: UNHCR, Reintegration and Local Settlement Section, August 2005), https://www.unhcr.org/44bf7b012.pdf.

A woman preparing vegetables for sale in the Kalobeyie integrated refugee settlement area.

and support the short- and long-term goals of individual refugees. To adjust or scale up such programmes, it requires monitoring and evaluation standards, tools, and indicators that seek and value refugees' participation. Excluding refugees and other beneficiaries from the evaluation process does not only conceal the full picture of the intervention but also discredits their struggle towards self-reliance, takes away their agency, and denies their dignity.

To conclude, as a refugee—but also as a teacher, a development worker, and a dignified individual in the broader sense—I think that one can only be self-reliant if his or her 'self' is recognised legally and socially within the development terminology;

but not only as a person of concern. Moreover, concealing individuals' self under the guise of 'group self-reliance' is counterproductive and only leads to underutilising the nuanced capabilities that individuals could otherwise rely upon; such groups are always the product of self-reliant individuals who seek collaboration and synergy.

The author

Gerawork Teferra, a learning facilitator and development worker, has lived in Kakuma refugee camp for almost a decade. He is currently working as an academic advisor under a Jesuit Worldwide Learning (JWL) and Global Education Movement (GEM) tertiary level education programs.

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ቤተይ ገዲፈ
Why I Leave Home
YOHANA TEKESTE

ብ   ዮሃና ተከስተ

ተወሊዱ ኣብ ምድረ በዳ

ዓብየ ብናይ ሓሶት ተስፋ

ወግሓ ጸብሐ ዓይነይ እናቐየሐ

ብዘይእብረ ልበይ እናተሰብረ

ሕልምታተይ ዷረት ኣልቦ

ዕድላተይ እናተራብሐ ብባዱ

እንተራእኽዋም ቅድመይ ዝነበሩ

ራኢኦም ጸልሚቱ መለሳ ዘይብሉ

ኣእምርኦም ሰፊሕ ቅንጥብጣብ ዝሓስቡ

ኣየር ብብዝሑ ትንፋሶም ተዓፊኑ

ምንባር ሓርቢትዎም ተስፋ ዝሰኣኑ

ተልእኹ ኣድኪሙ‘ኒ ዕላማ ዘይብሉ

ቃልሲ ዷ ናይ ኣቦይ እንድኣሉ

እግሩ ዝወሰደ መጻእየይ መንጢሉ

ጓሂ‘ዖ ዷ ክቀትለኒ እንታይ ኣለኒ ዕዳ

ንሕልመይ ምብካየይ ገበን ኮይኑ ግዳ

ስሙ‘ኽ ዘይፈልጦ እንትርፎ ክርእዮ

ስደት ዓዲ ጓና መኣስ ተመንየዮ

ዝብላዕ ስኢነ‘ዖ ዑቕባ ሓቲተዮም

ሕልናይ‘ዖ ጠምዮ ናጽነት ምስ ሰላም

ዓደይ ብምግዳፈይ ኮይነ ድየ ጠላም፤

I was born in a desert

In which I grew up with false hope

Eyes red, heart always aching

Free classes opportunities zero

I tried to look to those who were before

No change I could see

Mind so big, thinking so small

Too much air, couldn't breathe any more

Tired of missions without aim

The struggle took my father's leg and my future, too

My illness can kill if I don't leave!

Can this be crime to save my prime?

Seeking for a place which I cannot even name

Asking for asylum, it was not for food

More a hunger for freedom leading to peace

Was it my fault for leaving home?

The author

Yohana Tekeste was born and raised in Asmara, the capital city of Eritrea. She had a very happy childhood and a strong connection to her father. He raised her to be a girl with dreams and good work ethics. She is the second child of a family of all girls. Her father is everything to her; still today, he is her personal hero. Yohana graduated from college of arts and social science in 2015. She holds a degree of Eritrean language and literature, having had an interest in literature since her childhood and finding a big relief and enjoyment in this field. Currently, she lives in Addis Ababa, Ethiopia. She resides there as a refugee and it has been almost four years now since she came to Ethiopia. She loves writing poems, in which she finds a way to expresses her real feelings. If you are interested in following her work, she also has a Telegram channel to share her poetry: https://t.me/joinchat/AAAAAETYkXFypqLn4j8cLQ.

Sister
CELESTE CANTOR-STEPHENS

My sister lost herself,
Crossing the Sahara

She was a soldier
Practically enslaved by the state
who pushed her
      Situps, pressups
          at the barrel of a gun
     Practice, accuracy
       at the trigger of a gun
          Five-hundred times a day
A soldier
Practically enslaved by the state
who pushed her
encouraged her and the rest of her nation to hate
     the bodies at the other side of the border
        who looked the same
          felt the same
            even had the same names
         but whose fate was drawn with the shape of a line
        a national border of political worthiness, criminality,
                    life-time

A soldier
Enslaved by the state
who pushed her and all the others they call 'citizens'
mentally, and physically,
unbearably, damagingly
but not geographically

A soldier enslaved by the state
she could not leave
where national borders were barbed wire barrier
               compounds that screamed
'You belong here!
Thou shall not pass
to the other side.
Not without a document
that tells us
     why:
that tells us
   that we say
   that you belong
     outside.
You belong here!
   Isn't that nice.
   A soldier for your state
   A soldier to the president
   of the only party there will ever be.

You cannot leave! Because then everyone will see…'

My sister lost herself,
Crossing the Sahara

Uncle at her side
        she passed over the border
in the back of a truck
crammed tight between others
each with one well-packed little bag
grasped in one hand
as the other holds on
        for dear life
        for the bumps in the Saharan sand
        for the border controls
        for the breath that they held
        for their dear life
        and for the dear life of those they have left behind

My sister lost herself, when,
crossing the Sahara,
the driver
    with hands already grasped around a fat stash of grubby cash
had a change of heart
and my sister was abandoned
to the sand
the tightly-packed little bag still in one hand
while the other flails
        with nothing to grasp
but sand
and air
and her uncle's words
            of despair
  for the lack of direction
 the lack of control

My sister lost herself

She was a soldier
trained
    like her uncle
and the five other abandonees
who stood
        beside her
          lost
            in the Sahara
where all the training and press-ups
at the barrel of a gun
came to

But by some…
            not 'miracle'
       nor 'good fortune'
   but simply being human
 Another one
    another rickety van
         across the sands
                 steering wheel in the hands of another trafficking man

They dropped their
           one
              bag
                each
           and ran

My sister was an engineer
She was an unwilling slave, a soldier to the state
who after enforced training
would stay up late
to study the principles of
structural integrity
contemporary componentry
to withstand emergencies
so that the citizens could be
  - maybe one day - free

Fences in Calais.

But my sister was a soldier
a slave too
and when the opportunity came
she knew

We met over Elsa Kidane
singing at the top of her voice
on the outskirts of… Calais
My sister - and I - lost
in yet more sand
between the dunes
in a barren, town dump, wasteland

A tiny fenced-off area
where permitted women used to hang
to avoid unknown men
and police officers' hard hands
While many more
along with lone children and fathers and granddads
remained outside:
'Désolé; we only have beds for a certain number of women whom we have already
identified.'

We found each other across the music
streaming out between a borrowed phone
held in the same fingers
that held some months before
a little, well-packed bag
now lost to Saharan desert sands

My sister lost herself,
Crossing the Sahara
that never ended
African land became European sand
tiny bits of grit
          that get stuck under your fingernails
                and never leave the sole of your shoe
                or the soul of you
                  a sol-dier
Practically enslaved by the state

Sit-ups and press-ups
          at the barrel of a gun
turned into scaling spiked fences
          an endless need to run
to dodge racist abuse, state-fed dogs
the eyes of authority, the thud of police batons
the cruelty of traffickers
                      and the cruelty of loss

doubled each time something goes wrong
each time another friend is suddenly gone

My sister was an engineer
who transformed her study of structural integrity
into late-night plots to skip the country
to scale national borders
overcome emergencies
Because my sister was a soldier
Practically enslaved by the state
by the state to which she'd come
in order to be safe

where most of those around her were soldiers too
and all the new friends, all those that she now knew,
were also trying to do what she was trying to do,
and were trapped there for weeks, months, or years,
or simply disappeared

I lost my sister,
Somewhere beyond the Sahara
We met in Calais,
but I don't know where she went after

The author

Celeste Cantor-Stephens is a scholar, musician, interdisciplinary artist and activist. Much of her work focuses on human displacement, borders, (in)equality and social change, and on the place of music within this. Celeste's work includes research into the roles of music in makeshift refugee camps, a book chapter on 'Institutionalised Abuse ... at the Franco–British Border', multimedia pieces on related – and unrelated – topics, and journalistic writing for music magazines. Celeste is a trumpet player, with projects ranging from free improvisation to klezmer. She has an MPhil from the University of Cambridge and an MSt from the University of Oxford.

And Then It Rained...
CARLA SOFIA FERREIRA FERNANDES

1950s, one way ticket to cross the Atlantic
Promises and dreams, hopes and fears
Leaving behind all that he thought was his

Warm ocean waters, new food and scents
Endless summers in that tropical land
Working long hours, his new life began

Friends with different accents
People from other shores
Some had never seen money before

And then the radio announced the rain
Where some of his friends were from
After a drought so painfully long

Immediately they headed home
Rushing to celebrate the new rain
And that they could live there once again

They left my father, still by the ocean
Waiting patiently for good news to come
From the place he always called home

Talhadas, the home village of the poem's main character which he left in the 1950s to return to only twenty years later.

The author

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More Rights, Less Justice: Tribal Communities and the Indian Republic

PRASHANT SINGH AND MEGHNA SHARMA

The recent judgment of the Indian Supreme Court announcing the eviction of over one million forest dwelling and tribal communities from their ancestral lands sent shockwaves across the world. The order was directed at individuals and groups whose claims for property rights over inhabited lands were rejected under the contested Scheduled Tribes and Other Traditional Forest Dwellers Act (2006), commonly referred to as the Forest Rights Act (FRA). As per Section 3 of the FRA, forest rights are guaranteed to 'forest dwelling Scheduled Tribes and other traditional forest dwellers.' While the Court has stayed the judgment, over one million persons from forest dwelling Scheduled Tribes continue to face a legal protection black hole in India. This article explores the marginalising effects of the claim adjudication process under the FRA and the ensuing displacement crisis affecting tribal communities in India. This article also brings to the foreground an oft-ignored kind of displacement: forced displacement resulting from denial of tenure security and land access rights of forest communities.

Introduction

Approximately 45.6% of tribal communities in rural India suffer from absolute poverty and with tribal communities constituting 47% of the entire displaced population, displacement - often resulting from infrastructure development projects - is accepted as one of the reasons for the poor socio-economic indicators (Ministry of Statistics and Information 2011; Mander 2018).

While development projects are known to induce widespread internal displacement of the tribal population in India, other lesser-known factors also contribute to displacement, but have not been subject to the same scrutiny as development-induced displacement. Eviction of tribal communities from forest areas has continued since the colonial regime, when the British government enacted the Indian Forest Act in 1927 to capitalise on timber production. The legislation empowered the British government to rescind the land rights of these communities and has been an important cause of internal displacement since then. In essence, the legislation allowed the government to declare forests as 'state property' and consequently excluded the tribal communities from their homeland. By virtue of this law, the tribal communities were turned into encroachers and were left at the mercy of the colonial government (Prabhu 2010). This law continued to serve as the legislative basis for forest management even after India gained independence. The later Forest Conservation Act of 1980, for example, did not break away from this regime, but rather maintained the Central government's supremacy in controlling forest resources (Goyal 2005).

In 2006, this legal regime changed with the introduction of the Forest Rights Act (FRA). The FRA aimed to restore the rights of the forest dwelling communities in India by empowering *Gram Sabhas*[1] to decide the nature and extent of the claim of land rights. While this law was hailed for its normative articulations, the implementation on the ground left much to be desired as tribal communities have continued to be at the risk of being displaced on account of being denied their title claims under the FRA. This article first considers the

[1] Section 2(g) of the The Forest Rights Act, 2006 provides that 'Gram Sabha' means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tola and other traditional village institutions and elected village committees, with full and unrestricted participation of women.

implementation shortcomings of the FRA before analysing its adjudication before the Supreme Court in the recent *Wildlife First v. Ministry of Forest and Environment, Government of India* case. The article ultimately finds that the implementation and adjudication of the FRA has resulted in more rights and less justice for tribal communities in India.

Lack of procedural fairness under the new regime

The FRA was enacted to correct the historic injustice done to forest dwellers through the Indian Forest Act of 1927 and the Forest Conservation Act of 1980 by securing their right over forest land. Section 3 of the FRA entitles them to forest rights, which effectively includes the right to own, hold, protect, and settle on forest lands in addition to recognising their right to forest resources and biodiversity. In essence, the FRA is a rights-based legislation which recognises the rights of communities over their forests and lays down a procedure by which these rights can be secured. The procedure has been provided under Section 6 of FRA, which appears to have accommodated due process requirements.

- Firstly, it recognises *Gram Sabha*, i.e. the village body itself, as the primary authority which decides the claims under the FRA. The Act provides a very clear verification procedure that considers statements by elders, physical evidence of houses and other residential structures, and even traditional structures, like wells to ascertain land claims.
- Secondly, it lays down a clear appellate structure to ensure a reasonable opportunity to the person aggrieved by the decision of Gram Sabha. A committee has been formed at the Sub-Divisional level, District level, and the State level. Any person aggrieved the decision of Gram Sabha may petition to the Sub-Divisional Committee and then finally to the District Level Committee. These committees are thus constituted to decide on the claims denied by the subordinate authority. The State Level Committee has also been constituted to monitor the progress of these claims.
- Lastly, the FRA ensures that at every step the claimant is given a reasonable opportunity to present his case and that no claim be adjudicated upon without his presence.

The failure of the FRA in achieving its aim lies in the fact that the due process requirements as discussed above are seldom followed. The lack of procedural fairness is a result of several institutional and structural challenges, such as a lack of political will of state governments in standing up for rights of forest citizens, a lack of coordination between the committees set under the Act, and the constant undermining of *Gram Sabha* by politicians. In 2010, a committee appointed by the Ministry of Tribal Affairs found that due to an unnecessary rush to clear cases, a large number of claims were being rejected without even measuring the land. Further, the report also stated that the claimants were not given adequate grounds for rejection of their claims. Moreover, the report highlighted the lack of representation of some sections of the communities in the Forest Rights Committees which was a clear violation of FRA (Joint Committee 2010). Due to budgetary constraints, the government has been ineffective in spreading awareness about the FRA. In the worst cases, the claimants were uninformed of the rejection of their claims, leaving them with no option to exercise their appellate rights under the FRA (Socio Legal Information Centre 2016). A report also found that a majority of the claims were rejected

as a result of forest officials'[2] insistence on documentary evidence, which is not mandatory as per the FRA (Socio Legal Information Centre 2017).

The FRA implementation has been particularly poor with respect to community rights. While it is estimated that the FRA has the potential to secure the rights of over 200 million forest dwelling communities in over 170,000 villages, it has reached only 4% of its potential (Samarthan 2012). The poor implementation of the FRA, coupled with the low awareness of its provisions among marginalised tribal communities and difficulties in understanding the procedural technicalities, has enabled the creation of a regime where the tribal population has more rights but less justice.

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[2] The term 'forest officials' here is used generically to refer to the officers of the department of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions, who form the composition of Sub Divisional Committee, District Level Committee and State Level Committee. They are appointed to these committees by the respective State Government.

Forest conservation v. Forest Rights: A false debate

The internal displacement caused by the poor implementation of the FRA had not received significant scrutiny until it finally took centre-stage on 13 February 2019, with the judgment of the Supreme Court in *Wildlife First v. Ministry of Forest and Environment, Government of India* (hereinafter referred as 'judgment'). The petitioner, an NGO focused on wildlife protection, brought forward the issue of rejection of over two million claims for exercising forest rights, as recognised under Section 3 of the FRA. The petition highlighted that no eviction had yet taken place even after the rejection of the claims. Accepting the arguments of the petitioner, the court in first instance ordered the eviction, by July 2019, of those with rejected forest rights claims. This eviction order was later upheld by the Supreme Court.

The premise of the petitioners' argument was that the forest rights

20

regime is antithetical to forest conservation, protection of wildlife, and biodiversity. It is interesting to point out here that the petitioners specifically pleaded for eviction of communities. However, the legislative scheme of the FRA provides that even in case of rejection of claims, the communities can only be disallowed from exercising the right of self-cultivation.[3] As such, the concern for forest conservation could have been effectively addressed by taking the legal recourse under the FRA, which provides for denial of cultivation rights but not for eviction. Eviction and displacement of millions of forest dwellers is not a proportionate response to address the issue of conservation.

In view of the above, it is clear that the regulatory discourse around the FRA is marred by a false dilemma between forest conservation and forest rights, leading a section of conservationists to connect the FRA implementation with environmental harm, as was raised by the petitioners in this case. Contrary to this notion, however, the tribal areas in India have seen a recorded increase in forest cover. The forest cover report credits the increase to the conservation measures undertaken by forest communities themselves (MoEFCC 2017). In 2016, 40 international conservation organisations and experts wrote to the government calling for effective implementation of the FRA, noting that 'disregarding the Forest Rights Act or undermining it will greatly damage environmental protection in the country' (Group of Indian Conservationists 2016). Researchers also claimed that the FRA 'has the potential to recognize the diversity of use, access, and conservation practices and traditional knowledge of forest communities' (Dash 2010).

The 'tyranny of distance' between India's forest dwelling communities and the Supreme Court

The Supreme Court has played a proactive role in introducing dynamism to the Indian Constitution with respect to human rights by expanding the scope of the right to life under Article 21 (Basu 2008). The judgment presented a similar opportunity before the Court to advance the cause of forest rights and review the arbitrary administrative actions that undermine the rights granted under the FRA. Indeed, in considering how the eviction order risks resulting in the displacement of millions of tribal persons, the Court could have found a violation of the fundamental right of livelihood guaranteed under Article 21.

Yet, while hearing the case, the Supreme Court was not made aware of the lack of procedural fairness that caused the rejection of most claims in the first place, as discussed in the previous section. This is because the government did not present the case of the tribal communities at the Supreme Court and tribal communities were left without legal representation. Hence, the court ruled only on the basis of the account presented by the forest conservationist organisation petitioner.

Furthermore, the judiciary erred in inferring that the statutory consequence of upholding the rejection of claims under the FRA is necessarily the eviction of forest dwelling communities. However, the provisions of the FRA are silent on the required course of action in cases of rejection of claims. This created a situation of legal ambiguity in which the Court should have, according to the rules of interpretation, inferred a meaning that upholds the rights of forest dwelling communities and not vice-versa. The case of the communities was further weakened by the apathy of the state, which did not defend the law or challenge this eviction before the court. The court's failure to recognise the lack of representation of the forest dwelling

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[3] Forest Rules Clause 12 A (8) defines self-cultivation as including activities ancillary to cultivation such as keeping cattle, winnowing and other post-harvest activities, rotational fallows, tree crops, and storage of produce.

communities is a blatant disregard of the due process of law. In its latest order, however, the Supreme Court sought to rectify the judicial apathy shown in the earlier order by asking the state to respond to the lack of implementation of the FRA. It can be only hoped that this new development will end decades of institutional impunity for these forest dwellers.

Conclusion

The violation of human rights resulting from denial of forest land rights and ensuing displacement of tribal communities still remains unacknowledged. As a constitutional court, the Supreme Court of India had the opportunity to address issues related to lack of procedural fairness. However, the argument raised by the petitioner blaming the FRA for deforestation became the vehicle of analysis for the Supreme Court. Historically, the discourse surrounding forest rights remains contested by conservationists and forest rights activists. The Court overlooked the conclusions drawn by recent studies, which highlight the role of industrial projects in deforestation rather than the exercise of forest rights by tribal communities. Going forward, the government should draft a better defence of the law during future litigation on this issue.

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'Indigenous Peoples' Rights in the Context of Borders, Migration and Displacement': A UN Study on Indigenous Migration

ANNE-CÉLINE LEYVRAZ

In July 2019, the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) issued a study on Indigenous Peoples' rights in the context of borders, migration, and displacement. This study addresses important contemporary challenges that Indigenous Peoples face throughout the world, such as forced displacement, discrimination, non-recognition, and restricted transnational mobilities, and contests the presumption of Indigenous Peoples as static and embedded groups. The content of the study and its analysis of the applicable legal framework deserves scholarly attention and could lead to increasing policy awareness on this underexplored area in migration research. Their mobilities raises conceptual and practical questions for forced — as well as voluntary — migration. As indigenous migration challenges the very dichotomy between international/national migration, it questions current legal categorisation and calls for different approaches to apprehend the existing legal framework. The present contribution discusses the legal framework applicable to indigenous migration, as developed in the EMRIP study, and pinpoints areas that still require further investigation.

Introduction

'It is important to note that many of these children speak indigenous languages (…) We are caging indigenous people', tweeted a congresswoman from the United States of America after visiting detention centres for immigrants during the summer 2019.[1] A few weeks later, the murder of Emyra Waiãpi, an indigenous leader from Brazil, and the subsequent flight of the community from their ancestral land due to a lack of security sparked international indignation (IWGIA 2019). These two examples describe different contexts but portray the topicality, diversity, and challenges surrounding recognition of indigenous migration. Despite this topicality, only limited research has been undertaken since Yesca's (2008) report for the International Organization for Migration, which tackled the causes and modalities of indigenous migration, and, importantly, challenged the portrayal of Indigenous Peoples as immobile communities. More recently, however, the United Nations Expert Mechanism on the Right of Indigenous Peoples (the EMRIP) undertook a study on migration and Indigenous Peoples ('the study' or 'the EMRIP study'), titled 'Indigenous peoples' rights in the context of borders, migration and displacement'. While indigenous migration assumes different forms and precedes both colonisation and the creation of states, contemporary indigenous migration is relevant to forced migration studies.

In this contribution, I first address how the EMRIP and its work fit within the UN human rights system and then present different forms of indigenous forced migration. Following this contextualisation, I discuss the content of the study and underline that the legal framework addresses the specificity and commonness of indigenous migration.[2]

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[1] Twitter account of Alexandria Ocasio-Cortez (consulted in July 2019).

[2] This contribution stems from an ongoing research project titled, 'Asylum and Indigeneity in the Context of Ongoing Displacement on the Ecuadorian and Colombian Border: a Legal and Anthropological Analysis'. The project is conducted by Anne Lavanchy (HES-SO HETS Geneva), Johannes Waldmüller (UDLA Quito), Camilo Eduardo Umaña Hernández (UExternado, Bogotá) and Anne-Cécile Leyvraz (HES-SO HETSL Lausanne). The views expressed in this article are solely those of the author.

However, I contend firstly that it merely lists applicable rights and does not sufficiently describe how they would apply in the context of indigenous migration; secondly that it does not explicitly differentiate binding from non-binding international norms; and finally, that it should have considered legal developments arising from outside the UN system. Alongside existing initiatives to ensure respect for the UN Declaration for the Rights of Indigenous Peoples, my article seeks to contribute to discussions of the legal framework on indigenous migration by identifying features that need further improvement and proposes possible measures to that end.

Flagging the migration - Indigenous Peoples nexus

Created in 2007 following the adoption of the UN Declaration on the Rights of Indigenous Peoples, the EMRIP provides expertise and advice to the Human Rights Council on matters related to Indigenous Peoples' rights. The study was issued during the 2019 summer session and was developed initially as part of the Mechanism's amended mandate, which requires the subsidiary body to '[p]repare an annual study on the status of the rights of indigenous peoples worldwide in the achievement of the ends of the Declaration' (Human Rights Council 2016: para. 2 (a)). The decision to address migration and displacement in the context of border control was made at the 2018 session, held in July in Geneva. The Mechanism then organised a two-day seminar in November 2018 in Thailand for member States, Indigenous Peoples, national human rights institutions, and scholars. The study emphasises the causes of migration, legal considerations of trans-border movement of Indigenous Peoples, internal migration, and calls for specific attention to be paid to

indigenous individuals in vulnerable situations (Expert Mechanism on the Rights of Indigenous Peoples 2018). Involuntary mobility presents itself as a frequent feature in the context of indigenous migration.

The multiple root causes of forced indigenous migration

Poverty,[3] structural discrimination, inequalities, and human rights violations are powerful factors for forced indigenous migration (Berger 2019). An underlying cause lies in the difficulty for Indigenous Peoples to secure legal, social and/or political recognition, and territorial sovereignty at the state level (Bellier and Préaud 2011). They endure threats, violence, and murder that may lead to the displacement of the entire community from their land (Berger 2019). This may result from predatory behaviour on indigenous land by private companies working with or without government approval, and is also related to criminality of private groups (Watts 2017). While development is responsible for mass forced displacement, eco-tourism also leads to expulsions and forced removal in different parts of the world, such as Brazil, Mexico, Tanzania, and Mexico (Human Rights Council 2019). Conflicts, forced evictions and criminalisation of indigenous human rights defenders add to the list of causes. The forced displacement of indigenous populations creates an additional layer of vulnerability and difficulty to secure human rights. Yet, the study by the Expert Mechanism does not provide sufficient legal analysis on the parameters of indigenous rights and protection mechanisms in situations of forced displacement.

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[3] As stated under paragraph 20 of the EMRIP study, 'they make up 5 per cent of the world's population but account for 15 per cent of the poorest'.

The legal framework: a mixed result

International migration law "is sometimes described as […] a 'giant unassembled juridical jigsaw puzzle, [in which] the number of pieces is uncertain and the grand design is still emerging'" (Lillich 1984, cited in Chetail 2017). The metaphor refers to scattered and disseminated norms and principles. The legal framework on indigenous migration presented in the EMRIP study also is a puzzle of sorts. While ambitious in scope, it refers to a range of relevant human rights treaties, soft-law instruments, and documents adopted by UN agencies, and only provides for an unsystematised fragment of the 'grand design'.

The commonness and distinctiveness of indigenous migration

The study accurately recalls that the existence of collective rights does not preclude the validity of traditional individualised human rights, as enshrined in international and regional treaties. Just as is the case for non–indigenous migrants, indigenous migrants have the right to seek asylum and receive refugee status. They should be protected from forced arbitrary displacement, should not be subjected to torture or inhuman treatment, and children should not be detained for reasons related to their parents' migratory status. These examples shed light on shared experiences of violence against indigenous and non-indigenous migrants during the migratory process, and recalls that the 2007 Declaration on the Rights of Indigenous Peoples should be interpreted in the light of international human rights standards. As for the distinctiveness, the study highlights the 'particularly vulnerable situation' indigenous migrants face due to the 'current context of migration involving a global pushback against human rights, political instability, weak democracies and military use' (Human

Rights Council 2019: para. 6). Yet, the call for a human rights-based approach resonates beyond indigenous migration to encompass all forms of migration among all peoples.

Additionally, States have an obligation to uphold collective rights, such as self-determination, enshrined in the 2007 Declaration on the Rights of Indigenous Peoples, as well as in the 1966 International Covenants. Self-determination is a 'foundational right upon which all other rights of Indigenous Peoples are dependent', an affirmation valid beyond a migratory context (Human Rights Council 2019: para. 10; Weller 2018).

Shortcomings and oversights of the study

The legal framework presented in the EMRIP study suffers three major weaknesses. In a way or another, they each hinder the significance, legal clarity, and practicality of the study. First, while accurate and conforming with the definition provided by the International Organization for Migration,[4] , the working definition of 'migration' referred to in the study is broad and encompasses various manifestations of this phenomenon.[5] Keeping up with this breadth, the study tackles situations of voluntary return, forced displacement—which can be induced by events such as climate-change or armed conflict—eviction from home, and labour migration. Attempts to encompass the diversity of indigenous migration should be welcomed, however, it comes

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[4] The definition provided on the website of the IOM reads as follow: 'Migration - The movement of persons away from their place of usual residence, either across an international border or within a State'. International Organization for Migration, Key Migration Terms. Available from: https://www.iom.int/key-migration-terms (consulted on November 8th 2019)

[5] The definition reads as follow: 'In the context of the present study: the term "migration" refers to all movements of indigenous peoples, internal and across international borders' (Human Rights Council 2019, n. 2).

with a drawback: the legal analysis is vague and superficial. For example, the study mentions the International Convention on the Protection of the Rights of All Migrant Workers when addressing labour migration, but fails to explain how it applies in the context of indigenous migration, nor does it explicitly state that other instruments, such as the Convention n°169, are equally relevant for labour migration of indigenous individuals (Human Rights Council 2019: para. 15). Adopted in 1989 under the ambit of the International Labour Organization, the 'Indigenous and Tribal Convention' enshrines labour rights applicable to Indigenous Peoples, whether migrants or nationals. Instead, the study mentions Convention n°169 to address cross-border migration and relocation (Human Rights Council 2019: para. 16).

Secondly, the legal framework depicted in the EMRIP study emerges as a kind of patchwork, that refers to both binding and non–binding instruments. Treaties, such as the Indigenous and Tribal Convention n°169 or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, are presented

alongside Guiding Principles on Internal Displacement and Comments from UN Special Rapporteurs. These instruments are not all legally binding, as the last two are soft in their form. Customary norms can be enshrined in non-binding instruments, and soft-law instruments can restate existing rights. It is the case of some articles of the 2007 Declaration on the Rights of Indigenous Peoples, such as norms preventing discrimination or securing land rights (Åhrén 2014; Rodríguez-Piñero Royo 2014). This should not, however, have prevented an explicit distinction between binding and non-binding instruments in order to systematize which instruments are mandatory and which instruments have a different function in the international legal order. It is not to say that soft law instruments should be discarded. On the contrary, as is the case with other human rights related topics, they cannot be disregarded as they provide practical guidance, for example through interpretative work (Chetail 2014; Saroléa 2006; Blake 2008).

Finally, the legal framework presented in the study fails to pay sufficient consideration to the rich case law of the Inter-American Court of Human Rights,

EMRIP forum held once a year in Geneva.
EMRIP (2019)

a Court which has been deciding on cases related to forced displacements of Indigenous Peoples on the continent for years. It has decided on disputes involving forcibly displaced indigenous communities and also had the opportunity to tackle the presence of non-community members transiting and settling on indigenous territory. The same criticism can be made with respect to decisions adopted by the African Commission on Human and Peoples' Rights. While case-law is only mandatory for the parties to the dispute, it nevertheless gives meaning to international norms (Daillier and Pellet 2002).

Conclusion

This contribution has discussed a recent study on indigenous migration from a legal perspective and underlined strengths and weaknesses of the legal framework presented in the study. Indigenous migration should not be conceptually and analytically disconnected from commonly understood definitions of migration, but the specificities of Indigenous Peoples cannot be disregarded. Additional legal research is still necessary to further contribute to the understanding and implementation of the UN Declaration on the Rights of Indigenous Peoples in the context of migration. Future research should also pay due consideration to existing decisions adopted by regional judicial bodies. And as research moves forward, it should also consider how indigenous migration challenges current approach to migration and mobilities and build on a legal framework that complies with their own ontologies.

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When 'Qualifying' as a Refugee Gets You Permanent 'Illegal' Status in Hong Kong

Annie Li

Debates around the categorical difference between refugees and migrants are often underpinned by the idea that refugees enjoy better protection than other migrants. However, this is not necessarily the case in Hong Kong. Advocacy for both the application of the Refugee Convention in Hong Kong alongside non-Refugee Convention forms of admission and stay needs to be stepped up to ensure individuals are offered the protection they need.

The debate about whether refugees are categorically different to migrants and so should be treated as non-migrants is often informed by the idea that refugees enjoy better protection than other migrants. However, this is not true everywhere. In some jurisdictions, refugee status severely limits access to rights.

In Hong Kong, the 1951 Refugee Convention does not apply, as China has not extended its application to the territory.[1] However, the Government of Hong Kong has a policy of giving non-refoulement protection to those that meet an adapted definition of 'refugee' under the Refugee Convention, as well as those that face risks of torture or violation of certain rights enshrined in the Hong Kong Bill of Rights (Hong Kong Bill of Rights Ordinance 2017). Generally, only persons subject to removal can apply for this protection, and their 'illegal immigrant' status remains even when non-refoulement protection is granted. Their children, even if born in Hong Kong, also inherit this irregular status.

This classification severely limits refugees' ability to access rights. Most significantly, refugees in Hong Kong have no right to take up paid or non-paid work and have limited freedom of movement. Furthermore, once a refugee leaves Hong Kong, there is no guarantee they can re-enter the city. While UNHCR may help refugees resettle to another place, as of March 2018, only four people out of 75 whose claims have been substantiated under the Refugee Convention grounds since Hong Kong began assessing claims in 2014 have been resettled (Hong Kong Immigration Department 2018). Others risk potentially being stuck in permanent illegality.

This means that, contrary to a common understanding and the principle of non-discrimination, the process of seeking refugee status can result in an irreversible situation and a significantly worse one than for those who come to Hong Kong as migrants in pursuit of employment, family reunification or studies. This differential treatment is based on the legal pathway taken for migration, which may have no correlation with whether the person is in need of protection. There are indeed people who have moved as labour migrants but who also face risks in their home countries which relate to one of the three grounds for non-refoulement recognised in Hong Kong: persecution, torture, and violation of rights. Justice Centre Hong Kong (2017), for example, found two individuals who came to Hong Kong on a work visa because they faced risks of violence inflicted by State officials or domestic violence and forced labour.

In order to enrich discussions on non-Refugee Convention forms of protection in light of the adoption of the Global

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[1] The United Kingdom did not extend the application of the 1951 Refugee Convention to Hong Kong before the handover of Hong Kong to China in 1997, and China did not extend it to Hong Kong either thereafter (See United Nations Treaty Collections, at https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003002e&clang=_en).

Compact for Migration in December 2018, the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the law firm DLA PIPER (DLA PIPER and OHCHR 2018) released a mapping of national practices of admission and stay based on human rights and humanitarian grounds. Among the ten jurisdictions studied in the mapping, Hong Kong was the only one where protection does not and will never lead to regular status.[2] While it is possible to apply for family unification, an employment or student visa in Hong Kong, the likelihood of success is uncertain as applicants are regarded as irregular migrants.[3]

The case of Rose[4] (Anderson & Li 2018) illustrates the dilemma those working in Hong Kong while being in need of protection can face. As a child from a very poor rural area in a country in Asia, Rose was forced by her father to marry his creditor as repayment of his debts. She had to work for her husband's family for sixteen hours a day and was often slapped, hit, kicked and raped by her husband. Her parents were too poor to get proper medical treatment for her so, in desperation, they borrowed money to pay an agent to arrange work for her as a domestic worker in Hong Kong. Becoming a domestic worker in Hong Kong was both a means to flee and to support her family financially. She did not know about the non-refoulement protection mechanism in Hong Kong. The fact that she came to Hong Kong on a work visa but not as an asylum seeker had no correlation with whether or not she needed protection.

Although Rose worked for more than seven years in Hong Kong, her situation was compounded by a lack of access to permanent residence. Due to the government regulations on migrant domestic workers, she could not access a permanent residence no matter how long she had worked in Hong Kong.[5] Her visa expired when her last employment contract ended and she could not prepare the paperwork for another contract in time. She was then subject to removal. While overstaying, she gave birth to a child out of wedlock and therefore felt even more unsafe to return to her country of origin. The birth of her child also made it difficult for Rose to continue to work as a migrant domestic worker in Hong Kong. Even if the Immigration Department were to issue her an employment visa after overstaying, Rose, like all migrant domestic workers in Hong Kong, would be required to live together with their employers. However, there are few employers who would host a worker accompanied by an infant. With no employment contract, Rose made a claim for non-refoulement protection, even though this claim will not lead to regular status in Hong Kong either.

As Rose's case shows, further research is needed to explore the accessibility of various migration paths and the possibility to change between different legal statuses, including in the case of labour migrants, such as domestic workers like Rose, and non-refoulement

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[2] Other than while acting as a prosecution witness for human trafficking cases. (DLA PIPER and OHCHR, 2018, p.13).

[3] Grounds for stay as regular migrants in other jurisdictions studied in the mapping include being a victim of domestic violence, coming from a country with an environmental disaster or having serious illnesses. (DLA PIPER and OHCHR, 2018, p.10, 14 and 16).

[4] This name is a pseudonym to protect the individual's identity.

[5] According to section 2(4), Immigration Ordinance, Cap. 115, a person shall not be treated as ordinarily resident in Hong Kong during any period in which he or she remains in Hong Kong as a "foreign domestic helper". This excludes migrant domestic workers from access to the right of abode under Article 24(4) of the Basic Law, which states that persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region are permanent residents of Hong Kong. Other subsections of Article 24 are applicable to Chinese nationals and citizens, persons born in Hong Kong or persons who had the right of abode in Hong Kong only before the handover in 1997, and are therefore generally not applicable to migrant domestic workers.

claimants. This knowledge can help us to better assess the protection needs and differential treatment of individuals who reside in Hong Kong under such different legal statuses. The recent study published by OHCHR and DLA Piper (2018) was a first step towards informing discussions in Hong Kong on this subject and highlighted the need to provide people, including refugees and other migrants, a regular status and the protection they need.

Crucially, instead of debating whether refugees are or are not migrants, it is integral that policymakers, United Nations agencies and civil society spend more time on advocating for better protection for all persons outside their country of origin in vulnerable situations. In addition, advocacy for both the application of the Refugee Convention in Hong Kong alongside non-Refugee Convention forms of admission and stay needs to be stepped up to ensure individuals are offered the protection they need.

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The Politics of Exhaustion: Immigration Control in the British-French Border Zone

Marta Welander

Within a climate of growing anti-immigration and populist forces gaining traction across Europe, and in response to the increased number of prospective asylum seekers arriving in Europe, recent years have seen the continued hardening of borders and a disconcerting evolution of new forms of immigration control measures utilised by states. Based on extensive field research carried out amongst displaced people in Europe in 2016-2019, this article highlights the way in which individuals in northern France are finding themselves trapped in a violent border zone, unable to move forward whilst having no obvious alternative way out of their predicament. The article seeks to illustrate the violent dynamics inherent in the immigration control measures in this border zone, characterised by both direct physical violence as well as banalised and structural forms of violence, including state neglect through the denial of services and care. The author suggests that the raft of violent measures and micro practices authorities resort to in the French-British border zone could be understood as constituting one of the latest tools for European border control and obstruction of the access to asylum procedures; a politics of exhaustion.

Introduction

Across Europe, individuals arriving with the hope of seeking international protection often face severe forms of obstruction of access to the European asylum system and procedures. Arguably a reflection of European states' attempts to appease the growing 'populist right' and anxious populations, and potentially as a reaction to the deadlock surrounding the reform negotiations surrounding the Common European Asylum System, an often unforgiving implementation of deterrence policies signals states' eroding willingness and ability to uphold their obligations under international human rights law, including the right to seek asylum. The ways in which European states achieve this obstruction of access to asylum are wide-ranging, but could be broadly grouped into three main approaches: the externalisation of asylum and migration management to non-European countries such as Turkey, Libya and Morocco; push-backs conducted without proper legal formalities and deprivation of liberty through restrictions of people's freedom of movement as well as in the context of detentions; and the denial of safe and legal routes to seek asylum in certain countries such as the United Kingdom.

In the specific case of the United Kingdom, its juxtaposed border arrangements with France (Home Office 2017) mean that safe and legal routes to seek asylum in Britain are next to non-existent,[1] and have led to the emergence of a 'border zone' stretching from Calais and Grande-Synthe in northern France to the capitals of Brussels and Paris if not further afield. Within this border zone, a violence producing Politics of Exhaustion[2] plays out, with the objective of 'exhausting [prospective] asylum seekers, mentally and physically, with the ultimate goal of deterring them from approaching Britain for asylum, or indeed other European asylum system.'

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[1] This article refers to safe and legal routes to reach the UK from other European countries (specifically, via France) in order to seek asylum, whilst not referring to resettlement schemes of prospective asylum-seekers of individuals with refugee status from other parts of the world.

[2] The concept is being further developed as part of the author's ongoing doctoral research project at the University of Westminster, UK. Situated within critical border and migration studies, the project draws explicit attention to the ethical and moral implications of European immigration control in the British-French border zone. It is one of the very few in-depth academic research efforts that have taken place amongst displaced people seeking to cross the British-French border to-date.

(Welander 2019). The article draws both on research and policy engagement carried out by Refugee Rights Europe under the author's leadership, as well as qualitative field research interviews and participant observations which the author carried out in her capacity of PhD researcher at the University of Westminster. The latter included 75 formal and informal interviews with displaced individuals and volunteer aid workers and volunteers in Calais, Paris and Brussels throughout 2018-2019, and allow for further exploration of the dynamics of the Politics of Exhaustion in the subsequent sections of this article.

The emergence of politics of exhaustion in the British-French border zone

As part of the Politics of Exhaustion, displaced individuals in the French-British border zone face a high intensity of regular evictions of living spaces, random detention, removals, deportations and dispersals, untreated health problems, below-standard living conditions, and the continuous threat or reality of violence. However, rather than seen as isolated and reactive instances of violence, uprooting and intimidation, the micro practices and measures resorted to here are best understood as forming a high-level strategic state approach aimed at preventing individuals from crossing the British border and enter the asylum system there. This has very serious impacts on the lived realities of individuals in the border zone. The concept 'Politics of Exhaustion' was first introduced by the author alongside Dr Leonie Ansems De Vries of King's College London, in the context of the Calais camp in 2016 (Welander and Ansems De Vries 2016).

The Politics of Exhaustion is made up of both overt forms of physical violence perpetrated against displaced people by police officers, as well as banalised

and structural violence[3] (Galtung 1969), including what could be referred to as 'active neglect' (Loughnan 2019) whereby state actors withdraw services and care to produce suffering. Loughnan (2019) introduced the term 'active neglect' in the context of asylum seekers at Australia's doorstep, which she defines as the removal of government support services combined with the erosion of hope and wellbeing amongst refugees and asylum seekers through unfulfilled promises and refusals. Such 'active neglect', a form of indirect violence perpetrated against prospective asylum seekers, is an inherent part of the Politics of Exhaustion, and its harmful effects are testament to the violent nature of such policies. As such, the Politics of Exhaustion is a strategic and conscious approach to mobility governance, rooted in the exhaustion of human efforts to cross certain borders. In the case of the UK, it takes shape as an extension of the British domestic 'hostile environment', exported to French territory through bilateral agreements (Prime Minister's Office 2018) and juxtaposed border controls in France (Home Office 2017) as well as vast amounts of British funding (Full Fact 2018).

While northern France has been a migratory nodal point for many decades, the Politics of Exhaustion in this border zone arguably reached its first notable peak during the existence of the so-called Calais 'Jungle' camp in 2015-2016; an informal camp built by volunteers and displaced individuals themselves, which at its height hosted up to 10,000 individuals. During this period, the politics of exhaustion mainly took the shape of large-scale evictions and a successively shrinking living space

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[3] Galtung (1969: 170) suggests that undercurrents of violence may be equally harmful: '…there may not be violence in the sense that anyone is hit or hurt, but there is nevertheless the threat of physical violence and indirect threat of mental violence that may even be characterized as some type of psychological violence since it constrains human action.' Written 50 years ago, Galtung's notion of structural and indirect violence is highly relevant to these contemporary forms of immigration control.

for an ever-growing population, as well as detention, indiscriminate use of tear gas, police violence and the obstruction of aid (Welander and Ansems De Vries 2016a; Refugee Rights Europe 2016a). In March 2016, a court ruling permitted the French state authorities to proceed and demolish the southern part of the camp, which was home to several hundred individuals, including many family units. This inevitably led to the containment of all camp residents within a much more confined space, which sparked heightened tensions and allowed for fires to spread more quickly, and generally created an increasingly difficult daily existence in the camp.

Some seven months later, in October 2016, the camp was eventually demolished in its entirety, partly flattened to the ground by bulldozers and partly going up in flame through explosive fires. Several thousand former camp residents fled the war-like scene and continued to attempt the border crossing from other nearby locations, while others were taken on coaches to French asylum reception centres across the country. A scandalous failure to ensure the safeguarding of children in the camp meant that hundreds of children were unaccounted for and were lost in the process (BBC News 2016; Welander and Ansems De Vries 2016b; Taylor 2016).

The aftermath of the 'jungle' and the continuation of exhaustion

The period that followed, from October 2016 onwards, was characterised by a sustained period of complete destitution and systematic police intimidation, which included seemingly nonsensical if not outright bizarre practices, where the absence of a camp forced individuals into hiding in small forests and woodlands in and around Calais. Repeated evictions of makeshift

Eviction of the Calais 'Jungle' continues, 2016.
Rob Pinney

living spaces, coupled with dispersals, uprooting and sleep deprivation made people's existence in the border zone riddled with exhaustion and mental health concerns. Many of those individuals who had been dispersed across France to asylum reception and orientation centres (Centres d'accueil et d'orientation, CAO) to have their asylum or family reunion claims processed at the time of the Jungle camp clearance, would start to make their way back to the Calais area in order to 'take matters into own hands' (Refugee Rights Europe 2017). During the same period, an investigation by the French administration and security forces' internal investigations departments found evidence that police has used 'excessive force and committed other abuses against child and adult migrants in Calais' (Human Rights Watch, 2017). In the same period, Human Rights Watch found that police in Calais, in particular the so-called Compagnies républicaines de sécurité (CRS), would use pepper spray on both children and adults alike, including whilst sleeping and in other contexts where they posed no threat. The same report highlighted how police officers would also "regularly spray or confiscate sleeping bags, blankets, and clothing; and sometimes use pepper spray on migrants' food and water. Police also disrupt the delivery of humanitarian assistance." (Human Rights Watch, 2017).

In January 2018, France and Britain signed the Sandhurst Treaty, which involved an additional funding commitment of £44.5 million towards fencing, CCTV and detection technology in Calais and other Channel ports. The amount complemented the previous British investment of approximately £100 million. On the occasion, then-Prime Minister Theresa May stated: 'The further investment we have agreed today will make the UK's borders even more secure' (France 24 2018). In stark juxtaposition to this large-scale infusion of additional funding for 'border security',

aid supplies and donations directed at human security saw a steady depletion due to the systematic confiscation and destruction of tents and personal belongings by police which required constant renewal of supplies at a rate that was often more rapid than incoming public donations in the warehouse run by the aid groups on the ground.

The impediment of aid work, exhaustion of supplies, and widespread sense of hopelessness in the face of destructive and unforgiving state policies would start to induce an increasing burn-out and depression amongst volunteers and aid groups (The Guardian 2017). Sustained over time, the same policies and practices have contributed to an increasingly deteriorating mental health situation amongst sleep-deprived and abused displaced people. In October 2018, a team of mental health experts on the ground noted 'clear signs of depression, anxiety and hopelessness as people get trapped in a cycle of rejection from countries across Europe and in the case of northern France, at the border, with no obvious way out of their predicament' (Lloyd et al, 2018). A few months later, in April 2019, a trauma expert stated with concern:

> 'There's a lack of sleep, degradation of humanity, people not feeling human. All of this has significant impact on mental health. [...] I think it's got worse, increasingly, worryingly.' (Anonymous interview in Calais, 24 April 2019).

Politics of exhaustion, a subtle yet inherently violent approach to immigration control

Politics of Exhaustion is a relatively subtle approach to mobility governance, compared to the more drastic and overtly illegal alternatives of mass-detention, blanket returns and refoulement. This makes this particular approach to immigration control more difficult to

challenge from a legal perspective. As such, the Politics of Exhaustion could be understood as a manner in which liberal democracies continue to both counter-act and seemingly uphold their status as law abiding nations at the same time, operating functioning asylum systems and paying lip service to international and human rights law. Equally, from a moral stand-point, the Politics of Exhaustion is propped up by the prevalent British policy and media narrative of so called 'illegal migrants', providing a moral alibi for the violent maintenance of a sealed border obstructing the access to asylum, unfolding before the eyes of their national constituencies and international watch dogs.

In sum, the concept of Politics of Exhaustion helps to make sense not only of direct physical violence in border zones, but also more banalised violence and micro practices, aiding to our understanding of the inherent role which violence plays in European countries' immigration control. Taking the French-British border zone as an example, this article has explored a range of measures and micro practices which, taken together as a whole, could be understood as constituting a harmful and violent system of contemporary European immigration control. This approach, which may succeed in appeasing the growing populist right and anxious European populations, stands in tension with states' ability to uphold international human rights law, whilst arguably adding further fuel to the now widespread toxic rightist and xenophobic discourses witnessed across Europe.

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Eight Years of Displacement: Syria's Statelessness Still Unidentified

Thomas McGee and Zahra Albarazi

While statelessness is not a new problem for Syria, the civil war has brought about additional risks and instances of becoming stateless. It has also transformed situations and vulnerabilities for those who already lacked Syrian citizenship. Greater efforts are urgently needed to understand the impacts of statelessness within post-conflict and forced displacement contexts, and as a platform for change there needs to be heightened understanding and identification of the issue. This article will outline the characteristics of the main stateless profiles, and then will go on to focus on the challenges and need for identification of stateless persons and risks of statelessness.

Introduction

In over eight years, the Syrian conflict has brought new and unforeseen challenges to the country, region and the world - as well as reshaping old problems. One such challenge is addressing the issue of statelessness.[1] Statelessness is not a new phenomenon in Syria, since the country was already home to one of the largest populations of stateless persons in the world prior to the war (Van Waas 2010; ISI 2014), with discrimination embedded in its nationality law and practice (Global Campaign for Equal Nationality Rights and ISI 2016: 5-7). However, the protracted conflict has significantly shaped the issue in two key ways: changing the nature of existing statelessness problems and producing new instances of statelessness. Looking forward, there is an urgent need to address challenges facing stateless communities and prevent new cases of statelessness.

Relevant stakeholders in the Syrian refugee context - including states - must proactively work on how best to prevent new cases of statelessness and to protect the rights of those already stateless. Unfortunately, strategic responses to address statelessness have been limited; largely due to a lack of understanding and identification of the issue. Understanding who is affected by the problem can inform strategies to combat the discrimination they face and advocate for an end to situations perpetuating statelessness in the first place. This article seeks to highlight the current gaps in identification of statelessness and suggest good practices to overcome them.

Statelessness among Syrians: historic and new profiles

Existing situations

As the two main affected groups in Syria, statelessness for Syrian Kurds and Palestinians has been the result of specific historic events – the 1962 discriminatory census in Syria's north-eastern Hassaka governorate and the 1948 *Nakba* (mass expulsion of Palestinians) respectively.[2] Both groups have faced conflict-induced vulnerabilities and new experiences in displacement contexts since 2011 (NRC and ISI 2016).

While Syria's political unrest in 2011 led the government to concede to the naturalisation of one sub-group of stateless Kurds (the *ajanib*), this action excluded another category (the

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[1] The 1954 Statelessness Convention defines a stateless person as someone 'who is not considered as a national by any State under the operation of its law': http://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf

[2] It should be noted that most Palestinians residing in UNRWA mandated countries, as well as other 'stateless refugees', are not included in UNHCR's global statistics of stateless persons.

maktumeen). The latter, and *ajanib* unable to benefit from the concessions (Albarazi 2013), generally faced increasingly restricted freedom of movement and heightened risk of detention in the early years of the conflict due to an inability to present recognised identity documents at checkpoints that were proliferating the country. When fleeing Syria, *maktumeen* and non-naturalised *ajanib* have also found themselves excluded from some formal resettlement solutions available to other vulnerable refugees in neighbouring countries (ENS and ISI 2019). Of those reaching Europe, there is a common narrative of complex legal limbo due to their statelessness.

With regards to Palestinians, their statelessness vulnerabilities are also significant. Firstly, both Jordan and Lebanon had restrictions on allowing Palestinians to cross their borders when fleeing Syria (UNHCR 2017), with only Syrians admitted, which meant that stateless Palestinians were often left stranded at the border and unable to flee (HRW 2014). Families were split as to who could and who could not enter a neighbouring country (Amnesty International 2014). Additionally, some have also found themselves without protection from any UN agency. The UN mandated organisation to provide assistance for Palestinian refugees is UNRWA. Many Palestinians who had not registered with the agency in Syria found themselves in need of this assistance once displaced, but registering with UNRWA in secondary displacement contexts is challenging if not impossible. Additionally, as Palestinians it was not possible to register with UNHCR, and therefore in practice many fell into a protection gap where they were served by no UN agency (Erakat 2014).

New cases

Meanwhile, gender-discriminatory provisions within Syrian legislation, as well as the present context of conflict and displacement are generating new cases of individuals at risk of statelessness. Women whose children are born with no legally established paternity continue to face problems in passing their Syrian nationality to the next generation. This is especially problematic in displacement or asylum contexts, since a Syrian woman cannot pass on her own nationality when the child is born outside the country.[3]

An additional challenge is the lack of access to civil registration procedures in neighbouring countries and in Syria, particularly for birth registration. Birth certificates record where an individual was born and who the parents are, so without proof of this information it may become difficult for an individual to access their nationality. In neighbouring countries, problems of access include complex procedures, lack of awareness of their workings, the need for documents that are unobtainable and government employees taking large fees for authenticating documents. This often leaves sub-groups within the Syrian refugee community at particular risk of statelessness, such as children born within female-headed households or child marriages, undocumented refugees and refugees not registered with UNHCR (NRC and ISI 2016).[4] In Syria, civil registration becomes complicated for individuals who have lived in areas outside government control. There were no NGOs or humanitarian actors working on facilitating documentation in these areas to compensate for the breakdown of governmental systems. Alternative systems were not well established (IRC 2016). This means that those who lived in these areas, and ultimately end up elsewhere in second or third waves

[3] According to Syrian Nationality Law Legislative Decree 276, Article 3: https://www.refworld.org/pdfid/4d81e7b12.pdf

[4] For good practice examples on how some of these challenges were overcome, see UNHCR (2016) In Search of Solutions: Addressing Statelessness in the Middle East and North Africa: http://www.refworld.org/docid/57dbdaba4.html. This research was generated as part of UNHCRs #IBELONG campaign to end statelessness in 10 years: https://www.unhcr.org/ibelong/

of displacement, may be completely undocumented or have documents not considered legitimate.

The challenges of being both stateless and a refugee

'Isn't it better to say I am a Syrian national but I lost my papers?' (Stateless Syrian, Greece)

The displacement of Syrians to neighbouring countries and to Europe means that the stateless population is dispersed across wide geographical areas, and under various foreign legal systems, many of which have no formal statelessness determination procedure in place. Identification of cases will help stakeholders develop strategies on how to prevent new cases and how to protect existing cases; however, this is yet to be done effectively. Obtaining reliable statistics and information about the number and profiles of stateless Syrians and those at risk of statelessness, remains notoriously difficult for a number of reasons – but primarily due to the lack of awareness and identification by those who work with them. Additionally, stateless Syrians are often reluctant to disclose their lack of nationality as a result of perceptions that this might expose them to further vulnerabilities and challenges with bureaucratic and security structures, both in Syria and when abroad.

Displacement to neighbouring countries

'We have always been maktoumeen, but now we are maktoumeen and living in another country. That means we really, really don't belong. I don't know what the future will bring for my girls.' (Khalid, Sulaimaniya, Kurdistan Region of Iraq)

In neighbouring countries to Syria there is very little attempt at identifying statelessness or risks thereof. The majority of these countries have not ratified the 1951 Refugee Convention and therefore do not carry out their own refugee determination procedure or have any legal 'refugee' status (Akram 2018). None of these states has a Statelessness Determination Procedure either. This means that the identification of these individuals is left to UNHCR, where statelessness is not always recorded. Additionally, there is sometimes a tendency, like in the Kurdistan Region of Iraq, for the authorities and refugee protection actors to opt not to distinguish between stateless and citizen Syrian refugees (McGee 2016).

While it may be argued that such an approach avoids discriminating against certain refugees on the basis of nationality status (including lack of nationality), this may simultaneously conceal the vulnerabilities of those who are stateless. These 'hidden' vulnerabilities can be activated when refugees leave that country, such as being unable to access assistance available for Syrian nationals, or if they seek to travel to other destinations (ENS and ISI 2019). To resolve this, people without nationality may seek to return illegally to Syria in the hope of acquiring documentation (possibly through bribes) or may resort to acquisition of fraudulent documents. Such negative coping strategies are known to put stateless refugees at risk.

Also, a lack of awareness and understanding of statelessness among other stakeholders means that the statelessness of many stateless refugees is ignored in response projects. For instance, many lawyers providing free legal assistance to Syrian refugees across the region have little familiarity with the main statelessness risk factors and what statelessness means in the context. Perhaps one solution here would be to have integrated teams of staff or volunteers from the host and Syrian communities (the latter being

expected to have more awareness of the statelessness problem). One of the few Syrian lawyers qualified to practise in the Kurdistan Region of Iraq explained that, 'I receive many cases from those who are stateless, and usually they feel they have been misunderstood. While I am not always able to completely resolve their legal problems, I can advise them on any available solutions within Syrian law.' Such advice must complement legal information specific to the host country in which Syrians find themselves.

Experiences in Europe[5]

One of the major concerns for stateless Syrians has been whether their status will be well understood in humanitarian and asylum systems. A number of stateless Syrians encountered during transit through Greece in early 2016 mentioned a fear that acknowledging their statelessness to the authorities might complicate their situation and reduce their chances of finally reaching refuge in northern Europe. Some stateless persons have acquired forged documents in order to travel to asylum countries (both European and neighbouring Syria) or have had them produced as they believe that their claim to be Syrian would otherwise not be considered credible. Within immigration systems, there is understandably a challenge to determine who is really stateless - so their fears are at times legitimate. Stateless Syrians have been at risk of exclusion from resettlement procedures - this for example was true in the UK's Vulnerable Person Resettlement (VPR) scheme (which later in 2017 expanded its selection criteria), and for selection from embassies as proving their legal link to their children was not possible.

Some states in Europe do not have a statistical category for 'stateless persons',

but instead use other labels such as 'persons of undetermined nationality' - further complicating identification. This means that a stateless refugee will in most cases only be viewed as a refugee, with the stateless vulnerability ignored and not addressed. Also, the idea that refugees in Europe are automatically on a path to become nationals is not always true. In Sweden and Denmark, for example, the current situation is that many Syrians only receive 'temporary protection' - with no automatic route to naturalisation (Tucker 2017).

What is needed is more expertise in identifying those who are genuinely stateless or undocumented and at risk of statelessness and it is important that protection and outreach teams are able to identify those who are stateless. Given this new reality, it is imperative that staff working with Syrian refugees and 'asylum seekers' (be they government case workers, legal assistance providers or from asylum support charities) in a wide range of different countries are well acquainted with the particular profiles at risk of statelessness.[6] Unlike other stakeholders, the affected population themselves are usually very much aware of their stateless status, and therefore a role for many of the refugee focal points in Europe and the many refugee social networking groups is to encourage the community to inform authorities of their statelessness - or worries about the risk of statelessness - once they are settled. If this begins to be done effectively, it could put growing pressure on states to take this vulnerability more seriously.

Conclusion

Syria's statelessness problem is no longer a localised and static problem,

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[5] A good source of information on Europe's response to stateless refugees is: www.statelessjourneys.org.

[6] The European Network on Statelessness's recently published Syria Country Position Paper (2019) seeks to address the lack of awareness on this issue: https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Syria-August-2019.pdf; See also the toolkit developed by NRC and ISI: http://www.syrianationality.org

Street life in Aleppo, Syria
THOMAS MCGEE

but rather a mobile issue affecting many disparate sites. From stateless persons 'stuck' in 'protective custody' on Greek islands to those seeking to prove their status within asylum appeals in Western Europe and stateless refugees in Syria's neighbouring countries, it is essential that those working with Syrians have an awareness of the multiple new risk groups of statelessness as well as the historically stateless populations from Syria. A major challenge for actors working on statelessness and assistance to stateless Syrians is the need to develop a multi-sited response, and to mainstream understanding of statelessness across actors engaging with Syrian displacement in a broad geographical scope. Identification needs to be done effectively in order to successfully prevent statelessness and protect stateless persons.

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Water Scarcity and Environmental Displacement in Southern Iraq: Perceptions and Realities

Tiba Fatli

This paper argues that climate change interacts and plays along with other factors that worsen environmental crisis and induce forced movement in southern Iraq. It makes the point that to understand and address environmental-induced displacement, scholars and policy-makers need to listen and understand the perceptions of those most impacted by climate change as their experiences differ from institutionalised narratives. It concludes by urging scholars in the field to integrate displaced people not only in understanding displacement but also in finding practical solutions to climate change and displacement.

Water scarcity and displacement

While there has been a growing literature on environmental issues and displacement since the 1970s and 1980s, there is considerable uncertainty of local perceptions of climate change, its impact on movement, and policy (Brown 2007; Dessai; O'Brien; Hulme 2007). Particularly absent in the discussion of policy responses are the opinions of people displaced by environmental issues related to climate change. In effect, the loudest voices in this conversation, supposedly about a changing environment, are those farthest removed from shifting ecosystems. Current policy approaches to climate-induced refugees are not practical and are ineffective.

My research demonstrates that local government officials and international experts remain focused on water conservation measures while displaced persons—farmers and marsh dwellers—advocate for action on climate change as a result of their displacement. To craft appropriate policy related to water-induced displacement, particularly under the threat of climate change, we must understand this issue's complexity and the different perceptions to contextualise the different factors that impact water resources, while paying special attention to the knowledge and experience of displaced people whose lived experiences often differ from institutionalised narratives on resource management. Considering their opinions may push policy-makers away from a management heavy response that preserves the current refugee regime and towards addressing the root cause of movement—climate change.

The data is derived from around 60 semi-structured interviews the author conducted with environmentally displaced families, local activists, and policy-makers in southern Iraq (refer to Map 1 and 2). The purpose of this is to provide an understanding of how those who are directly affected by water scarcity perceive the causes of the scarcity, and how officials who are working on policies related to water and the environment perceive water scarcity. These perceptions are analysed alongside data on various factors that impact water scarcity in order to identify knowledge gaps and policy-making consequences. This fieldwork examines how the gap between displaced communities' understandings of climate change and that of local policy-makers differ, thus limiting the impact of the latter's attempts to prevent further displacement. Generally, the difference in perceptions and understandings of water scarcity and displacement shows the complexity of water-induced

displacement in which stakeholders – whether displaced populations, local government officials, federal policy-makers, non-governmental organisations or international development organisations – focus on particular factors of water scarcity.

As the world is expected to reach 1.5 degrees Celsius hotter in as little as 11 years, slow and sudden-onset environmental changes such as decreased rainfall and increased heatwaves are expected to occur with increasing severity (Hoegh-Guldberg et al. 2018). Desertification, dwindling

water resources, land degradation, and drought are decreasing the size of arable land and herd size in southern Iraq, and slowly making parts of the region inhabitable and difficult for traditional livelihoods. These weather events, Jane McAdams argues, form 'push' factors for farmers and animal herders in southern Iraq to migrate, largely within the country, displacing people permanently. Climate change does not alone produce water scarcity; it interacts with political and internal factors that continue to exacerbate the water crisis in the south of Iraq and force people to move (Mayer 2018).

Map 1. *(left)* Fieldwork sites - each of the pins represents a location of fieldwork site with community members

Map 2. *(bottom)* Water crisis by location in southern Iraq (IOM 2018)
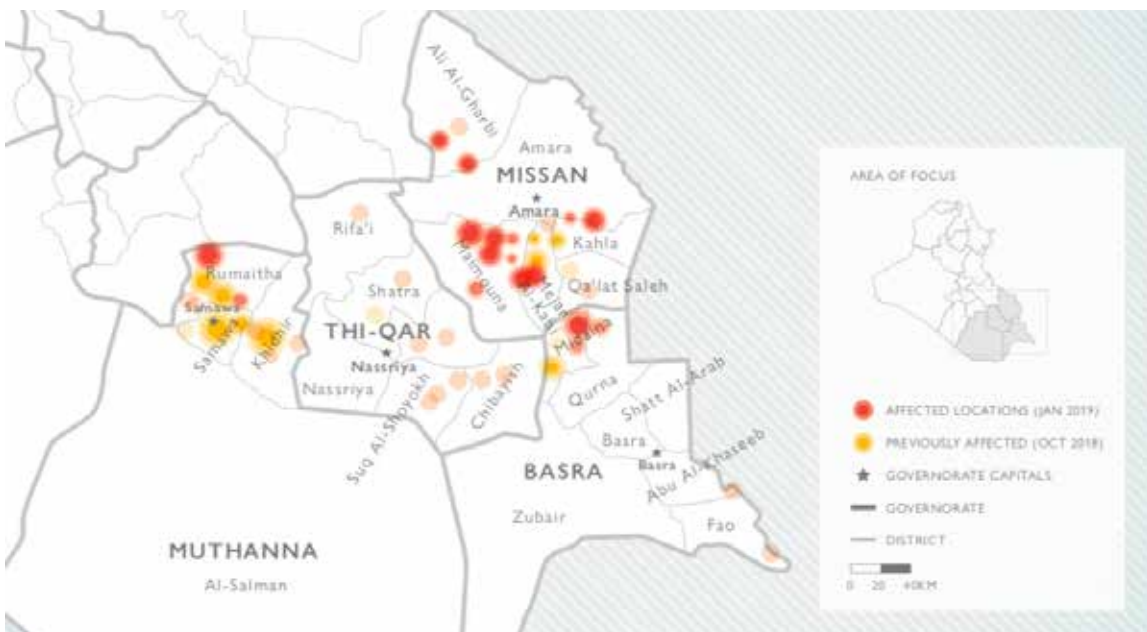
A continuing history of environmental displacement in southern Iraq

Throughout contemporary history, water problems have played a role in the forced movements of Iraq – a country of 40 million people (World Bank 2019). Eight years of war with Iran, the Gulf War, and decade-long sanctions in the 1990s severely damaged Iraq's water systems (Nagy 2001; GLEICK 1993). The Ba'athist government's extensive and profound campaign draining 90% Iraq's marshes further severely impacted Iraq's water resources (Azzam et al. 2004). Environmental-induced displacement during the 1990s, however, was temporary compared to the current displacement. The main source of water was intentionally diverted in 1990, which resulted in the displacement of the majority of marsh dweller, who were later able to return to their land post 2003 when the marshes were restored (Curtis et al. 2006; Wetland International 2016).

Post 2003, severe weather conditions worsened Iraq's water crisis. Failure of adequate water services was compounded by a severe drought in 2007, significantly hindering Iraqis' access to water (IOM 2012). Those who could not adapt to the increased scarcity, find alternative livelihoods sources, or afford to buy water were forced to move. In 2007, the International Organisation of Migration (IOM) reported that a decline in safe drinking water and sustainable water supplies coupled with the 2007 severe drought forced 20,000 rural inhabitants in southern Iraq to leave their agricultural communities in search of water. This driver of displacement in Iraq happened in a setting where many Iraqis were being displaced following the 2003 US occupation (Sassoon 2008). Meanwhile, 5,347 families fled southern Iraq citing water scarcity (IOM 2019). The drivers of displacement were compounded by damaged infrastructure, loss of economic opportunities, and pressure of dwindling natural resources. Iraqi forced displacement was not only a product of the insecurity in the country, but also a result of not being able to access basic services, particularly access to water (FMR 2007).

In the past year alone, water-induced displacement in southern Iraq has increased by almost 50%; a total of 5,347 families have been displaced so far (IOM 2019). Thi-Qar governorate is the most affected by water-induced displacement, which as McAdam predicted, is largely internal displacement. Of those that IOM is tracking, around 79% of families were displaced to urban areas (2,790 families) with only 21% to rural areas (757 families) (IOM 2019).

My fieldwork reveals two types of water-induced displacement in Southern Iraq. First, farmers with longstanding tribal claims to land sell their farms and move to urban centres as their lands become not arable. Second, nomadic marsh dwellers are no longer able to rely on the wetlands to meet their livelihoods; their buffalos die, fish populations collapse, and water becomes scarce and polluted. And while internal movement within the wetlands has long characterised the lives of marsh dwellers, communities view their current movement as 'forced' and permanent.

Beyond these generalisations there are many adaptation strategies as people seek to remain in their homes. Farmers bought buffalo and some marsh dwellers worked the land. However, I heard an overwhelming number of stories of families who had tried both and were packing up anyway. The permanence and significance of these internal migrations is illustrated by two quotes my informants shared. One farmer said 'we don't sell our land.' A marsh dweller said 'when our buffalo die, we die.' Unlike displacement in the 1990s—neither group will return anytime soon. As Brown argues, migration is not the first response to climate change, other non-climatic factors interact with and worsen existing problems before people decide to move (Brown 2007).

Local perceptions of causes of water scarcity

There are three main perceived causes of water scarcity and displacement within southern Iraq among local government official, farmers, and buffalo breeders that were stressed throughout the fieldwork. First, marsh dwellers and farmers heavily stressed environmental factors as a cause of water scarcity and displacement. Their main grievances and perception of the catastrophic state of water in their homeland is closely linked to the lack of rainfall and necessary evaporation, and extreme heat waves. There were four years of severe droughts between 2005 and 2017 that were consistently cited throughout interviews: 2005, 2008, 2015, and 2017. These drought dates were identified by marsh dwellers during fieldwork and corroborated by data gathered from the Ministry of Transportation (see Figures 2, 3, 4 and 5). For displaced people and those on the verge of displacement, these environmental changes constituted a direct and obvious cause that was often characterised as being 'unprecedented' and 'unsolvable', and 'irreversible'. Buffalo breeders and farmers who have resided within southern Iraq their entire lives understand the changing climatic conditions as a regional phenomenon occurring not just within the state boundaries of Iraq but beyond as well.

Indeed, southern Iraq experienced its hottest summers and the worst droughts in the years 2007, 2008-2009, 2014-2015, and 2017 (Barlow et la. 2016; Barlow et la 2015; Chulov 2009; Pearce 2009). This impacted irrigation seasons, led to an abandonment of farmlands, and killed animals in the region. Beginning in 2008, Iraq experienced significant increases in the length of dry seasons, substantially decreasing the period of time during which the rangelands are grazable. Farmers have coped by increasing importation of water and feedstuffs and decreasing their herd

sizes (Evans 2008). Since 2012, of Iraq's 28% arable land, 1,000 sqm was lost each year to degradation. Meanwhile, 39% of Iraq's surface was estimated to have been affected by desertification, with an additional 54% under threat (Webrelief 2012). IOM found that in 2012, 40% of Iraq's total cropland had suffered a significant reduction in productivity and livestock was devastated (IOM 2012).
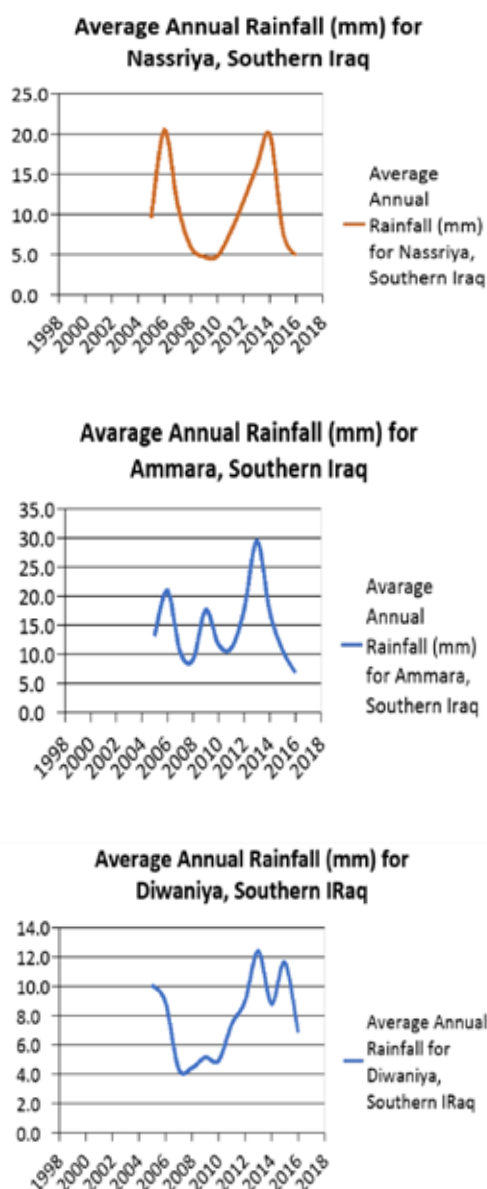
Figures 1, 2, and 3. Average Annual Rainfall in Fieldwork Governorates as recorded by the Meteorology and Seismic Monitoring Centre Iraq's Ministry of Transportation that the author collected during fieldwork.

Maximum Temperature between 2005-2016 in Celsius for the Month of July, Nassriya, Southern Iraq
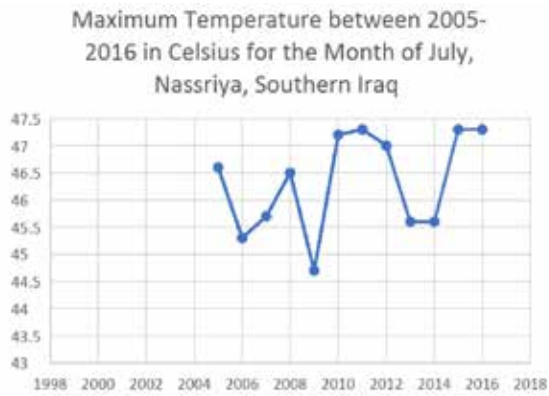
Figure 4. Average Annual Rainfall in Fieldwork Governorates as recorded by the Meteorology and Seismic Monitoring Centre Iraq's Ministry of Transportation.

Second, local government officials in all field sites stressed the impact of dam building outside of Iraq's borders, which they perceived to be related to Turkey and Iran's control of the upstream water flow of transboundary water resources. While officials downplayed or outright rejected the implication of climate change, they frequently highlighted international factors in light of aggressive, politically driven Turkish and Iranian development practices that are, thereby advocating for a regional water management agreement. Displaced farmers and marsh dwellers, however, conceptualised the construction of large infrastructure projects as a response to regional climate change and a form of adaption. They understood Turkey as preserving water resources to adapt

to climate change, albeit not being as vulnerable as Iraq.

The annual discharge of the Euphrates and Tigris Rivers has been in steady decline and the discharge is predicted to be reduced by 9.5% by 2040 (Bozkur et la 2013). Water flow has severely impacted southern Iraq. Upstream construction projects have increased since the 1960s, contributing to the reduction of the flow of the two rivers by approximately 80% (Wilson 2012). Iraq and its neighbouring countries have a long history of tensions over dam construction and failed water agreements (Aysegül, Tugba 2014). These tensions are once again coming to a head as the entire fertile crescent is threatened by warming climate (Behrooz 2004; Financial Tribute 2017).

Map 3. Dams on the Tigris and Euphrates River Basin (Homles 2010).

Third, Iraqis cited internal governance and mismanagement of water services. The exact nature of their issue depended on their location, geographically—along the course of rivers—and socially. Marsh dwellers and farmers raised particular issues with not receiving their fair share of water. For them, this violates the annual water distribution plan that is issued on a yearly basis by the Ministry of Water Resources. This leaves the 'southern region in general and the marshes in particular with the last drop of the rivers' (Interview with marsh dweller 2017). Nonetheless, displaced farmers and marsh dwellers acknowledged and sympathized with those who 'impinge' on others, who use water pumps to take more than the quota allotted to them by the federal government to meet their water needs given the scarcity of water (refer to Figures 7 & 8). Thus, while communities acknowledge that internal management of water resources is an issue, they perceive it as an unintended consequence of climate change and its impacts on water scarcity. Policy-makers, on the other hand, perceive 'impingement' or unlicensed water pumps as 'water theft'. Water scarcity was understood as a political matter of internal governance failure, with water shortages experienced only during the dry season, rather than an issue of climate change. For them, the largest factor in seasonal water shortage is unequal distribution of water resources between and within governorates and the lack of innovative irrigation techniques in Iraq, deeming Iraqi farmers 'lazy…uncivilized and [too] inept to learn new methods of irrigation' (Interview with local official 2017).

TOP: Impingement: an unlicensed pump taking water from a canal in Al Qadyysiah.

BOTTOM: Southern Iraq's water management infrastructure has not yet fully recovered from the dual threats of war and climate change. Many canals have been destroyed and the canals that do exist are unmaintained and hold little water.

These photos were taken during fieldwork on climate change and displacement in southern Iraq. At the time, winter of 2017, the area was going through a growing and harvesting season. Farmers and marsh dwellers, however, were living through water scarcity; there was not enough water from Iraq's two main rivers or rainfall to water the farms and the quality of the once fertile land was deteriorating. The images present a time where marsh dwellers and farmers had no choice but to move to adapt to climate change. These images show the scarcity of water and impact on agriculture in Iraq's farmlands in some parts of its southern governorates, the lack of water in the once flourishing wetlands of Iraq, and the impact on fishing, buffalo breeding, and farming.

Towards a just policy approach

Current policy-making on climate change and displacement is exclusionary. It has not attempted to include those most impacted by climate change in the discussion, nor does it address the root causes of environmental-induced displacement (Dehm 2018). The two most often discussed solutions to environmental-induced displacement, a new legal regime for climate refugees or expanding already existing migration policy, do not address the issue at its roots: climate change. Both can potentially create another exclusionary international migration governance regime, akin to the 1951 Refugee Convention, and do not have the capacity of addressing grievances of current and anticipated 150 to 300 million climate-displaced people in five years (Chimni 1998; Gemenne 2011). According to UNHCR figures, out of the current 70.8 million forcibly displaced people worldwide, only 25.9 million are recognised refugees and have international protection under international refugee law. UNHCR, the UN agency mandated to provide international protection to refugees, carries out refugee status determination procedures largely in the global south. Adding environmentally displaced persons to this system is beyond the organisation's legal mandate and capacity. On the other hand, a new global regime, as Jane McAdam argues, will not 'solve' the humanitarian issue due to conceptual and pragmatic difficulties (McAdam 2011). Perhaps, more importantly, drafting a treaty necessitates defining who falls within and outside of the scope of application of a movement that has not been fully conceptualised and understood.

Based on my findings, those closest to their changing ecosystems have the most profound understanding of the complexity of the issue on both a local and regional level and should be included in a participatory policy-making. Policy-making on both a national and international level needs a community-based policy approach. On a domestic level, displaced Iraqis are demanding inclusive development and participatory approach to national water governance (this can be in the form of public forums, representations in local councils, being included in the annual water management plan). The realm of policy-making on an international level is limited. Displaced people in southern Iraq highlight the finality of climate change, and that to address their displacement is to address the warming climate. As such, international organisations, policy-makers, and governments have to approach migration and environmental policy in light of anthropogenic climate change; they need to advocate and set in place equitable and fair environmental policies that place regulations on the extractive world economy that treat nature as a finite resource.

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Remembering the Camps: Portuguese De-Colonization, Competing Colonialisms in Mozambique, and Deportation to India

Nafeesah Allen

Since the 15th century, Mozambique has had a sizeable population of residents from the Indian sub-continent (herein referred to as Indo-Mozambicans). In reaction to Portuguese de-colonization in India, the African colony became a theater for forced migration and coerced citizenship articulation. The 1961 end of the Portuguese empire in India triggered transformational shifts in Indo-Mozambican migration and identity patterns. This paper briefly summarizes that history and presents recently recorded narratives from those who were interned, deported, and left behind as children. Their recollections of the camps trace layered legacies of colonialism which affected different identity groups during the de-colonization process. Local differences emerged among Indo-Mozambican merchants of different nationalities and religions. Those sub-identities and intergroup rivalries persist today.

Introduction

From 2014 to 2017, I conducted doctoral research in Maputo to identify Indo-Mozambican (Mozambican residents of Indian-subcontinent origin) layers of migration and identity that emerged in reaction to geopolitical shifts in the Indian Ocean and Lusophone worlds. Twentieth century migration, both voluntary and involuntary, was an ethnographic entry point to explore agency, citizenship, location, and belonging in Mozambique's national context. In controlling the identity group (Mozambicans of Indian-subcontinent origin), geographic space (in Lourenço Marques before 1974, named Maputo after 1975), and temporal lens (1947-1992), I found that four historical punctuations triggered migration and ethnic identity formations among Indo-Mozambicans: first, the end of the British empire in India and the subsequent partition of India and Pakistan in 1947; second, the end of the Portuguese empire in India, with the annexation of Goa, Daman (also spelled Damão), and Diu (also spelled Dio), in December 1961; third, the independence of Mozambique from Portugal in 1975; and, finally, the

civil war of Mozambique from 1977 to 1992. Oral narratives from Maputo today illustrate these punctuations of forced migratory experiences that splintered the larger Indo-Mozambican community into smaller sub-identity groups and cultivated intergroup conflict.

When I began fieldwork, I did not know much about Portuguese colonial history. Thus, my initial research was biased towards Anglophone colonial history. I expected British colonial independence and self-rule movements to be causally linked to Indo-Mozambicans' use of migration as a survival tool. Specifically, I anticipated that the creation of Pakistan in 1947, the independence of India in 1947, the founding of Bangladesh in 1971, and the expulsion of Asians from Uganda in 1972 would all prove deeply relevant to Indo-Mozambicans' memories of the 20th century. During my fieldwork, however, I learned that British markers were far less relevant than Portuguese ones. The most important of these markers was the end of the Portuguese empire in India, with the de facto Indian annexation of Dadra and Nagar Haveli in 1954 and the subsequent annexation of Portugal's remaining Indian enclaves in December 1961.

This article offers oral narratives of current Maputo residents, who experienced this de-colonization movement as children through the lens of Portugal's retaliatory internment of people of Indian and Pakistani-origin in Mozambique. Those children are now elders and I consider them as co-researchers. In my dissertation, memory contested colonial archives, a body of primary source knowledge typically biased to de-legitimize the lived experience of the colonized. Here, however, I focus exclusively on oral narratives as valid, primary source data; much in the same way that researchers prioritize (often flawed) written records. For example, I preserve respondents' use of the term 'concentration camps' to describe their internment sites, because everyone who experienced internment referred to it this way. Methodologically, this work offers complexity to South-South studies (by using colonial and colonized children, cum adults of various political positionalities) to re-examine post-colonial and heritage studies. The names in this article are all pseudonyms with one exception. Salim Sacoor, a vital collaborator, consented to use of his real name and to report on his family business, N.M. Sacoor, a shipping company deportees used to return to India and Pakistan.

A brief history of de-colonization, competing colonialisms in India and Mozambique

In response to Portuguese de-colonization in India, Mozambique – then, a Portuguese colony—became a theater for forced migration and coerced citizenship articulation. Shortly after British India gained independence in 1947, India's independent government raised with Portugal and France the topic of integrating their colonial enclaves into liberated India. Hostility increased as Portugal repeatedly refused to discuss the integration of Dadra, Nagar Haveli,

Goa, Daman, and Diu (Da Silva 1976: 50-52). In 1954, India invaded Dadra and Nagar Haveli; India's blocking Portugal's access to these landlocked enclaves triggered de facto annexation to India. In December 1961, the Indian military launched 'Operation Vijay,' annexing the three remaining enclaves. Despite Indian reports that Operation Vijay had less than a handful of causalities, Diogo Simões Roque Moço (2012: 55) reported that Portugal's military police calculated 1,018 people as "dead, injured, or disappeared." Countermeasures were implemented across the Portuguese empire, but none more than in Mozambique. The 1963 edition of *Africa Today* reported that 15,000 Indians were arrested or interned throughout Mozambique (Anon. 1963: 12-13). From N.M. Sacoor records, I found that between 1962-3, over 2,400 Indo-Mozambicans boarded ships to depart the colonial capital of Lourenço Marques for Pakistan and India; most were Indian-citizen deportees and their dependent children of various citizenships (N.M. Sacoor, Lda. Business Records).

This decade-long escalation is often minimized to the gross misnomer of 'Goan independence'. While there were certainly people who preferred annexation to India over colonization by Portugal, there is strong evidence that Portuguese colonial subjects in India wanted self-rule. Goan-origin interviewees told me the use of the terms 'liberation' or 'independence' was inaccurate and offensive; it was annexation after invasion. Popular sentiment among Goan Mozambicans was that India's idea of liberation was an imposed and unwelcomed neo-colonialism. They mourned their connection to Portugal, though some did not agree with Portugal's retaliatory deportation of Indian passport holders from Mozambique. Collectively, these local histories of iterative self-rule movements and imperfect independence counter celebratory post-colonial metanarratives of African and

Asian solidarity; further, they raise the possibility that once-colonized countries can become hegemonic themselves.

The generation that still remembers the camps and the ships are aging; the following sections capture their childhood stories of family, factionalism, and forced migration. These narratives offer a glimpse into the memories of detention, deportation, being left behind, and inter-group rivalries. The 1961 invasion of Portugal's colonies on the Indian sub-continent splintered the larger Indo-Mozambican community into sub-identity groups and cultivated intergroup conflict that previously did not exist, but persists into the present day.

Detained: Portuguese-citizen child of Muslim parents

Though she was just three or four when she went to live in a camp in Matadouro, in downtown Lourenço Marques, Ibtihaj remembers the camps. While her biological mother was Mozambican, Ibtihaj was raised by her stepmother from Pipodara and her father born in Ghandar—both Muslim Gujaratis and Indian passport holders. Ibtihaj and her husband, Saadiq, recalled the camp:

Ibtihaj: It was in the railway station… I stayed in the concentration camp for two or three months with my parents, but they stayed there longer. We [Ibtihaj and her brother] had to leave, because we had Portuguese nationality. We were born here in Mozambique… I think [my parents] stayed five or six months… Since they had Indian passports, they did not want to go to India because all of the Hindus were being returned, no? Well, all Indians…

Saadiq: But those who were Portuguese stayed. Because her father and step-mother opted to be Portuguese, they ended up staying [in Mozambique]… [1]

Me: There wasn't any violence?

Ibtihaj: No, I am not going to lie. I didn't see violence… At that time, I did not see violence. We had food… We had military guards who protected us. Each of us who were interned had a military guard. So one group stayed one week and then left. Then came another group, like that, successively… When it came time for Muslims to fast, many Muslims here helped and sent food to those of us interned…We weren't mistreated or anything. We also had visiting hours, so family members could come and converse openly. We were free in there, but we couldn't leave whenever we wanted (Ibtihaj and Saadiq, personal interview, October 2015).

Deported: Portuguese-citizen child of Hindu parents

With her daughter's English translation assistance, Rama, born in 1952 in Lourenço Marques to Hindu Gujarati merchant parents, responded to my detailed research questionnaire about Indo-Mozambicans' cultural and assimilation experiences in Mozambique. Rama explained that her father first immigrated to Mozambique in 1942 "because [he] had relatives in Mozambique. That's one of the reasons and he saw good opportunity for business… He liked Mozambique, but had to leave because of the [1961] war. [He] was forced to leave by the Portuguese government

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[1] Though it went unexplained at the time of interview, research shows that Muslims, like Ibtihaj's parents, obtained Portuguese or Pakistani citizenship to avoid deportation. These citizenship choices were not available to Hindus, who had little recourse against deportation proceedings.

back in Lourenço Marques" (Rama, Questionnaire, 2015). She remembered her family's stay in a camp in Matola, a suburb of Lourenço Marques, before being deported in 1961 to their ancestral village of Porbandar, Gandhi's birthplace:

> *This year the colonist country Portugal had made an agreement with the Indian government that if Portuguese had to leave India-Goa, so would the Indians living in Lourenço Marques leave their country. I was only nine years old and was dependent on my family. Both my parents were Indian and therefore I had to leave the country. We were force [sic] to live for six months, before going to India, in a secure place/building by the Portuguese government. Thereafter, we were directly deported to India in a ship. We reached India in twenty-two days. Our house in Lourenço Marques, every property my father owned, was sealed and taken by them (Rama, Questionnaire, 2015).*

Intergroup rivalry among those left-behind

Throughout my research, Hindu Indo-Mozambicans asserted that Muslim Indo-Mozambicans profited from the deportation of Indian citizens. Joana Pereira Leite and Nicole Khouri's 2013 in-depth study showed that Ismaili Muslims took loans to purchase confiscated businesses at auction, suggesting that the Goan crisis, and the subsequent expulsion of Hindustani merchants created new business opportunities for those who managed to stay behind in Mozambique. They write that in fact '(…) oral sources outside of the [Ismaili] community attest that it was at interesting prices that some Ismailis acquired establishments that had belonged to Indian citizens, who had been forced to abandon the colony' (Leite and Khouri 2013).

Deni is the Lourenço Marques-born son of a Hindu tailor, who came to Mozambique in 1920. Deni was seventeen years old when he and his brother were left behind, after his parents and younger siblings were deported to India. He recalled:

> *Deni: [My parents] stayed almost three months in the concentration camps, until they regularized the situation… Here there were two factors: there were Indians who were Hindu and Muslims. The Muslims were lucky that time. The Embassy of Pakistan gave them passports.*
>
> *Me: In 1961 and '62, they were changing their passports?*
>
> *Deni: Yes, that's why they stayed here. We [Hindus] were all kicked out. The Portuguese didn't know who was Indian or Muslim. The Muslims put up signs with the Portugal flag in all of their homes and stores to symbolize that they were friends of Portugal. This was to distinguish between the Pakistanis and the Indians. We had to stay in the concentration camp until they sent us away. Each person had to buy their own ticket back to their country. Many people did not have money. The little that they had was pooled together and they helped each other to buy tickets… It was a cargo ship that had sleeping quarters. The trip took twenty-eight days… The Muslims just laughed. They bought the majority of the Indian stores. They became more privileged. (Deni, personal interview, July 2017)*

Who's boarding the boats?

No one knows exactly when N.M. Sacoor, the shipping company deportees used to return to India or Pakistan, was founded, but Salim Sacoor, the current

owner of the company, guesses it must have been in the 1920s. His Muslim grandfather (likely originally from Gujarat), Aboobakar Suleman, fled to Mozambique from South Africa and got a job with the company. For reasons that are still unclear, the owners left the business to Salim's dad (young Sacoor) around 1947. N.M. Sacoor eventually became the local vendor for the British India Steam Navigation Company. When Portugal ordered all Indian citizens be detained and deported from Mozambique, Salim remembered that deportees came to his father to purchase ship tickets:

> *Panic spread throughout the city. Policemen broke into the houses and shops to look for those with an Indian passport, so they could be arrested and taken to a concentration camp, located near the C.F.M. [the train station in Lourenço Marques]. Then came the expulsion order from Portugal, so the race was tremendous for the purchase of tickets at N.M. Sacoor. And purchases were made standard, regardless of the friendship they had with Young Sacoor when the order was implemented (Sacoor, personal interview, 2018).*

Salim did not remember how many deportees bought tickets, but my review of N.M. Sacoor records showed that approximately 2,469 people took the S.S. Karanja and S.S. Kampala from Lourenço Marques to India between January 1962 and July 1963. The largest of these journeys were the August 1962 voyage of the S.S. Kampala with 628 ticketed passengers and the January 1963 voyage of the S.S. Karanja/ Sirdhan with 1550 ticketed passengers. The timing and scale of these departures are congruent with oral histories that confirm that deportees waited months before receiving official deportation orders and then they waited again in internment camps for three to six months, before

paying their own fare on passenger ships to comply with the deportation order. Throughout my research, I found that N.M. Sacoor was the only passenger ship with a concession to travel from Lourenço Marques to the Indian-subcontinent when deportation orders took effect. While I cannot be certain that all of the Karanja and Kampala's 1962-1963 passengers were deportees, I hypothesize that the vast majority of them were.

Conclusion

It is counter-intuitive to fathom that an Indo-Mozambican Muslim merchant, representing a British company, directly profited from Portugal's deportation of Hindus back to their native India. Yet, ethnographic research about those directly affected by 1962-63 internments and deportations revealed the normalcy of such stories; new fault lines of identity and nationality emerged in Mozambique, in reaction to the multi-layered and protracted de-colonization processes on the Indian subcontinent. Across the Indian Ocean, competing British and Portuguese colonialisms (and their layered legacies of post-colonialism) resulted in local rivalries among expatriates who had previously regarded one another as countrymen.

Figure 1. N.M. Sacoor company records: Postcard of the S.S. Karanja (Photo taken by the author, 2017)

Figure 2. N.M. Sacoor business records: Postcard of S.S. Kampala (Photo taken by the author, 2017)

Figure 3. N.M. Sacoor Business records: Page 15 of 15 listing passengers on S.S. Kampala's Aug 1962 voyage (Photo taken by the author, 2017)

Figure 4. N.M. Sacoor Business records: Page 12 of 38 pages of 1550 passengers on the S.S. Karanja/ Sirdhan voyage of January 1963 (Photo taken by the author, 2017)

The author

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Reflective Practice and the Contribution of Refugee Researchers to Critical Understandings of the Refugee Integration Process

VEYSI DAG

How does the positionality of refugee researchers and the research subject of refugees interact in the process of data collection? The reflective research practices of refugee researchers address the broad spectrum of questions that concern the researchers' ethics, objectivity and the insider and outsider dichotomy in the process of data collection. This piece argues that the insider- approach, positionality and self-reflection of refugee researchers are crucial in the process of the data collection and analysis to produce critical knowledge on the integration process of refugees. Their research practices reveal that the refugees are not only the object and source of the data, but also producers of the critical knowledge. Based on six months of fieldwork, 230 in-depth interviews with newly-arrived Kurdish refugees and Kurdish diaspora leaders as well as participant observations in five urban and twelve rural cities in Germany, Sweden, Denmark, Austria, France, and Italy, this paper sheds light on the reflective role and contribution of refugee researchers in the production of critical knowledge for decision makers and the general public on the role of diaspora associations in the process of escape, settlement, and integration of recently-arrived Kurdish refugees.

Introduction

'[W]hile calls for radical changes to "You are not the first person who comes to interview us. We share our experience with researchers, but nothing happens because we believe that they do not present our problems or make our problems visible. We have lost our faith in humanity because we lost our families, home and now ourselves. We feel isolated and ignored. We are constant refugees in exile since we escaped from Syria because of war but we are also looking for a way to escape from the challenges that we face in connection with the paperwork, bureaucracy, isolation, uprootedness and lack of understanding in this country!"

These words belong to members of Kurdish refugee groups that I interviewed in different cities. They express their frustration about researchers that fail to bring up refugee grievances rooted both in the homeland and in new societies.

Following my engagement with Kurdish refugees, I realise that these statements also reflect my own previous experience of being a refugee; I was tortured and jailed in Turkey and lived permanently in fear. I was anxious about being captured and deported while seeking to escape to a safe country behind a border, where I was forcibly cut off from my homeland. This status has not changed as I am willing but unable to go back to my homeland in Turkey, but I fear that I would likely face persecution, torture, imprisonment and perhaps even death due to my critical stance towards the Turkish regime. Due to my refugee background, I have also often faced challenges and felt a lack of recognition, support and opportunities as a researcher, even though I have been awarded a PhD in Germany. This has occurred despite my legal status as a German citizen, my academic education, my multi-lingual social status, and my freedom of mobility.

My experiences, which are rooted both in my homeland and in Germany, have now become the field. I place my experience in relation to those of the

Kurdish refugees I have interviewed, as an object of study. These memories of suffering transgress space and time in my life and constantly come up in my dreams, during conversations with other refugees, and in my social interactions. These experiences connect me with the refugees I have interviewed, with the homeland, and with friends who have been tortured, disappeared or had their lives taken in Turkey. The connection between my experience as a researcher with a refugee background and the experiences of recently arrived refugees with precarious status leads to two questions: What types of impact has my research on Kurdish refugees had on me personally as a researcher? How does my positionality as a Kurdish researcher with a refugee background have an impact on the data interpretation and analysis that aims to acquire and produce critical knowledge on refugees? In answering these questions, I must consider the decisive role I play as a refugee researcher in producing knowledge on refugees for decision makers in the field of migration and refugee integration. My approach to this research topic is therefore not neutral, but is shaped by my subjective experiences, biases, and normative believes. Yet, my positionality as a researcher with a blurred outsider-insider view is crucial to my interpretation of the knowledge I have gained. While objectivity in research should typically be valued, I argue that through bringing in my own position as a refugee researcher, I can contribute to a deeper understanding of the importance of self-reflectivity in field research and also bring a critical perspective to established discourse on the integration of recently-arrived refugees.

Research on Kurdish refugees: The context of the study

In 2019, I embarked on ethnographic fieldwork on the function, role, and politics of pre-established Kurdish diasporic associations in European cities. My research focused on processes of reception, incorporation, and settlement of recently arrived Kurdish refugees from Iraq, Syria, and Turkey since the 'European refugee crisis' of 2015. It also examined the relationship between diasporic associations and recently arrived refugees, as well as the approaches of both the diasporic associations and the refugees toward local and national authorities. In the context of this fieldwork, 235 in-depth interviews with both newly arrived refugees and diaspora leaders were conducted alongside focus group discussions and participant observation across 17 European cities.[1] The research revealed a wide range of challenging experiences rooted in both the homeland but also in the process of encountering bureaucratic obstacles as a refugee, such as paperwork and regulations. In addition, refugees encountered a lack of understanding and social isolation during the process of adapting to their new environments. The aim of my research was to understand and explore the role of Kurdish diasporic associations as part of a larger study of multi-scale forms of integration governance[2] in Germany, Sweden, Austria, Denmark, France, and Italy.

The insider-outsider perspective

Subjects of investigation in this research discussed 'push-factors' such as ongoing violent conflicts, political persecution, and homeland politics, as well as the personal impacts of various factors that emerge in the integration process in new countries. These factors included: their asylum status,

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[1] Berlin, Munich, Landshut (Germany), Stockholm, Malmo, Lund (Sweden), Bornholm (Denmark), Salzburg, Vienna (Austria), Paris, Nice, Antibes, Cannes (France), Ventimiglia, Rome, Grosseto, Bari (Italy).

[2] My field research took place from March to August 2019 as part of the European Union-funded Horizon 2020 project on 'Migration Governance and Asylum crisis' (MAGYC).

bureaucratic and language obstacles, social isolation, and a general lack of practical assistance in integration-related areas.[3] One of the aims of the research project was to examine these factors from the viewpoint of refugees and provide decision makers, scholars, and the general public in receiving countries an insight into the refugees' perspectives. I draw on my own experience of being a refugee and having suffered from a painful integration policy, which I experienced as being one-sided. In many cases, the political and institutional actors engaged in decision making and decision implementation around refugees' integration policies fail to recognise the background, experiences, and vulnerable circumstances of refugees. This approach may impede refugees' smooth incorporation into the social, political, cultural, and economic structures of receiving societies. Therefore, the refugees in question often struggle for recognition by the authorities and for their understanding of the cultural, political, and social factors related to conditions in their countries of origin and settlement. Through the struggle, refugees promote their own integration from below. My interpretation is based on the fact that I have also faced the difficulties of some of the existing 'integration' policies, which often also include experiences of discrimination, exclusion, and marginalisation, and even interactions with authorities that produce feelings of worthlessness. Despite my ambitious efforts to engage in 'integration from below', I sometimes encountered situations in which I was discouraged from learning German or prevented from studying or exerting a policy impact on issues relevant to refugees and migrants in Germany. I also personally experienced discriminatory practices in some of my interactions with state authorities and public institutions, including universities and funding

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[3] These areas include housing, the labour market, education, social security, and everyday experiences of discrimination and exclusion.

institutions.

In my experience, these exclusionary practices triggered a sense of frustration and ultimately, the inability to express suffering. Hence, I could strongly identify with the severe distress of both the established and newly arrived Kurdish refugees and their trauma. As in my case, those I interviewed, for example, felt not only forced to leave but also banned from their ancestral homeland. Like me, the Kurdish refugees in question—both those outside and within the diasporic associations— had been living in countries outside the Kurdish region for more than half of their lives but often without a clear legal status. The consequences of this is that, as I realised through my previous experience as a refugee, they have had to endure a long-term condition of feeling vulnerable, insecure, and unprotected. They are affected by repressive politics in their countries of origin and are still obsessed by news about the tragic events in these countries, especially as it relates to what they feel to be their Kurdish brethren in the Middle East. Thus, they lead a 'life in transit' as I did when I left Germany for a restless life all over the place. I feel always 'on the move' both in the physical sense but also in the mind. This experience has constructed and re-constructed my personality and positionality, and also affects how I conduct my research on Kurdish refugees.

The impact of being a refugee researcher

The negative implications emerging from the experience of being a refugee and the development of a high level of self-consciousness have enabled me to deal with the predicament faced by the refugees I encountered in my research. I could understand the uncertainties surrounding their lives in the present and future in new countries from a refugee perspective. I ultimately decided not to distance myself from my own

personal experiences and the narrative of suffering that I share with Kurdish refugees. Instead, I actively reflected on the experience of Kurdish refugees and coped with the personal repercussions. I did this in order to be better able to affect the perceptions and attitudes of authorities, decision makers, and individual citizens towards refugees. By doing so, I demonstrated that refugees have the agency to critically define the notion of 'refugee' based on their own experiences. My own case and those of many other refugee researchers should make clearer that refugees seek to influence political decision-making at various levels, including beyond borders and through critical knowledge production that aims to understand the challenges and conditions faced by refugees from more humane and ethical perspectives.

As a refugee researcher, I point out that refugees should not just be assumed as victims who rely on the compassion and empathy of other human beings, but rather I try to challenge notions of helplessness to create a political space for their rights, protection, self-expression, and self-representation. Moreover, the autonomous efforts of refugees to create a political space of equal expression are meaningful. The creation of this political space helps them to overcome their dire predicament and their collective narrative of suffering and allows them to express and share their critical self-knowledge in order to be seen, heard, and felt. When Kurdish refugees critique researchers for not including them in the production of knowledge, they are pushing back against the idea that they are solely a source of data and not producers in their own right.

The personal impacts of conducting field research and my positionality as a refugee researcher

During this fieldwork, I have experienced highly emotional moments

and feelings of helplessness as I listened to stories relaying the tragedy of being uprooted, lost, discriminated against, and neglected in a new environment. They have experienced a calamity owing to the fact that the Kurdish people are stateless, and in consequences of this, being refugees seems to be an essential factor for their survival. Kurdish refugees have an uncertain status, collective narratives of suffering, traumatic experiences, and ongoing situations of precarity, all of which lead to a condition of extreme vulnerability. Kurdish refugees are often assigned a low status and are treated as minorities that belong to deprived communities or classes. They are often marginalised in both their new home and their homeland. To put it simply, my interviewees were often forced to live on the periphery of societies in which they are present everywhere but welcome nowhere.

These circumstances have left a deep emotional impact on me and further shaped my positionality, sparking my own self-reflectivity during the data collection process. The stories I encountered often evoked my own past trauma as they fit within a collective narrative of common suffering and shared memory. This has a direct impact on my research and the way in which I approach Kurdish refugees. The position I try to represent in my research is not related to my common ethnic background as a member of the ethnic Kurdish community, but rather to the collective social and political consciousness that arises out of the experience and narrative of suffering. I hold this position along with others who have been forced to escape regardless of their ethnic, social, symbolic, or political identity. I have decided to emphasise my position of being a refugee in order to recognise refugees' common struggles against injustice, coercion, and victimhood that are often caused by the actions of state institutions.

In the process of undertaking field research, I have developed a sense of academic commitment and responsibility

to communicate the obstacles and hardships of Kurdish refugees and to raise awareness amongst decision-makers, as well as the general public. This involves a critique of the unfavourable integration policies and perceptions of the general public towards Kurdish refugees, which in turn shape refugees' social, political, and institutional adaptation to receiving societies. My sense of responsibility also extends to promoting an understanding of the implications of Kurdish statelessness, which is rooted in countries of origin, and places the Kurdish refugees and diasporic associations in a dire predicament. I aspire to shed light on the ways in which Kurdish refugees have been unable to express their collective experience of suffering due to their marginalisation. Finally, I seek to support their collective efforts to create a political space for their integration from below that will allow them to obtain both their recognition and visibility.

Kurdish diaspora activists created a mountain, surrounded with images of the Kurdish martyrs, symbols of the homeland and wild landscape of Kurdistan. This image was taken at the Ahmet Kaya Kurdish Centre in Paris in May 2019.

The author

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A Model of Protracted Suffering among Refugees on the Greek Islands: The Case of Chios

MOHAMAD ALHUSSEIN SAOUD AND MARTA WELANDER

This article proposes a model describing the situation for refugees and displaced people on the Greek island of Chios. This model was developed by the authors following extensive field research in Chios, consisting of 300 interviews with refugees and led by the human rights organisation Refugee Rights Europe in May 2017. It illustrates the situation on the island in a dynamic way, connecting refugees' past, present and future, in order to make sense of the lived experiences of refugees on Chios. Based on the model, this article demonstrates that the distress refugees experience, including traumatic past experiences, a violent and desperate present situation, and an uncertain future–including fear of deportation and continued family separation–, appears to contribute to depression and mental health issues among thousands of people seeking protection in Europe. As such, the article calls for firm policy action in order to overcome a continued situation plagued by sustained and escalated violence, as well as more self-harming.

Introduction

In several places in Europe, refugees and displaced people find themselves in situations where harsh living conditions, untreated health problems, and a heavy-handed treatment by police officers are a daily reality (Refugee Rights Europe 2018). The situation is particularly acute on the Greek islands, where thousands of prospective asylum seekers are forced to stay in overcrowded and unsanitary camps, awaiting their potential transfer to the mainland and eventual status determination. The grave situation on the islands is a result of increased number of arrivals and the signing of the EU-Turkey Statement in March 2016, which led to the introduction of what is known as the Greek 'containment policy', banning newly arrived individuals from travelling to mainland Greece until their asylum claims have been processed (Al Jazeera 2017).

While the legality of the containment policy has been widely criticised (Amnesty International UK 2018), it is still in place at the time of writing, and the situation has deteriorated further with rising numbers of arrivals leading to a camp population increasing from approximately 4,500 people in May to

nearly 14,000 by the end of October 2019 (Reidy 2019). While accelerated transfers to the mainland are certainly urgently needed to address the overcrowding on the islands, the Greek government announced in November 2019 that individuals would be transferred to closed centres, which has been heavily criticised by rights groups as a form of de facto detention and deportation centres (Deutsche Welle 2019a).

In this article, the authors introduce a previously unpublished 'model' illustrating the protracted and exacerbated suffering amongst refugees on the Greek islands, based on published research findings by Refugee Rights Europe as well as the authors' own wider familiarity with, and analysis of, the situation amongst refugees in Europe. The main research findings informing the model are derived from Refugee Rights Europe's field research study in Chios, Greece, from May 2017. During this period, one of the authors, alongside four other field researchers, conducted 300 semi-structured surveys with refugees and displaced people on the island, in Arabic, Dari, English, Kurdish, and Pashto. Based on the estimated population in Chios at the time of the study, the research sample

represented between 8-13% of the refugee population on the island, with 88% of respondents being male and 12% female. By way of comparison, in 2018 men made up 48.2% of asylum seekers in Greece, and women 19.3% (with 36% being registered as children) (The Asylum Information Database 2019). It is therefore important to note the gender imbalance of this sample, with an underrepresentation of women and girls. The researchers surveyed as many individuals as possible in and around the two camps on the island (Souda and Vial camps), mainly using a snowball sampling method to identify interviewees. The research team's observations and complementary informal interviews with charities and NGO staff served to complement these interviews with refugees.

Based on the insights collected throughout this field research, the two authors produced a model of refugees' experiences of suffering on the islands, using the case of Chios as a basis but suggesting that the model is representative of the wider situation on the Greek islands. In developing the model, the authors drew on their

knowledge of, and insights into, the refugee context in Europe, with the aim of offering suggestions for more constructive policy proposals.

A model of protracted suffering among refugees

Through a model that connects refugees' past, present and future, one can better make sense of the lived experiences of refugees and displaced people trapped on the Greek islands. Starting with the past, the model illustrates refugees' experiences of war, conflict or other forms of protracted crises. Such experiences have led many to have traumatic and painful memories, also contributing to an erosion of hopes and aspirations. Indeed, feelings of hopelessness result when an individual has fled his or her country, leaving their possessions, family members and social networks behind, which is bound to be a difficult, isolating, and potentially traumatising experience for most human beings. Moreover, many individuals fleeing war and conflict may have sustained potentially severe
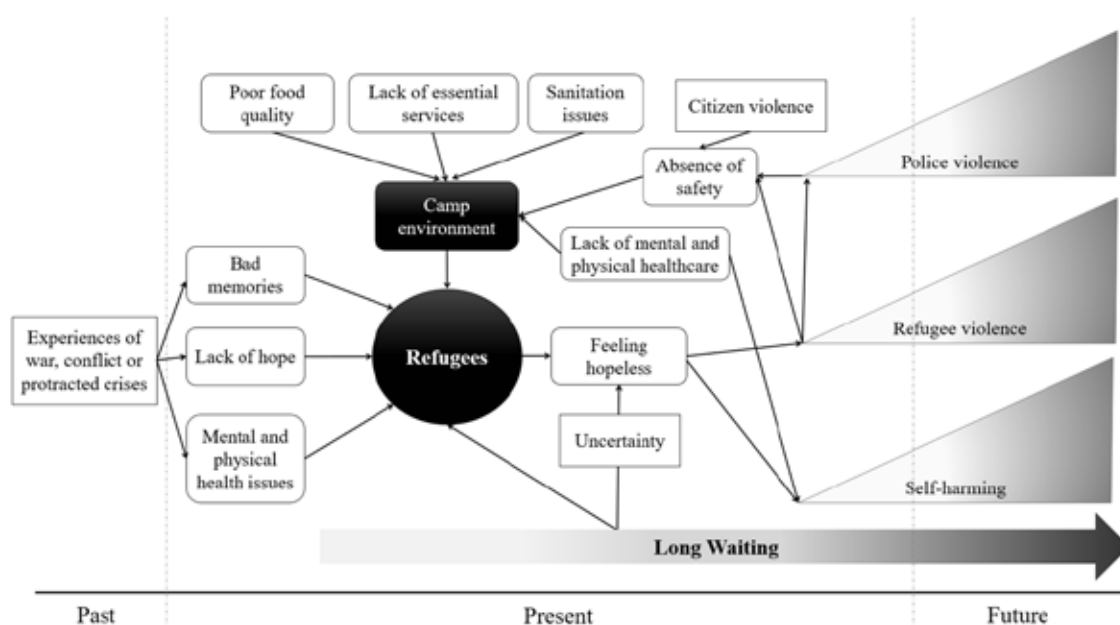

Figure 1. The model of the situation of refugees in Chios

injuries, with some having been arrested and tortured. Such experiences are likely to precipitate or be accompanied by mental health issues and/or chronic ailments. Such harsh experiences make individuals particularly vulnerable, requiring extensive and targeted rehabilitation, care and support–which is too often inaccessible to refugees, including those stuck on the Greek islands at the moment.

Despite these past experiences and resulting critical needs, refugees on the islands were placed in camps which do not fulfill basic living conditions. The food that they received was of very poor quality, with many interlocutors reporting that they could not eat the food due to episodes of food poisoning. For instance, one respondent told the research team: "I gave up eating the food that we received after I was poisoned few months ago" (Refugee Rights Europe 2017: 22). The lack of essential services in the camps was clearly evident, with the people in the overcrowded Souda camp on Chios living in fragile tents. Some individuals did not even have access to a tent in the first place (Refugee Rights Europe 2017: 21). In Vial camp, there were caravans, but the camp was isolated with extremely limited access to public transport and long waiting times. Sanitation issues were widespread, with insects and rats everywhere due to a drainage pipe letting out dirty water in the vicinity of the camp, and toilets were very dirty. To illustrate the urgency of this, one respondent explained: "I created a high sleeping place inside the tent for my child in order to keep her away from rats" (Refugee Rights Europe 2017: 21). In the Vial camp, informants said that there was no water in the toilets. Hot water was rarely available in Souda camp, only available for a few hours per day, while it was completely absent in the Vial camp (Ibid). Consequently, refugees residing there were barely able to wash themselves, which affected their hygiene and health, as well as their sense of dignity. The lack of medical services

was mentioned frequently during the interviews, with 72% of the survey respondents with a health problem reporting that they had not received any medical support (Refugee Rights Europe 2017: 25).

Refugees on the islands live in this miserable situation for a prolonged period of time, which in turn contributes to further feelings of hopelessness and despair, especially when a critical 'uncertainty factor' is added. One research participant, who had been in Chios for more than a year, highlighted this sense of despair with the following statement: "Sometimes I sit alone and cry. All my friends who came with me left" (Refugee Rights Europe 2017: 19). This uncertainly stems from the fact that people have no idea about what their future might hold, or what their next steps will be. They do not know when they will be transferred to the mainland and what the final decision of their asylum application would be; everything is uncertain and the process excessively lacking in transparency. The answer refugees often receive when asking officials about their potential transfer to the mainland is that they need to 'just wait', without any further information given–a common frustration shared by those displaced residing on the island. "I have been here since April 2016 and I am ready to wait for two or three years, but all I need to know is when I will be transferred from here. I have no idea, I am just waiting hopelessly", a refugee told the research team (Refugee Rights Europe 2017: 35).

The long waiting time and the accompanying absence of certainty and information about next steps, combined with an exhausting living environment and the condition of being surrounded by individuals who are already consumed by war, conflict or other protracted crises, inevitably create a critically hopeless and desperate situation. In turn, this desperation provokes and exacerbates two main serious problems, namely self-harming and violence. The

absence of psychiatrists who might be able to support individuals in preventing self-harming behavior exacerbates this phenomenon. "The psychiatrist gave me only five minutes, he said he cannot give him more time as there are others waiting", a refugee with a serious psychological issue explained (Refugee Rights Europe 2017: 25).

The researchers interviewed many people who were on the brink of harming themselves, with some interlocuters already engaging in such self-harm. For instance, one person explained: "I tried several times to hurt myself by a blade but my friend prevented me" (Ibid; Refugee Rights Europe 2017: 39). When left untreated, such tendencies are of course incredibly concerning as they may lead to even more serious outcomes, including suicide attempts. For instance, Médecins Sans Frontières (MSF) reported in September 2018 that "an unprecedented health and mental health emergency [was unfolding] amongst the men, women and especially children kept in Moria refugee camp, on Lesbos, Greece" (Médecins Sans Frontières 2018). The MSF teams reported several cases per week where young people tried to commit suicide or engaged in self-harm (Ibid, see also France 24 2018).

As regards interpersonal violence, the lack of hope and the exhausting environment appear to be contributing to increased levels of aggression amongst desperate individuals, which in turn risks leading to violence between refugees themselves. The researchers heard many accounts of fights breaking out between refugees, with 37% of interviewees reporting that they had experienced violence by other refugees on the island (Refugee Rights Europe 2017: 14). This violence would often lead to police intervention. One recent example from September 2019 was the police response to the refugee riots which broke out in response to the death of a mother and child in a fire at a reception center on Lesvos. Riots started as a protest against the slow response to tame the fire and the overall terrible living conditions experienced, and the police force moved in and fired tear gas at the protestors in response (Deutsche Welle 2019b). When a major fight would break out, police would move in to end the fight and reportedly to punish the perpetrators. However, on many occasions, it was unclear who the 'perpetrators' actually were, which would lead to generalised punishment against anyone who happened to find themselves on the site of the brawl. This approach by the authorities might be rooted in a general antipathy towards refugees, or simply a misguided attempt to deal with a complex situation. The researchers heard stories of how the police arrived the day after a big fight and arrested a significant number of individuals at random. 24% of the interviewees mentioned that they had themselves experienced violence by police (Refugee Rights Europe 2017: 17).

Such violent episodes would, in turn, exacerbate conflictual relationships between refugees themselves and between refugees and the police, potentially leading to increased violence in general and a heightened sense of insecurity on refugees in particular for women and children. Coupled with incidents of citizen violence by far-rightist groups reported by 22% of respondents (Refugee Rights Europe 2017: 12), the different layers of violence on the island would aggravate the overall mental condition of refugees and contribute to a further degradation of mental health and exacerbation feelings of misery and hopelessness. In turn, this may induce a cycle of further self-harm and violence.

Conclusion

The model of refugees' experiences on the island of Chios illustrates critical concerns that are witnessed on many of the Greek islands in the Aegean Sea. The distress experienced by refugees,

including traumatic past experiences, a violent and desperate present situation, and an uncertain future, combined with fears of deportation and continued family separation, appears to contribute to depression and mental health issues among thousands of people seeking protection in Europe. Whilst complex, these concerns are arguable not irresolvable, but would require political will and resource allocation to address. Priorities for national and EU-level actors must include increased access to healthcare, proper and quicker status determination procedures through accelerated transfers to the mainland where due process with adequate legal safeguards, legal aid and interpretation services needs to take place, and improved access to the asylum procedure.

Meanwhile, it is likely that a long-term solution can only be reached by abandoning the so-called containment policy and revising the EU-Turkey Statement which has contributed to the humanitarian crisis unfolding on the islands. The number of arrivals has again increased, with nearly 14,000 individuals in the camps at the end of October 2019 (Reidy 2019), meaning that policy action is perhaps more urgently needed than ever before. Without meaningful action at the European and national levels, we are likely to witness a continuation of a situation of collective distress and self-harming among asylum seekers.

A view from Chios
Mohamad Alhussein Saoud

The authors

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The Picture from Above: Using Satellite Imagery to Overcome Methodological Challenges in Studying Environmental Displacement

Alison Heslin and Lisa Thalheimer

Extreme and uncertain climate conditions adversely affect people around the world, including, in extreme circumstances, by displacing them from their homes. In today's global climate crisis, it is critical to have a range of tools available to measure and address the scale and drivers of such forced migration. Inclusive development and the provision of time-effective humanitarian aid to those displaced requires real-time information on displacement, information that can be difficult to fully obtain through data collection on the ground. Satellite data offers an opportunity to supplement ground-level data collection for targeted intervention in areas most at-risk of displacement. The starting point of this paper is the discourse on environmental displacement, the challenges of studying this type of displacement and the opportunities information from remote sensing provide. We then showcase the applicability of such data in an embedded case study on Somalia, a country with a longstanding history of forced migration, drought and conflict.

Introduction

We find ourselves in the midst of a warming world with intensifying climate and conflict shocks. Studying forced migration in the context of environmental change and extreme weather events has gained prominence with the climate emergency being discussed in the media and among policymakers worldwide (McLeman and Gemenne 2018; Ponserre and Ginnetti 2019). The effects of climate change on rainfall patterns and storm severity will continue to threaten populations in coastal, low-lying, agricultural and pastoral communities (IPCC 2012). Additionally, their economic livelihoods are at risk as weather events jeopardize natural resources on which many of these 'climate change hotspot' communities depend. Intervention into areas at risk of environmental degradation and extreme weather as well as providing early response in the wake of displacement, possibly at a large scale, are critical in addressing forced migration.

Interventions into areas at risk of displacement and areas receiving displaced persons require a thorough understanding of the mechanisms and processes driving the timing of people's decisions to move and their selection of destination locations. In turn, understanding the displacement process requires data on a range of topics as the movement of populations is highly complex and motivated by interrelated sets of factors (see, for example, Heslin et al. 2019; Marsh 2015). Studies of displacement, in general, can face difficulty in obtaining data which predate the displacement event of interest. In particular, studies of environmental displacement may require data both preceding and following natural disasters, which alter the landscape, infrastructure and communities and can therefore disrupt any existing and ongoing data collection efforts.

In the context of environmental displacement, satellite imagery offers an opportunity to supplement information collected on the ground with environmental data that covers large geographic areas and time frames. To exemplify, using satellites, one can measure land use, vegetation, soil moisture, and other environmental variables at fine time scales and varying

spatial resolutions. Through platforms such as Google Earth Engine, these data sets are publicly available and frequently updated, providing near-real time information to monitor displacement events as they unfold. In addition to environment-specific data, satellite imagery can be applied to measure the growth of cities, refugee camps, and informal settlements, adding to data on destination locations. In this paper, we discuss the scale of environmental displacement, the need for quality data to inform our understanding of this process and provide an example of the potential use of satellite imagery in the case of internal displacement in Somalia.
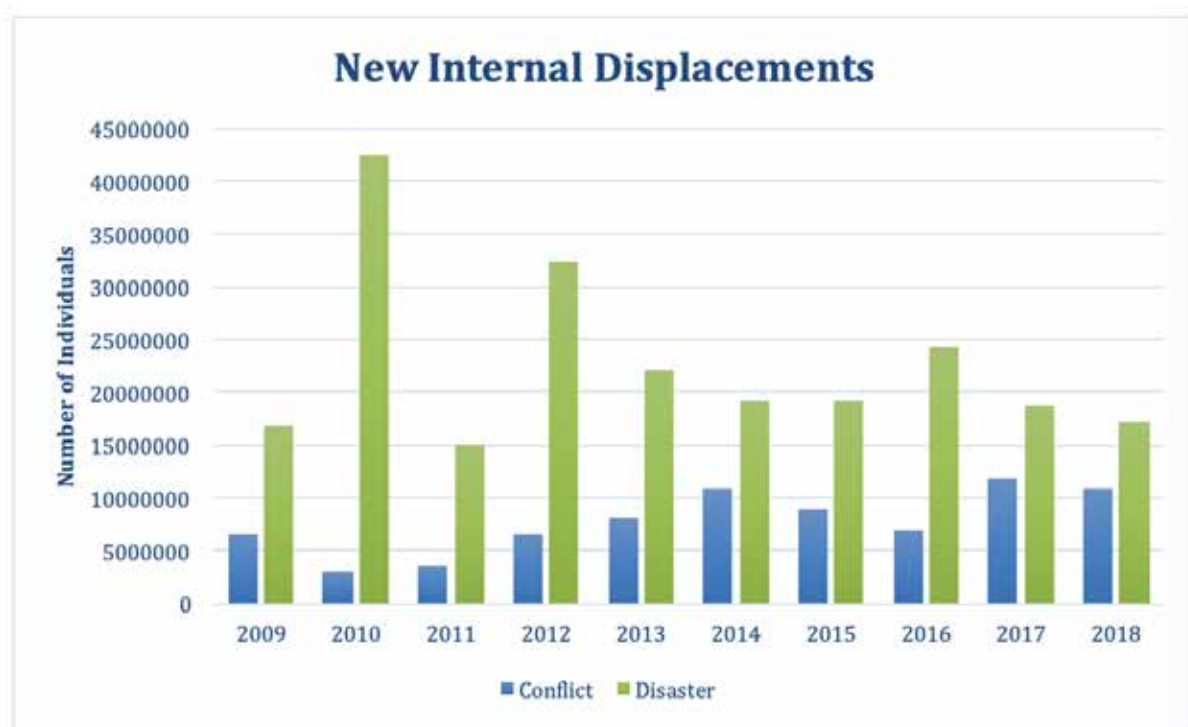
Figure 1. New Internal Displacements 2009-2018.
Source: Internal Displacement Monitoring Centre, Global Internal Displacement Database

Environmental displacement

Projections of displacement[1] in general and environmental displacement, specifically, vary widely across studies using differing data and methodologies (Gemenne 2011). Based on reliable sources, natural disasters resulted in 227 million internal displacements from 2009 to 2018; a number nearly three times greater than conflict-related internal displacement over the same time period (IDMC 2018a) (Figure 1). The first half

of 2019 saw 10.8 million new internal displacements, with seven million of these triggered by natural disasters, a new record high mid-year displacement by natural disasters (IDMC 2019a). In addition to sudden onset natural disasters, environmental displacement can occur through longer term, gradual onset changes that affect livelihoods, fuel conflict, and drive internal migration to urban centres (Heslin et al. 2019). While the majority of displacements occur internally, disasters and conflict also drive populations across borders–most often into neighbouring countries, which host four in five refugees (UNHCR, 2019).

[1] In the migration literature, typically the terms displacement and forced migration can be used interchangeably. Throughout the remainder of the paper, we use the former.

With climate change adversely affecting sea-level, storm severity, and weather patterns (IPCC 2018), environmental displacement is likely to continue as a major humanitarian issue into the future. During extreme weather events and humanitarian emergencies, health, safety and shelter are the most prevalent priority needs for displaced people. In addition, displaced persons face disruptions in education and livelihoods when leaving home, which can have lasting impacts (Bessler 2019; Cazabat 2018). Differences in disaster-preparedness, geographic location, and societal context also create context-specific challenges for displaced people. Ayeb-Karlsson et al., for instance, investigate early warning system (EWS) effectiveness, finding social determinates of EWS failure in some cases (e.g. mistrust of authorities) and cultural determinants (e.g. religious understandings of disasters as God's will) in others (2019).

Environmental displacement is complex, and our understanding of associated mechanisms is limited. Examining the causes and mechanisms of environmental displacement can help in designing effective policies and processes influencing people's exposure and vulnerability to extreme weather events (sudden) or climate change (slow onset). It is widely accepted that drivers are multi-causal, meaning they range from non-environmental issues such as the political economy, demographic change and conflict conditions to environmental changes and climatic shocks resulting in floods, storms or heat waves (Black et al. 2011). Thus, the study of environmental displacement requires a range of data sources to model these complex dynamics.

Data limitations

When studying displacement in general, and environmental displacement specifically, several data challenges emerge. First, ground-collected data for determining underlying drivers of migration decisions may not exist or may be incomplete if collection begins only after an event has occurred or only in locations where formal programmes of assistance exist. Within the context of disasters reported in the IDMC database, Ponserre and Ginnetti (2019) report that only 130 of 7,000 events reported since 2008 have time-series data displacement numbers and flows. Second, in the case of regularly collected data–the type that could be used to determine the initial characteristics or vulnerability of a region, community, or household– sudden onset extreme weather events can disrupt their collection. Such gaps in data collection result in missing data during a critical time frame for fully understanding a displacement process. For monitoring unfolding humanitarian emergencies, delays in data access between its collection and public availability can impede research and hold up activities aimed at assisting relief efforts. Lastly, in addition to delays in the public availability of data, data collected by government agencies and aid organizations may not ever be made accessible due to either explicit intentions to keep information internal or simply from lack of capacity or resources to enter and host data in an accessible server.

Opportunities in using satellite data

The IDMC, among others, has highlighted the potential role of satellite data as a tool in addressing displacement (IDMC 2019b). While remote sensing, or collecting data about an area from a distance, cannot replace the breadth of information gained from on-the-ground knowledge and experience— for instance from in-depth interviews, household surveys, or ethnographies— it can supplement such information in many ways. Addressing the above listed data limitations, one advantage of satellites is that they consistently record

data at equal intervals around the world. A prominent example are Landsat satellites, which have been collecting imagery of the Earth's surface since the 1970s. The intervals of image collection for the numerous open source satellite data sources are uninterrupted by natural disasters (with the exception of cloud obstruction) or conflicts. This historical depth and contemporary consistency offer major advantages (Witmer 2015).

Satellite imagery can be used in many different ways in the study of environmental displacement, both in terms of gaining a better understanding of the drivers of migration and in measuring actual displacement numbers. Imagery can be used to track changes in land cover or land use type, surface water extent or infrastructure locations at high spatial and temporal resolutions, with open source satellite imagery from sources such as the Sentinel 2 satellite, which collects high-resolution imagery in five day intervals at a 10-meter spatial resolution, meaning any location will have imagery data collected by the satellite every five days. In addition to such imagery, georeferenced climate data provides information on rainfall, temperature, drought indices and soil moisture at daily or near daily timescales as well as climate projections of temperature and rainfall under different climate change scenarios. Radar data, which measures physical properties of the earth's surface, is available for a given location every three days and can be used to gauge expansions of settlements, measuring increases in built structures such as houses, tents, buildings, or roads. Such geographic data are particularly useful due to the near immediacy with which they are publicly accessible, providing near real-time information on the state of the landscape in any given location.

Targeting interventions and building resilience

Researchers and practitioners have used remote sensing in post-natural disaster and large-scale displacement contexts to aid in addressing ongoing crises. In the event of a natural disaster, satellite imagery can provide information on the extent of damage and displacement. For instance, imagery of flood extent, destroyed structures, or burned areas can be compared with pre-disaster imagery to provide governments and aid organizations estimations of the land area and number of people affected (Boccardo and Giulio Tonolo 2015). In addition, studies have used satellite imagery to estimate the size of displaced populations at points of destination. Such studies use imagery to count tents and buildings as well as to measure night time lights to estimate the number of people in a given location (Bharti et al. 2015; Bjorgo 2000; Checchi et al. 2013; Lang et al. 2010; Wang et al. 2015).

These remote sensing data can be combined with ground data and applied in collaboration with organizations working on the ground. In the Northwest Himalaya mountain region, Bharti et al. (2015), for instance, combine anonymized mobile phone data with satellite imagery of night time lights to estimate population movements to improve in the delivery of aid and rebuilding. With information on the approximate number of people in a location, governments and aid organizations can better allocate food and other supplies and estimate requirements for supporting these displaced populations. In the context of targeting interventions displacement need not be strictly environmentally motivated to benefit from satellite data, as determining the size and location of populations can direct aid and resources those displaced from any driver.

During humanitarian emergencies, knowledge of the most affected regions may come after displacement has begun when livelihoods and social structures are

already severely damaged. Anticipating who is affected and likely to be displaced can allow for intervention in situ, reducing challenges of assisting already displaced populations and allows for work to build resilience in vulnerable populations. Creating resilience to environmental hazards requires building and strengthening the capacity of vulnerable populations to quickly and effectively recover from disasters and anticipate and reduce future risks (Hallegatte et al. 2017). Satellite imagery, along with georeferenced climate projections, can help identify areas at risk in order to build resilience and intervention strategies in advance of a crisis. The information available through remote sensing from satellites includes climate and land cover, such as vegetation and road surfaces, among many others. Such information can be used to assess the vulnerability of regions to environment displacement. In identifying factors that may cause displacement, such as unusual drops in vegetation or projections of crop failure based on rainfall anomalies, one is also less limited by the spatial resolution of data than in identifying the size the already displaced populations. In measuring already displaced populations, studies like those outlined above counting tents and buildings, require high-resolution imagery whereas in identifying potential environmental hazards for populations, high resolution imagery increases precision, but lower resolution imagery of land-use type or geographic data on climate variables can still offer insight into regions at-risk of displacement.

Critical to using such a vast resource of information for locally applied interventions, however, is ensuring that the data is relevant to the specific context of interest. Knowledge on the region of interest is important for first identifying the primary livelihood source of the population and the livelihood-specific vulnerabilities. Once these specific stressors are identified, it is possible to map vulnerabilities in near

real-time or based on future climate projections to identify areas likely to face threats to their well-being. Increased temperature or decreased rainfall, for instance, will be acutely experienced by those dependent on rain-fed agriculture, specifically drought sensitive crops. For example, with remote sensing, one can first identify agricultural regions, then use historical data to locate areas, which regions have experienced decreases in vegetation during periods of below average rainfall. Knowing these areas are vulnerable to rainfall variability and knowing the values of precipitation at which the cropped area historically decreased allows for the use of either contemporary rainfall or rainfall projections to identify locations for intervention. By mapping future rainfall projections over the same regions, we can begin identifying areas likely vulnerable to droughts as climate change progresses.

Such measurements have most potential when applied in tandem with data collected on the ground or in-depth familiarity with the region, as they identify potential environmental drivers of displacement, a process that is multi-causal and context-specific. Satellite data offers the opportunity to fill gaps in knowledge of real-time conditions over large areas for practitioners working in the field. Already existing knowledge of the conditions which have driven displacement events in the past should guide data collection efforts to identify the current state of those factors in inaccessible regions or time intervals.

Potential for satellite data: the case of Somalia

For over two decades, Somalia has been a prominent humanitarian crisis in Africa, presenting a challenging landscape for aid agencies. The case of Somalia presents an example of the highly complex nature of protracted displacement crises in which conflict,

environmental disasters, and political and economic instability drive internal and international displacement while disrupting aid flows and data collection (Thalheimer and Webersik 2020). Somalis have faced seven drought events from 2000 to 2017, including the severe drought in East African drought from 2011 to 2012 (Gebremeskel Haile et al. 2019). Despite the number of new drought-related displacements abating, drought-related internal displacements continue and many people have been unable to achieve durable solutions in terms of their health, safety, shelter (Figure 2).
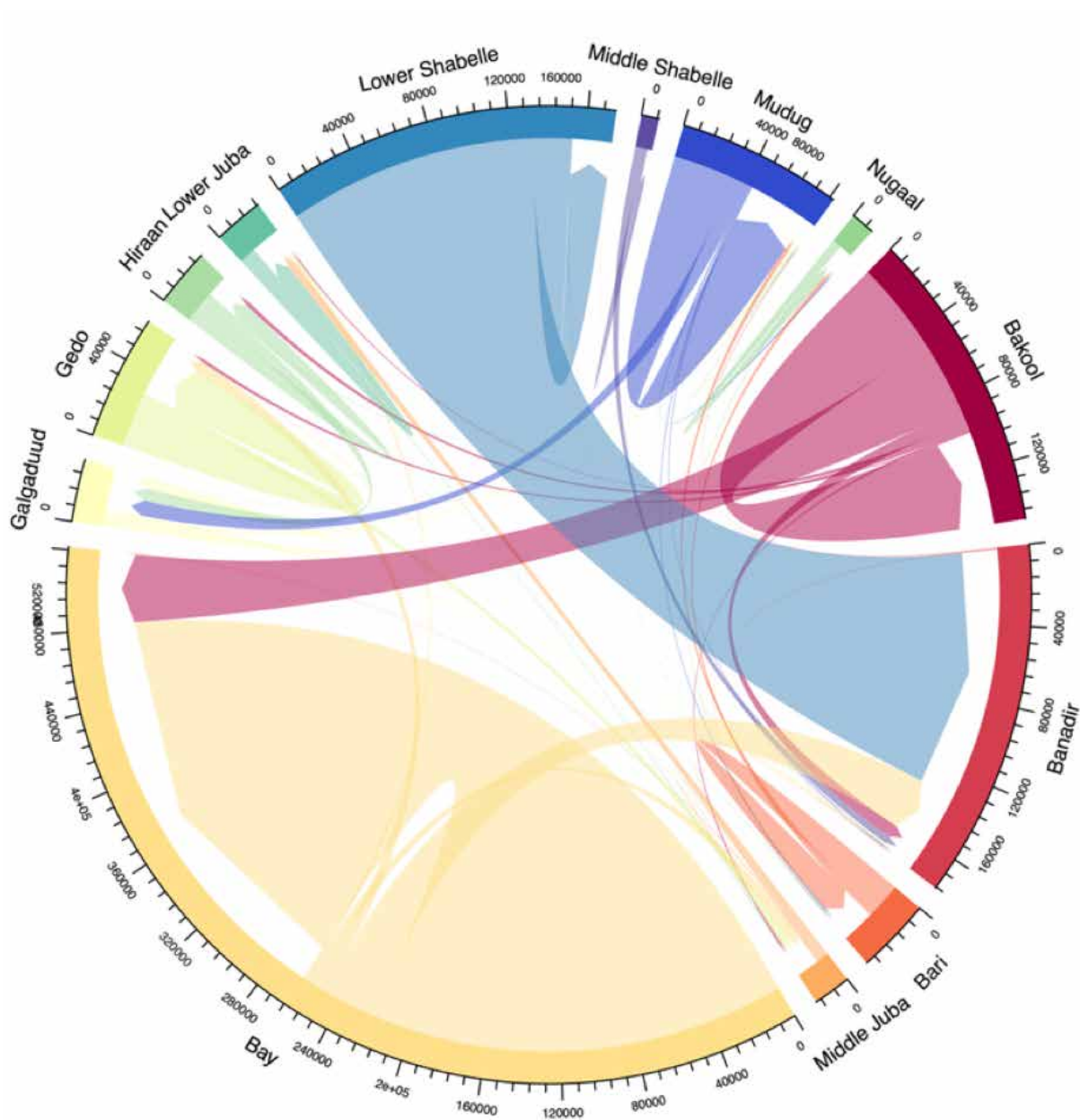

Figure 2. Drought-Related Internal Displacement 2017, Somalia (excluding Somaliland).
Data Source: UNHCR PRMN Somalia Internal Displacement, 2017

The 2011 East African drought

The 2011 drought in East Africa offers a sobering example of the role of the environment in displacement. Well below average rains in the fall of 2010 and spring 2011 devastated livestock and crop production, causing an increase in food prices and worsening humanitarian situation in East Africa. The humanitarian emergency in Somalia was further exacerbated by a combination of generalized violence and conflict between the Federal Government of Somalia (FGS) and its allies fighting rebel groups. By summer 2011, the UN declared famine conditions in south and central Somalia as refugees fled into neighbouring Kenya and Ethiopia and internally displaced persons (IDPs) numbered over one million (Norwegian Refugee Council/Internal Displacement Monitoring Centre, 2012). As the drought destroyed crops, reduced livestock levels and exhausted people's resources, much of the food assistance allowed into the country was diverted by different parties to the conflict (Seal and Bailey 2013). Although the Federal Government of Somalia (FGS) recognized the severity of the food crisis, it was unable to react ex-ante, as little had been invested in anticipating and preventing the vulnerabilities, thus addressing root causes of this kind of displacement. Somalia's capital Mogadishu, for example, is an urban centre, which receives IDPs without the capacity to provide adequate safety, healthcare, housing, education and sanitation to arrivals, resulting in evictions, illness and gender-based violence (IDMC, 2018b). Due in part to limited state capacity as well as delayed humanitarian response, the 2011 drought resulted in widespread famine in Somalia, killing approximately 258,000 people (Checchi and Robinson, 2013).

The need for pre-emptive action

While Somalia represents a particularly challenging case for intervention, it encapsulates many aspects leading to forced displacement more broadly, including ongoing conflict and limited state capacity. In such circumstances, the combination of an environmental event, moving populations and fragility presents substantial challenges for directing timely intervention. Indeed, once displacement begins, many intervention opportunities have already passed. In addition, ground-level data collection, if it existed prior to the crisis, will likely be disrupted, adding further obstacles to identifying intervention locations and solutions. In a real time evaluation report of the 2011 drought in the Horn of Africa commissioned by the UN Office for the Coordination of Humanitarian Affairs, the authors highlight uncertainty regarding the severity of the crisis as a factor, which limited early responses (Darcy et al. 2012). For example, the report notes scepticism and uncertainty surrounding anecdotal evidence reported from various agencies and villages to central officials.

The presence of additional data to confirm or expand upon reports from more remote areas of Somalia could have expedited the identification of those at risk of hunger and displacement This could have allowed for aid interventions in place, thereby protecting populations from many additional dangers that accompany displacement.

Following the 2011 East Africa drought, Save the Children and Oxfam issued a joint report outlining insufficiencies in the response that accounted for the prolonged and devastating food crisis and famine. Of particular note in their report is the call for a stronger focus on data to identify risks and investment in preventative interventions based on those assessments of risk (Save the Children and Oxfam, 2012). What both organizations highlight in the report regarding the famine applies more

broadly to addressing forced migration elsewhere–that the best strategy to deal with a crisis is by intervening before it can become one through building resilience and reducing vulnerability to droughts, floods, storms and other risks.

To locate populations most vulnerable to climate extremes requires data on their location and surrounding environment, livelihoods, infrastructure and topography. For example, a qualitative assessment of existing road conditions through satellite-derived images are crucial for determining the feasibility and type of humanitarian aid delivery. Combining these data with that of local climate conditions and projections can target intervention before situations deteriorate into displacement-driving humanitarian emergencies. Such advanced action faces fewer obstacles on the ground as it could occur prior to disaster-induced conflict and instability and infrastructure and housing damage.

During the 2017 Somalia drought, after almost half of the Somali population was already on the brink of yet another humanitarian crisis, the World Bank supported the Food and Agriculture Organization (FAO) and the FGS with a $50 million emergency funding package for drought relief, addressing deteriorating food security levels. While the response in 2017 helped to avert a repeat of the famine conditions of 2011, forecasts of soil moisture, temperature, and precipitation could be used to direct aid to areas at risk of future extreme events before populations are so severely affected. Whereas satellite imagery has been used in the context of mapping Somali road networks and population distribution in the absence of a humanitarian crisis (World Bank Group 2018), we argue that such data could have been used for a timelier intervention in 2017 (and 2011) to ensure disaster preparedness and build resilience in the face of a changing climate. Practitioners like the Red Cross Climate Centre (RCCC), for instance, have been starting to apply tests of forecast-

based financing (FbF) approaches to inform short-term humanitarian assistance based on disaster warnings from scientific forecasts (Coughlan de Perez et al. 2015). For example, FbF was applied during the 2015/16 El Niño event in Peru and helped reduce impacts from heavy rainfalls and floods by protecting houses, providing safe drinking water and first-aid training to affected populations (Red Cross EU Office 2019). To enable anticipatory humanitarian action, the use of satellite data helps to develop early warning systems, providing funding before an extreme weather event strikes. Ultimately, such ex-ante finance mechanisms support disaster-preparedness, reducing risks and strengthening resilience of vulnerable populations through an integrated framework.

The applicability of satellite data could have averted a humanitarian emergency during Somalia's 2011 drought. Satellite imagery could have offered an opportunity to locate vulnerable populations when regular data collection was obstructed by violent conflict or limited resources. One could, for example, combine data on rainfall, temperature and land use to identify areas facing most extreme weather anomalies, use satellite imagery to measure the size of displaced-persons camps and assess the environmental vulnerability of those in refugee or IDP camps. In the context of food security, the Famine Early Warning Systems Network (FEWS NET) incorporates data from partner organisations such as National Oceanic and Atmospheric Administration (NOAA) and remote sensing climate products, like the Climate Hazards Group InfraRed Precipitation with Station data (CHIRPS) in analyses for food security outlooks in selected regions in Africa, Central Asia and Central America (FEWS NET 2019a). Such a system could be applied to populations' vulnerability to extreme weather and displacement.

To identify at-risk areas to target aid intervention, one can use existing land
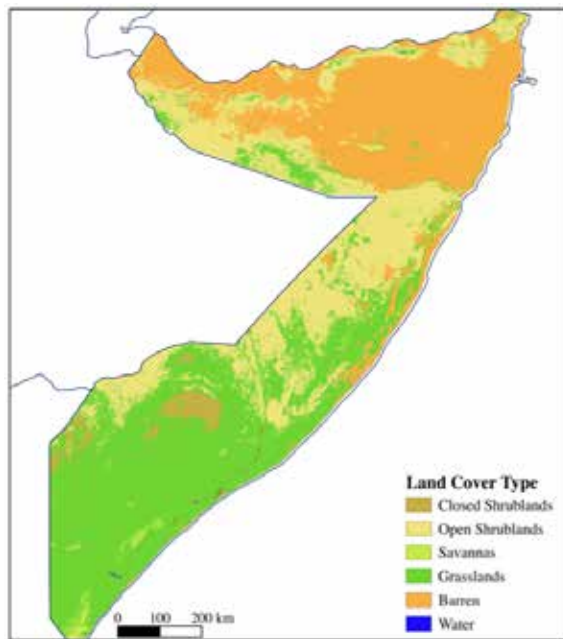
Figure 3. Land use type Somalia
Data Source: MODIS Land Cover Type 2016

cover maps (Figure 3) or create more detailed supervised classifications of remote sensing data to locate land use types throughout the country and to identify regions vulnerable to climatic changes like decreases in rainfall, for instance agricultural or pastoral communities. Historical data can identify regions that experienced vegetation loss in previous drought events using numerical indicators, including the Normalized Difference Vegetation Index (NDVI) and the Standardized Precipitation Evapotranspiration Index (SPEI). NVDI provides a measurement of the amount of vegetation, which can be used to identify regions showing a marked decrease in vegetation during previous years. The possible influence of drought can then be assessed using SPEI, which combines measures of precipitation with evapotranspiration to identify drought conditions. This combination of NDVI, SPEI, and land cover data can allow for distinguishing the role of human and conflict-driven land degradation from drought-induced vegetation declines. Following the identification of regions with high

levels of vegetation and land-based livelihoods, which were historically drought-sensitive, remote sensing can further be used to plan aid shipment routes or identify infrastructure damage that may impede intervention.

In the context of disasters such as severe droughts, having up-to-date information as well as historical data for comparison is critical to anticipate resource needs and high-risk locations before situations rapidly deteriorate into displacement and famine, as occurred in Somalia in 2011. Having access to additional types of data beyond that which can be collected on the ground is vital to pre-empt disasters and inform humanitarian responses in unstable and quickly changing environments.

Way forward

Satellite data can provide important opportunities to strengthen estimates of populations at risk of forced migration, particularly in the context of disasters and degrading environments. Remote sensing data has been used in limited contexts to enhance the timeliness of knowledge on displaced persons' destination localities. We suggest additional applications to address environmental displacement, including identifying vulnerable communities to support pre-disaster resilience-building interventions. Regarding Somalia, these methods are applicable to inform life-saving early warnings, especially given existing conflict conditions and associated risks in on-the-ground data collection and field visits. Satellite data of conditions of land areas must be guided by knowledge of the populations and their prior experiences under different environmental conditions. For this reason, the data from satellites would be best obtained and analysed in close collaboration between geographic and remote sensing experts and those by government and humanitarian actors working in early response and risk mitigation.

While these data sources are publicly available online, expertise is required to obtain, analyse and interpret data in a way that can inform decision makers and, ultimately, policy. For example, satellite information on the location, frequency and intensity of affected areas will be crucial to address priority needs and to design adaptation measures, but requires merging data from multiple satellites, resolutions, and time scales. The existence of the data does not guarantee its accessibility by those who could best interpret and apply the information available. In such cases, capacity building needs to be a priority to equip actors with the tools needed to take advantage of this vast data resource satellite imagery offers. Maps of displacement outlooks could make this information quickly accessible through an easy to grasp visual method, similar to maps showing priority areas of future food insecurity (FEWS NET 2019b). In addition, collaborations between researchers and practitioners to create early warning systems for displacement and emergency aid needs is crucial to better address displacement in the context of environmental disasters.

An image of Dadaab refugee camp in Kenya created from Sentinel-2 satellite data, provided by Alison Heslin.

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Challenges to the Governance of the Return of Victims Abroad to Colombia

Paul De Ryck and Stéphanie López Villamil

The return to Colombia of victims of the armed conflict living abroad has arisen as a major issue over the last few years. The emergence of numerous claims from victims to arrange their return in decent and safe conditions and the negotiations carried out by the Colombian government and the FARC-EP led country authorities to implement several policy measures related to Colombian return migration. However, a lack of participatory governance and civil society participation in the decision-making processes have characterised the shaping of these return policies. In spite of the unwillingness of the authorities to include them in the policy-making process, civil society organisations and other organisations supporting victims abroad issued claims and concrete proposals to influence those policy processes, with the objective of guaranteeing victims the right to come back to Colombia in voluntary, decent and safe conditions.

Introduction

The question of the return of Colombians living abroad, particularly the return of victims of the civil conflict, arrived a few years ago onto the Colombian political stage, during the time of the signing of the Peace Agreement with the FARC[1] guerrilla in 2016. In fact, the progressive implementation of migration policies by the Government of Colombia at the end of the 2000s, combined with Colombian citizens living abroad claiming their rights, and the beginning of the peace process, have led to the commencement of several initiatives issued by the Ministry of Foreign Affairs related to Colombian returnees.[2] Greater legal precedents have been established that expand the legal possibilities of supporting return migrants, while various institutional programs have been carried out in order to improve the return conditions of Colombians abroad, through reintegration assistance in Colombian society.

The Colombian government estimates that around 4.7 million Colombians live abroad, that is to say more than 10% of its global population (Dinero 2019). Colombians abroad may be found predominantly in neighboring countries, but also in the United States and Spain. Moreover, economic and political turmoil in Venezuela has increased the need to achieve an efficient return policy for Colombians, as thousands of them had emigrated to Venezuela since the oil boom in the 1970s and are now looking to return (López 2019). According to Migración Colombia,[3] more than 500.000 Colombians have already returned from Venezuela (El Nacional 2019).

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[1] The FARC - *Fuerzas Armadas Revolucionarias de Colombia* (Revolutionary Armed Forces of Colombia) - also called FARC-EP - EP standing for *Ejercito del Pueblo* (People's Army) - has long been the most important guerrilla in Colombia, until its dismantlement by the Peace Agreement in 2016 and its transformation into a political party - *la Fuerza Alternativa Revolucionaria del Común* (the Common Alternative Revolutionary Force). In spite of the Peace Agreement, several dissident groups are still existing.

[2] In general, return can be defined as the 'return of an international immigrant to his home country, with the intention of re-establishing his residence in it, regardless of the length of his stay outside of his country and of the eventuality of a posterior reemigration' (Mejía and Castro

2012: 17). The International Organization for Migration (IOM, 2006) distinguishes voluntary returns without obligation, from obligated voluntary returns (due to the ending of migrants' temporal protection, rejected asylum, etc.) and compulsory returns (deportation, expulsion).

[3] Migración Colombia is a governmental immigration agency.

Exile is a key issue in the Colombian political and social context, as it represents a 'prorogation of the impacts of the armed conflict and of generalised violence beyond Colombia's borders' according to the National Centre for Historical Memory (NCMH 2016: 20). However, this is an unknown phenomenon in Colombia which, despite the long history of the armed conflict, remains invisible today to many (NCMH 2018). Colombians who left the country due to the armed conflict have not been a priority in the national agenda compared to those internally displaced. If victims overall, regardless of place, have suffered certain invisibility, 'the invisibility of the victims abroad is even worse (…) they are faceless victims who had to leave everything behind them' (Duarte and Aliaga 2018: 62). Nevertheless, institutional responses from the Colombian authorities as a welcoming country for its returning citizens have been so far inoperative, particularly regarding assistance to those called 'victims abroad' - victims of the armed conflict who fled to other countries.[4] In particular, restricted involvement of civil society and of main interested parties, such as victims themselves, whether they have already returned or not, has characterised the decision-making and monitoring of a return legal framework for victims abroad. In fact, return policies have suffered from a deficit of 'governance'.

This article aims to examine, from a critical perspective, the governance of return policies of victims abroad to Colombia and the integrated approach applied to assistance for return victims. It raises the following question: to what extent have inputs from civil society organizations been incorporated in the governance of return for Colombian victims abroad? Answering this question will be accomplished first through a

qualitative analysis of the legal framework and public policies the Colombian government has implemented. Second, the article will highlight several reflections from civil society organisations that call for further governance of voluntary return of victims abroad.

Return policies in Colombia: gaps and insufficiencies

The legal framework of return in Colombia

According to Mármora (2002:297), migrant-repatriation policies are 'aimed at retrieving emigrant population, whether it is through their physical return or their possible contribution to its origin country'. However, to grasp the issues raised by the return of victims abroad to Colombia, it is imperative to discuss the overall Colombian migration public policy, as, in this case, 'emigration and return are two characteristics of the same migratory process' (Díez Jiménez 2014: 23). The development of a migration policy began only in the 2000s, first through the Colombia Nos Une program created in 2003 that was incorporated into the Ministry of Foreign Affairs' functions and aimed to provide assistance to the Colombian diaspora. At the same time this program was created, the National Intersectoral Commission on Migration was created. However, the CONPES[5] document 3603 of 2009, which enshrined the implementation of an 'Comprehensive Migration Policy', following the approaches developed by the National Development Plan 2006-2010, was the first to comprehensively[6] address the migration issue in Colombia

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[4] There are victims living in foreign countries who have not acquired the refugee status, while others have; in this article, both are included in the same category: 'victims abroad'.

[5] The National Council for Economic and Social Policy (CONPES) is the highest national planning authority and functions as an advisory body for the Government in all matters relating to Colombia's economic and social development.

[6] For the first time, the Colombian government stopped separating policies for immigrant and emigrant flows and began to articulate the implementation of migration strategies between its authorities (Ciurlo 2015).

(Castro 2016). New legislation has since complemented this public policy, specifically Law 1465 of 2011 which put in place the National System on Migration.

Regarding the return of Colombians abroad, Bedoya (2014: 86) points out the 'historical background of incentives' of Decree No 1397/1972, directed towards Colombians possessing a university degree. As for the return of the victims, the Victims and Land Restitution Law,[7] provided them the right to return to their homeland as a reparation measure.[8] Nonetheless, the topical issue of return of Colombians abroad has mostly been addressed by the Return Law,[9] with the purpose of facilitating their return through a tax reduction policy, as well as customs concessions to the entry of goods acquired abroad. This legislation divides return into four different types: occupational (*laboral*), productive (*productivo*), humanitarian or for specific causes (*humanitario o por razones especiales*), and supportive (*solidario*); this last one actually applies to victims of the armed conflict, and is coordinated with the Unit for the Victims Assistance and Reparation (UARIV), as established in the Victims and Land Restitution Law. These four types have been criticised for relegating some subjects to invisibility (Aliaga et al. 2019), in particular exiled Colombians who fled their country due to the conflict but are not considered

victims, as we will analyze later.

People wanting to benefit from such assistance to return envisaged by the law, provided they meet all the requirements,[10] shall register in the *Registro Único de Retornados* (RUR), the registry of returnees. The Intersectoral Commission for Return, created by Decree 1000 of 2013, is notably tasked with considering applications made by nationals living abroad who have solicited assistance to return. They are then included in the RUR and guided in their proceedings. In parallel to these mechanisms, the Colombian authorities developed various programs aimed at enhancing the voluntary return of nationals living abroad, both nationally[11] and locally,[12] some focused on the host country or the qualifications of the returnee.[13]

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[7] Law 1448 of 2011. Ley de Víctimas y restitución de tierras: por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas del conflicto armado interno y se dictan otras disposiciones.

[8] Article 28 stated the right to return to their place of origin or to resettle in voluntary, safe and decent conditions. Likewise, article 66 established that 'with the purpose of guaranteeing comprehensive attention to victims of forced displacement who voluntarily decide to return or resettle, under favourable and safe conditions, they will endeavour to stay in the place they chose so that the State can guarantee the effective enjoyment of the rights'.

[9] Law 1565 of 2012. Por medio de la cual se dictan disposiciones y se fijan incentivos para el retorno de los colombianos residentes en el extranjero.

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[10] The available information on the website: https://www.cancilleria.gov.co/footer/join-us/work/plan emphasises the following requirements:
1. Be of legal age.
2. Prove their permanency abroad for at least three years.
3. Must not have current convictions in Colombia or abroad and provided they have not been condemned for offences against the public administration
4. Must not have more than 12 months living in the national territory after having returned.
5. Provide relevant authorities with their interest in returning to Colombia invoking Law 1565 of 2012.

[11] The '*Retorno Positivo*' plan was created in 2009, through which were established the *Oficina de Atención al Migrante y los Centros de Referenciación y Oportunidades para el Retorno* (CRORE), regional instances that bring assistance to the returnees. In addition, the former Presidential Agency for Social Action and International Cooperation now known as the Department for Social Prosperity, implemented two programs: the '*Retornar es Vivir*' program in 2010, which prioritised the assistance to returned families in 115 municipalities; and the '*Familias en su Tierra*' program, born in the frame of the Victims and Land Restitution Law.

[12] The '*Bienvenido a Casa*' program was created in 2009 in Bogotá, and was replicated in the Risaralda Department as the '*Siempre serás bienvenido a tu tierra*' program.

[13] The '*Retorno Productivo*' Plan (2012) focused on the return of Colombians who owned a professional or technical degree, while the '*Es

Finally, the return issue appears in the Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, signed in 2016. Indeed, the point 5.1.3.5 underlines the correlation between return in decent conditions and the adoption of measures that facilitate the socioeconomic reintegration of the returnees:

The assisted return will consist of promoting conditions to facilitate their return to the country and the construction of their life project. This includes providing decent reception conditions through the coordination of these plans with the specific institutional services offered, to progressively guarantee access to basic rights, decent employment, housing, health and education at all levels according to each person's individual needs. (Office of the High Commissioner for Peace 2016: 194).

Governance of return in Colombia: an illusory participation

In parallel to the legal framework of return implemented by the Colombian authorities, several tools were put in place in order to facilitate civil society and victims' participation in decision-making. However, in practice, the lack of willingness of the government to include victims in the policy-making process has restricted their participation; moreover, the fact that they have mostly been considered as economic subjects has been another obstacle to their effective participation.

Aguilar (2006: 8) defines governance as an 'associated and interdependent governing style between governmental organisms, private and social organisations', distinguishing governance from governability, considered as a

Tiempo de Volver' program, implemented in 2014, aimed at incorporating Colombian doctors trained abroad.

'centralised hierarchic style'. Thus, governance aims at being developed in 'different spheres of the society' (López 2018a: 85) and at different levels (Faludi, 2012); on migration issues, some authors claim a social governance centered on cooperative actions (Barbero, 2012). Applied to the Colombian context, governance in this article refers to the inclusion of non-state actors in the design, follow-up and monitoring of migration public policies and in particular of return policies. This concept is deeply relevant in public policymaking to address international migration issues, and especially on the issue of the return of victims abroad to Colombia. Aguilar's definition will be used as a cornerstone of this analysis, with a focus on civil society participation in the development and tracking of return policies.

Initially, the Colombian government created areas to foster the involvement of civil society stakeholders from the implementation of the *Colombia Nos Une* Program in 2003 onward (Ardila 2009). Moreover, the creation of the National System on Migration led to the implementation of the *Mesa Nacional de la Sociedad Civil para las Migraciones*, a national civil society commission especially focused on migration, composed by a group of actors such as:

Colombian population abroad, returned population, foreign community in Colombia, private companies, trade unions, NGOs, humanitarian actors, academies, populations with a differential approach (ethnic groups, gender, diversity and age-group, amongst others) who will work for the benefit of the migrant population and will look after their interest and ideas for the purpose of reaching common objectives (COLOMBIA NOS UNE 2019).

On the other hand, the Victims and Land Restitution Law enshrined

in its Title VIII provisions in order to guarantee involvement of the victims in the design, implementation, execution and evaluation of public policies. In its Article 193 more particularly, it sets out the provisions for the creation of Victims Participation Roundtables, as a tool for encouraging the participation of the victims and ensuring their input on political decisions that affect them. They are institutional representative spaces compound by victims of the armed conflict, developed at a municipal, departmental, district and national scale.

Furthermore, since the Habana peace negotiations, a forum for participation of the victims abroad was launched, which included returnees who were previously exiled (López 2018a). They organized the International Forum for Victims (FIV),[14] which enabled them to exert pressure on the government to address in the final version of the Peace Agreement the topical issue of return as reparations, demonstrating civil society's capacity to have an impact on decision-making.

However, the lack of coordination between the different parts of the Mesa *Nacional de la Sociedad Civil para las Migraciones* prevented it from choosing a representative before the Intersectoral National Commission on Migration, as planned by the law (López 2018a). Likewise, at the field level, governance of return in Colombia is 'non-existent', mainly because of the centralization of the Colombian government (López 2018a: 95). Indeed, Bedoya (2014) quotes several interviewed returnees who live in the Risaralda and Quindío departments, in the coffee region, saying the fact that the government has not decentralized enough financial and human resources, as well as scarce institutional coordination, has triggered this absence of operational

governance (Bedoya 2014). Return policies are not a top priority of the Colombian government, who has been more focused on its struggle against guerrillas, poverty, drug trafficking or internal displacement, which can also explain the failure in the implementation of these laws (Bedoya 2014). Then, though there are legislative measures to promote civil society participation, they have hardly been operative in reality, due to a lack of willingness from the Colombian government, which seem to be more willing to create the 'illusion' of participation, rather than foster the actual participation of civil society.

Aside from the fulfillment of cathartic functions and the retrieval of one's citizenship for people who suffered severe violations of their basic rights, the participation of victims is crucial for understanding the return experience of these persons and addressing these experiences in the policy-making process. Nevertheless, several policies were designed without the institutional involvement of victims as foreshadowed by the Victims and Land Restitution Law; their influence in decision-making processes has been very limited, while the lack of coordination between the local and national levels created a profound sense of frustration among the victims (Berrío 2013). For instance, the Constitutional Court, repeatedly emphasized the weaknesses of the 'Nation-Territory Coordination Strategy'; in its Judgment Auto 383-2010, it showed the lack of political willingness from local authorities, who do not implement national action points; as well as the lack of human resources and the numerous administrative changes that prevent public officials from acquiring relevant skills with regard to the inclusion of civil society in policy-making.

These instruments of participatory democracy, purportedly directed towards enhancing the civil population's engagement in shaping return policies, are inoperative and do not foster participatory governance on return.

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[14] The International Forum for Victims is a communication, coordination and participatory action mechanism, created by victims of the armed conflict who live outside of Colombia, with the purpose of collecting reflections and proposals from civil society regarding peace issues.

In fact, this lack of governance reflects the absence of a comprehensive return policy. In spite of the ratification of a few sporadic laws, there is no holistic vision for return migration in Colombia. Although substantial advances have been made as a result of the Return Law and the tax incentives it offered to enhance the return of Colombian citizens,[15] it is characterised by its restrictive conception of the migration issue (Bedoya 2014). Moreover, although it recognises the existence of four different types of returnees, its focus on the economic significance their return could represent leaves aside the protection of their rights (AESCO 2012). According to Muñoz, Mejía y Castro (2012: 11), 'return public policies only offer a clear picture to those who return with good resources and financial capital'.

Certainly, the economic approach of return policies in Colombia, combined with the lack of involvement of civil society actors whose expertise is a vital element for its governance, have led to the development of a legal framework that does not fully guarantee the victims' enjoyment of their right to return. As a matter of fact, the government's strategy on return appears to be determined by a cost-benefit analysis of the potentially lost remittances generated by the returns of Colombians abroad and the gain in human capital (Mármora 2002). Hence, this neoclassic focus on migration, particularly exposed by Massey et al. (1993) and that we can attribute to the Colombian approach to return, leads to the exclusion of the return of victims abroad within the global return policies and theorizing. For example, López (2018b) criticises this perspective, which only considers the migrant as a subject

of economic development, ignoring the most vulnerable ones.

The marginalization of victims abroad in the return process

The exclusion of victims in the return policymaking process is evident by the marginalization of victims in relevant policies. First, the restrictive definition of a victim, apart from limiting the participation of many in the policymaking process, also excludes many de facto victims abroad from the possibility of benefiting from return programs (Fuentes-Becerra y Atehortúa-Arredondo 2015). Duarte and Aliaga (2018), though they do not deny the significant impact of the Victims Law, point out its limitations regarding reparations for victims abroad. In regard to return, the information contained in the Unit for the Victims Assistance and Reparation (UARIV) specifies that only people included in the *Registro Único de Víctimas* (RUV), the registry for victims, can benefit from an assistance to return (UARIV 2019):

> *Thus, when only referring to victims of internal forced displacement in its definition of forced displacement (Art. 60), this law excludes thousands of victims abroad who had to flee for multi-faceted and complex reasons that may not be acknowledged as sufficient by the definition of forced displacement (Duarte and Aliaga 2018).*

As for supportive return, UARIV registered 1.058 returns from 21 countries; in 2018, only 408 people returned. It should be noted that a total of 12.222 victims requested inclusion in the RUV from abroad (UARIV, personal communication, 29 March 2019), demonstrating how low the rate of return is. In comparison, in February 2017, the United Nations High Commissioner for Refugees (UNHCR) reported 340.000

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[15] In particular, as mentioned earlier, a tax reduction policy, as well as customs concessions to the entry of goods acquired abroad, an affiliation to family compensation funds. In another context, tax incentives were notably used by the Malaysian government to target high-skilled Malaysians abroad and incite them to return (World Bank 2016).

Colombians were refugees around the world, 95% of whom were located in Latin America, demonstrating the issue of under-registration.

On the other hand, the absence of a policy that guarantees victims abroad a return in voluntary, decent and safe conditions has been highlighted. The absence of a guarantee of such conditions allows for the potential re-victimisation of these people upon return. Hence, in spite of the signing of the Peace Agreement, in several areas of the country, armed groups and criminal bands are still perpetrating gross human rights violations. Indeed, for many victims abroad, it is meaningless to return if the unsafe conditions that led them to flee are still extant. According to Duarte and Aliaga (2018),

In Colombia, we cannot talk of a postconflict yet, well, even if there has been a negotiated a peace agreement with the FARC-EP, there are other actors that are an important part of the armed conflict in Colombia and who are still active (2018: 65).

Furthermore, the lack of comprehensive assistance from the State has been fundamental to the failure of these programs, as the lack of institutional support has impeded the socioeconomic reintegration of the returnees. Likewise, disregard for the heterogeneity of the returned population in Colombia and the scarcity of information in relation to the returnees' socioeconomic characteristics, have made it difficult to address the reality of return and have caused inefficiencies in the return process (López 2018b). There is only one study in Colombia that exposed the socioeconomic characteristics of Colombian return migrants in recent years.[16] Thus, it is difficult to design

return policies adapted to returnee needs, as there are limited data on the gender, age, education level and labor skills of Colombian returnees, as well as their host communities.

Towards a governance of return in Colombia: ideas from the civil society

Given the lack of inclusion of non-governmental stakeholders in the design and implementation of return policies, several civil society organisations have issued alternatives for the development of a comprehensive return policy in Colombia for the victims of the armed conflict who have left the national territory. This work has provided a valuable input, whether it is by means of the drafting of numerous grievances, or by concrete proposals aimed at improving return policies through an incremented governance.

Pleas for the creation of adequate conditions for the return of victims abroad

Despite the restricted participation of civil society organisations in formal forums, several civil society organisations have advocated for different policies and rights for victims abroad. First, they have advocated for the acknowledgement of exile as a victimising fact by the Colombian government, in order to allow a greater access for victims abroad to return programs. Thus, *Consultoría para los Derechos Humanos y el Desplazamiento* (CODHES 2017a)[17] emphasises the need to extend victims' recognition to an extraterritorial approach to foster the visibility of those

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[16] This study was realized by the District Observatory on Migration of the Secretary General of the Mayor of Bogotá office and the Colombian Observatory on Migration of the

Esperanza Foundation and the Alma Mater Network, a network of several public universities in Colombia, in 2009.

[17] CODHES is a non-profit organisation working in the area of human rights and international humanitarian law, with a focus on peace building processes and displaced populations.

who live abroad. The Fifth International Forum for Victims held in Alicante, Spain in December 2018, also pushed for the acknowledgement of transboundary displacement as a victimising act. The Commission on Forced Migrations, Exile and Reconciliation (2018: 3)[18] stresses the need to implement an 'adequate structure to guarantee victims abroad access to attention, assistance and reparation measures'. Finally, the *Red de Víctimas Colombianas por la Paz Latinoamérica y Caribe* (REVICPAZ-LAC 2018)[19] pleads for the automatic recognition as a victim for refugees who voluntarily request their inclusion in the RUV.

The signing of the Peace Agreement triggered the interest of many exiled Colombians who associate their desire to return with its implementation (REVICPAZ-LAC 2018) which has so far been a major claim from civil society stakeholders. Indeed, due to the high-level of vulnerability and uncertainty of numerous victims abroad, guaranteeing decent and safe conditions is imperative to enhance their return. Through an investigation on the possible return of Colombian citizens who live in Spain, *América, España, Solidaridad y Cooperación* (AESCO 2016)[20] showed that 80% of the interviewed people who expressed their willingness to return to Colombia in the post-conflict context would be motivated by safe return conditions.

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[18] The Commission on Forced Migrations, Exile and Reconciliation is a coordination mechanism between civil society organisations and academic actors in Colombia and several countries of the region, compound amongst other by CODHES and the International Forum for Victims.

[19] REVICPAZ-LAC is an organisation that gathers victims' groups in Latin America and the Caribbean, and unites victims who do not necessarily form a part of organisations. It is a paramount civil society stakeholder, as it provides victims with an international forum of expression.

[20] AESCO is a non-profit organisation whose purpose is to improve solidarity through development cooperation projects between Europe and Latin America. It works particularly with vulnerable people and has developed several projects with migrant networks in Spain.

Indeed, the safety issue is prominent in people's minds when considering a potential return to Colombia, as highlighted by an elderly man living in Quito, Ecuador. He states that 'the whole subject of durable solutions is bound to the possibility of returning to Colombia. If I want to come back to Colombia, I should be able to do it in complete safety' (CNMH 2018: 216). However, the sluggish implementation of the Peace Agreement has not generated suitable conditions for their return so far, which can explain the fact that a significant part of the Colombian diaspora does not want to return to Colombia for now (REVICPAZ-LAC 2018). In addition, the Truth, Memory and Reconciliation Commission of Colombian women in the diaspora (TMRC 2018)[21] found that a main issue for returned women to Colombia has been to find themselves in unsafe situations due to their status as women.

The idea of decent return also refers to the need to provide returnees with assistance to foster their socioeconomic reintegration in Colombia. In many cases, most of the victims abroad could not rely on the help from relatives in their reintegration process, whether it is because they were also forced to flee their home or perished during the conflict, or because they do not have the financial means to do so. In light of this, the Government of Colombia's support is essential beyond the repatriation process. Eighty percent of the families interviewed by REVICPAZ-LAC (2018) stress that access to healthcare is a vital component in the design of return policies. Second to this is access to decent employment (78.4%), followed by the relocation of all the members of the household (68%), and the recognition of studies completed abroad (58.4%).

Many returnees mentioned the absence of information around the existence of migration and return

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[21] TMRC is a Colombian-women-led organisation created in London in 2014 working with Colombian women on migration and return.

policies, which led to them returning without any institutional support. Those who did receive assistance from the Colombian authorities highlighted the scarcity of support during the return process. In particular, they lacked attention for their reintegration, above all regarding access to education for kids, healthcare, work and decent housing (REVICPAZ-LAC 2018). Women especially experienced great difficulties in finding a job adapted to their profile when they came back, even though many returned with entrepreneurial ideas (TMRC 2018).

Also, civil society has strongly requested coordination between return programs and Development Programs with a Territorial-Based Approach (*Planes de Desarrollo con Enfoque Territorial* – PDET) contained in the Peace Agreement. This is crucial to boost the inclusion of locals and returnees in equal conditions and essential in fostering the reconstruction of the social fabric and territorial peace (CODHES 2017a; REVICPAZ-LAC 2018). As pointed out

in point 1.1.7 of the Peace Agreement, land restitution is a sine qua non to allow socioeconomic stabilisation of forced displaced people and promote their return in decent conditions.

Concrete proposals from civil society

These several claims led different civil society actors - victims organisations, human rights organisations in particular - to draft concrete proposals, aiming to create conditions conducive to the return of victims abroad. The explicit incorporation of victims abroad in the Peace Agreement is a significant step as it recognises forced displacement outside of the country and extends the focus to an extraterritorial approach on victims. However, there are still legal gaps regarding the question of their return, and regarding reparations and political participation (CODHES 2017a).

The limits of the Victims and Land Restitution Law in regard to victims abroad, formerly described, must be
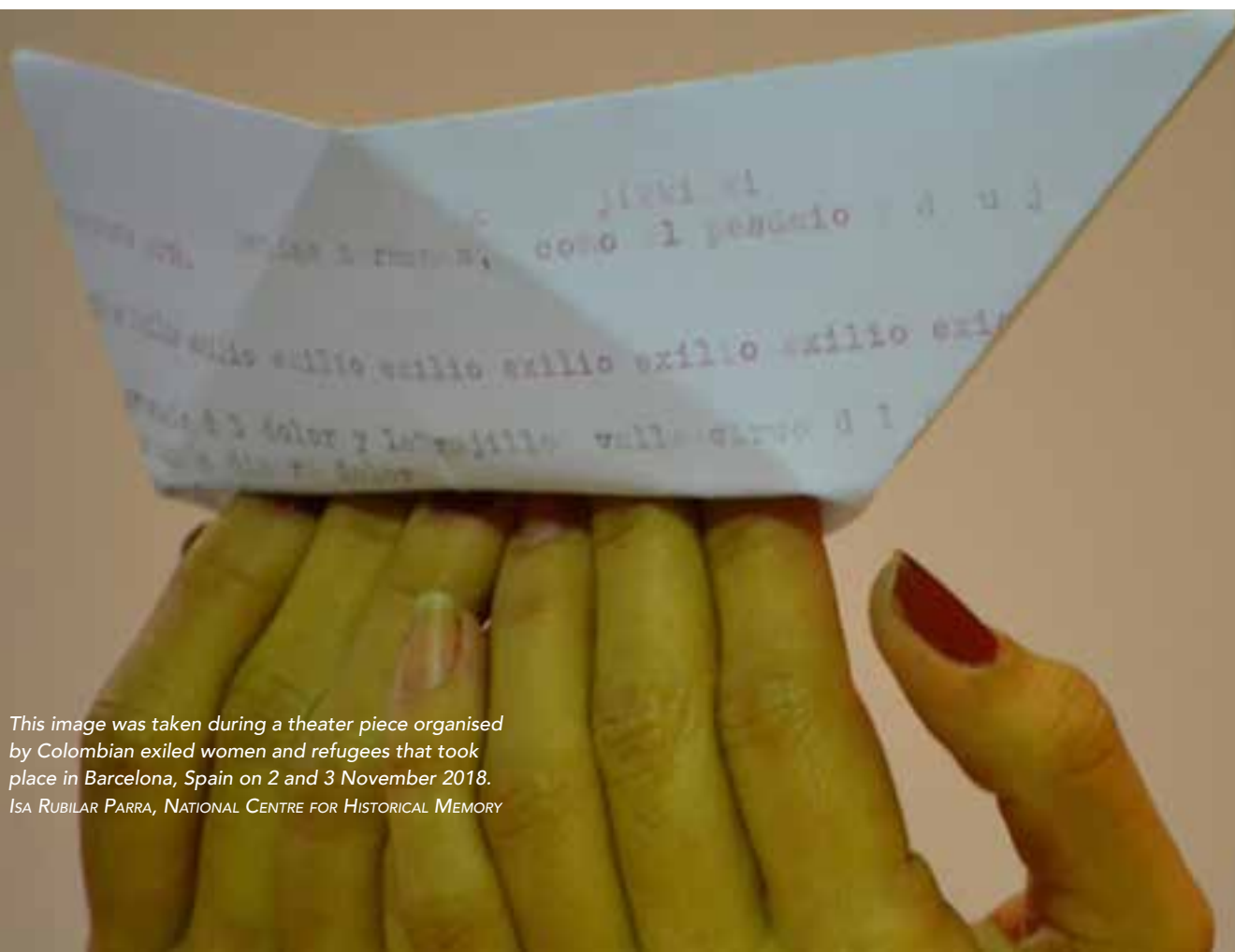
This image was taken during a theater piece organised by Colombian exiled women and refugees that took place in Barcelona, Spain on 2 and 3 November 2018.
Isa Rubilar Parra, National Centre for Historical Memory

overcome to enhance a global peace-building process through reparations for these victims and guarantees of non-repetition. In particular, CODHES (2017a), as well as REVICPAZ-LAC (2018), have urged the Colombian government to recognise exile as a victimising act. In fact, CODHES (2017b) notably wrote a draft law proposal aimed to edit the Victims and Land Restitution Law to bring it in line with the Peace Agreement. The main proposal is the inclusion of a definition of the concept of victims abroad, absent this law, for the people who were forced to abandon their country in relation to, or because of, the armed conflict. Moreover, it would introduce an article that enshrines the right of these victims to a voluntary and assisted return in safe conditions and socioeconomic sustainability. Then, if all the civil society organizations urge the government to adopt a broader legal framework on the return of victims abroad, particularly regarding the acknowledgement of exile as a victimising act, CODHES has committed to rewrite the Victims and Land Restitution Law.

Likewise, CODHES continues to attempt to strengthen the involvement of victims abroad, through the integration of delegates of *Comités de Impulso de los Sujetos de Reparación Colectiva* (Impulse Committees on Collective Reparation Subjects) within the Participatory Roundtables, who would represent victimised ethnic people, as well as victims abroad. Indeed, citizenships restitution to the victims abroad is an imperative condition for them to get their rights back. As a consequence, CODHES (2017a) pushes for several reforms of the political system, including voting rights and means for Colombians who have not returned, as well as other measures provided in point two of the Peace Agreement concerning political participation.

The restitution of civil rights appears to be a form of collective reparation for those victims living outside of Colombia (CODHES 2017a). Though

the Victims and Land Restitution Law provides rules related to the reparation of victims abroad, CODHES (2017a: 17) describes them as a 'precarious legal development'. Hence, along with the Jesuit Refugee Service (JRS 2018),[22] CODHES promotes the implementation of a transnational approach to reparation, first realised by the identification of individual and collective reparations, and by the implementation of public policies to foster the return and reintegration of victims abroad to Colombian society if they wish so (CODHES 2017a). On this subject, the International Network of Human Rights (INHR)[23] recommends the creation of a specific commission for the Colombian diaspora within the Commission for the Clarification of Truth, Coexistence and Non-repetition, with a differential focus, aimed at building a 'historical memory on migration, refuge and victims abroad as a reparation mechanism' (INHR 2017: 8). Although this last proposal seems particularly relevant in order to increase the visibility of victims abroad and to foster their contribution to the peacebuilding process, it may be difficult to implement such a Commission in the next years, as the peace processes has already been launched and are currently experiencing significant difficulties moving forward.

The organisation REVICPAZ-LAC (2018) has been another important stakeholder in advocating for the need to improve the socioeconomic reincorporation of returnees. First, it points out the need to design a specific program for voluntary, decent, and safe return for refugees, asylum seekers, and victims abroad, characterised by an assistance to return that is not only economic but also psychosocial, the creation of institutional routes to ease the regularisation of relatives born outside of Colombia, as well as access to

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[22] The Jesuit Refugee Service is an international Catholic NGO working in the field of refugee assistance.

[23] INHR is a non-profit organisation whose mission is the promotion and protection of human rights.

healthcare, education and occupational reintegration. REVICPAZ-LAC (2018) also emphasises the need to improve degree and skills accreditation, accompaniment and support for kids and teenagers on local integration, and transfers of pension contributions. As for women, their access to labour opportunities must be facilitated through the construction of professional networks to encourage their inclusion in the labour market (TMRC 2018).

On the extensive participation of victims in decision-making, the International Forum for Victims has been particularly active. Indeed, the International Forum for Victims advocated for the acknowledgement and deeper inclusion of victims'' organisations in the elaboration of return policies. In fact, according to REVICPAZ-LAC (2018), UARIV has been averse to working with civil society stakeholders based in host countries of victims. Promoting operative participation of refugee's associations and civil society organisations in host countries and in Colombia in all the steps of the policy-making process - design, implementation, monitoring and evaluation - is paramount for considering the needs of victims (REVICPAZ-LAC 2018). Indeed, the experiences of the victim population is indispensable for the coordination of relevant actors in return programs, as well as for the identification of good practices, notably for future returnees. This claim emerges from victims abroad themselves, who emphasise the need to create victim-led organisations, who understand the conflict and the reality of exile: 'what we need are organisations that arise from us, grassroots organisations made up by people who lived the conflict. We are the ones who really know about that (Afrocolombian woman, exiled in Ecuador)' (CNMH 2018: 295).

Furthermore, the State must guarantee resources for travel from host countries back to the country of origin, with priority given to the most vulnerable people. In the case of victims abroad, it must coordinate return programs that also provide special assistance, attention and reparation mechanisms. Assistance, monitoring, and evaluation of local integration processes are equally essential, especially for the socioeconomic stabilisation, security assurances and non-repetition of the returnees' forced displacement (REVICPAZ-LAC 2018). Local governance is also key to better prepare societies to receive returnees, considering many times returnees are judged or welcomed based on political and symbolic representations, something for which the work achieved by civil society organisations in combatting xenophobia is crucial (REVICPAZ-LAC 2018).

Last but not least, other key stakeholders, such as IOM, UNHCR and states hosting victims abroad also perform vital roles. The formation of multiparty working groups composed of these actors, as well as civil society organisations and victims abroad, are therefore necessary to enable the execution and evaluation of return programs and to promote voluntary return programs (REVICPAZ-LAC 2018). However, as some organisations have argued, the diaspora and host countries should agree upon these return plans, which should not make up a part of a repatriation policy shaped by the European Union or other external actors (INHR 2017).

Conclusion

Policies aimed at fostering the return of victims abroad represent a major issue Colombian authorities have to deal with, despite it not being their main priority in the last few years. Nevertheless, the issue is also critical for a multitude of other actors, including civil society stakeholders and victims organisations, whose participation in the design and implementation of those policies is of great importance. Through a comprehensive review of the legal framework of return in Colombia and

of civil society organizations' proposals on this matter, this article has aimed to show that, although there are legal means that have been adopted to enable the governance of the return of victims abroad to Colombia, in its application, there has been a very limited participation of civil society in decision-making.

To cope with the lack of participatory governance in this area, concrete proposals made by these organisations, mainly based on the experience of victims, have proven to be crucial in promoting the implementation of return policies for the victims abroad in safe and decent conditions. In particular, return programs should not provide return assistance that is only circumscribed to humanitarian aid for repatriation, but should rather be structured around two other issues, according to Mármora (2002): determining the reasons that led the migrant to flee his country and including mechanisms to foster his (her) reinsertion in his (her) home country.

It is legitimate to question the effectiveness of certain proposals in the current political context. Indeed, the acknowledgement of exile as a victimising act, through an amendment to Victims and Land Restitution Law, would constitute a significant step forward for thousands of victims abroad. However, the lack of commitment of the Colombian government towards this recognition makes it unlikely that the request will be adopted, taking into consideration that the validity of this legislation, the Victims and Land Restitution Law, extends only until 2021. Moreover, even if the Colombian authorities were to amend this law, the experience has proven so far that the laws implemented to foster the return of victims abroad had not trickled down onto the operational level; then, without a comprehensive adaptation of the policy on the ground, amending this law would not actually change the current situation. In addition, despite the signing of the Peace Agreement, its limited implementation, largely due to the lack

of the political will from the Colombian government, led to the continuation of the conflict in several regions of the country, in which dissident armed actors, paramilitary groups, and drug traffickers have impeded the establishment of decent and safe conditions for the return of victims.

Nevertheless, the impact of civil society on policymaking in the area of return has been profound in some matters. The strengthening of the governance of return of victims abroad is intimately linked to the long-term efforts victims and human rights organisations have been realising. Pressure from the International Forum for Victims to include the issue of victims abroad in the Peace Agreement, mentioned earlier, illustrates the advocacy capacity of these stakeholders, despite the typical reticence of the government to implement their recommendations.

sIn sum, the involvement of exiled citizens and civil society organisations in policymaking on return migration is necessary to consolidate peace and economic recovery in a post-conflict Colombia and is currently insufficient, if not altogether absent. In fact, 'it is clear that the success of mass repatriation is inextricably connected to the complex processes underpinning post-conflict reconstruction and vice versa' (Long 2010: 17). Thus, the return of victims abroad and the construction of sustainable peace in Colombia are interrelated issues, as the return of many victims depends on the existence of decent and safe conditions for their repatriation, while at the same time, their participation in peace processes is imperative to the reconstruction of the social fabric. Although the Colombian government seems to be applying a participatory governance approach to return policymaking, the implementation of the existing legal framework the civil society claims analysed in the article show that the participatory aspect of the governance of return remains, overall, an illusory approach.

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Regionalisation Versus Securitisation: The Pending Fate of the Refugee Protection Regime in Central America

BRIANNA GÓMEZ CASTRO

This article contributes to the growing literature on forced displacement in the Americas, specifically with respect to Central America's 20th and 21st century migration crises. It investigates Central America's formal entry into the international refugee protection regime, and its subsequent acceptance of regionalism as a preferred method for addressing issues of forced displacement. The article then scrutinises the effectiveness of regionalisation for securing human rights in light of a prevalent competing trend: securitisation of migration. To highlight these competing dynamics, it closely examines the case of Mexico—an important regional geopolitical actor to Central America— drawing from primary data collected through an expert interview to support the analysis. The juxtaposition of these two theoretical frameworks allows for a unique inquiry on the future of forced displacement in Central America; it aims to inspire future research and policy initiatives that are invested in bringing lasting peace and stability to the region.

Introduction

The following discussion engages with the particularities of forced displacement in the Americas, a regional bloc, which, in forced migration studies, is insufficiently researched, with the exception being in relation to migration to and from the United States. This is paradoxically so, considering its proud and extensive tradition with the institution of asylum from which many lessons can be drawn (Kron 2011; Harley 2014; Cantor et al. 2015). Even still, taking the American continent as a unit of study for forced displacement understates the vast complexity of migration patterns, policies, and laws in the countries that comprise it. The difference in social demographics, institutional governance, and geographical attributes and/or burdens — to name a few variables— are intersectional factors that deeply define the dynamics of forced displacement in each sub-region, namely North, South, and Central America.

Noting these sub-regions' complex histories with forced displacement, this article specifically investigates Central America — comprised of Belize, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama — and

its distinct journey in becoming an area of the world with one of the highest concentrations of forcibly displaced persons (Cantor 2016: 89). There is laudable research that documents the causality between the rise of crime and weak governance in the region with the increase of forced displacement (Cantor 2014; Jimenez 2016). However, there appears to be a considerable gap in the literature that analyses Central America's unified response for addressing these migration trends. Accordingly, this article explores Central America's implementation of a regional refugee protection regime as a cooperative approach and solution to forced displacement.

Scholars, such as Mathew and Harley (2016) and Barichello (2015), have studied the effects of regionalising refugee protection to highlight the various challenges and successes to be expected. The former broadly analyse the theoretical underpinnings of regionalisation and briefly touch on a particular Central American initiative as a case study; given the expansive nature of their research, they are unable to investigate Central America's continued experience with regionalism. The latter dutifully examines and delineates

regionalism's development within the Latin American context, but neglects to pay significant attention to the increasingly pivotal role played by the isthmus countries. As such, this article draws on and contributes to the existing literature by analysing Central America's experience with forced displacement and providing analysis to contemporary developments towards regionalisation of the refugee protection regime. Moreover, the research scrutinises the effectiveness of regionalisation for securing human rights in light of a prevalent competing trend: securitisation of migration. The juxtaposition of these two theoretical frameworks allows for a unique inquiry on the future of forced displacement in Central America; it aims to inspire future research and policy initiatives that are invested in bringing lasting peace and stability to the region.

The first section of this article provides background on Central America's history with forced displacement to demonstrate the conditions that prompted these countries to formally join the international refugee protection regime. It explores their development of a regionalist approach and analyses multiple declarations and agreements adopted over the course of thirty years. The second section focuses on the most recent regional document and its operational counterpart –the 2017 San Pedro Sula Declaration and the Comprehensive Regional Protection and Solutions Framework (MIRPS in its Spanish acronym), respectively—to investigate Central America's efforts to mitigate their current refugee crisis. The third section then delves into the securitisation of migration – drawing particularly from the case of Mexico – in order to elucidate the reasons for which it jeopardises an effective regional refugee protection regime in Central America, and consequently undermines the human rights of forcibly displaced persons.

The research for this article primarily draws from a desk review of relevant primary and secondary sources published in both English and Spanish. Importantly, due to the hyper-contemporary nature of the third section, many online newspaper publications and press releases from relevant agencies were used. The analysis in this section is also supported by data collected from an expert interview. Considering the au courant nature of this article, it should be noted that research is limited to events that have occurred by mid-August 2019. Forced displacement in Central America is an ever-changing landscape that is nearly impossible to keep up with, and so, noteworthy developments may not be covered. Bearing this in mind, this research is produced with a critical and open-ended approach so as to appropriately assess the future of the refugee protection regime in Central America.

A history of forced displacement in Central America and the development of a regional refugee protection regime

The overarching theme in this article, regionalism, refers to the pursuit of common goals among a group of states that are close geographically, share identifiable patterns of behaviour, and co-exist in an imagined sense of community (Fawcett 2004). Utilising this broader definition will allow us to analyse the partnership and collaboration that has developed beyond the geopolitically established region of Central America, in particular with Mexico.

Scholars have examined the consequences of regionalising refugee protection regimes to find that it is a positive, constructive approach for facilitating the application of universal International Refugee Law (IRL) and International Human Rights Law (IHRL) principles in a specific context, and prioritising responsibility-sharing among the states in question. Shuck (1997) argues that it can be a positive initiative because it encourages a

tradition of regional responsibility for displacement concerns and leads to more appropriate solutions that reflect the interests and values that regions tend to share. Commenting on the critical responsibility-sharing component, Hathaway and Neves (1997: 169) argue that it 'not only makes practical sense as a means to combat the withdrawal of states from the duty to protect refugees, but is consistent with general norms of international law'.

Recently, in their book R*efugees, Regionalism and Responsibility*, Mathew and Harley (2016) build on the existing literature and analyse five different regional mechanisms to assess the merits of regionalism. Whilst they acknowledge the potentially adverse effects cautioned by a few scholars (Gibney 2007) they find that ultimately such regional initiatives can enhance the refugee protection regime 'if they address the specific needs of refugees in the region, foster greater attention to these needs from states, and are developed in accordance with international human rights standards' (Mathew and Harley 2016:16). Conversant with Mathew and Harley's findings, the succeeding paragraphs will take the view that regionalism is a useful approach for addressing forced displacement, and will investigate Central America's experience in developing its refugee protection regime.

Migration has long been an encouraged part of the socioeconomic identity of Central America due to the existence of shared cultures and traditions that were not easily confined by borders (Garcia 2006). However, these common and accepted migration patterns saw a major shift in the late 20th century, primarily from the 1970's onward. In her book *Seeking Refuge,* Garcia (2006) outlines how this is a direct result of interlinked civil conflicts occurring simultaneously in Nicaragua (1979-1990), Guatemala (1960-1996), and El Salvador (1980-1992). High levels of instability and insecurity in the region gave way to rampant human rights violations from governments, paramilitary groups, and rebel groups; lack of proper governance and a suppressed society led to increased levels of poverty across the entirety of the region. As a result, an overwhelming number of Central Americans found the living conditions impossible, leading to staggering numbers of forced displacement. By the early 1990's, more than three million Central Americans were displaced within their own country — referred to as Internally Displaced Persons (IDPs) — or forced across an international border, becoming refugees (Garcia 2006). There may have once been a strong migratory tradition in Central America, but the region proved fundamentally 'ill prepared to deal with the refugee crisis of 1974 to 1996' (Garcia 2006: 31).

Noting the need for appropriate legislation and response mechanisms, Central American countries gradually acceded to the 1951 Convention Relating to the Status of Refugees (hereafter, Refugee Convention) from the 1980's onwards, formally marking their entry into the international refugee protection regime. Unfortunately, however, the Refugee Convention definition[1] did not extend protections to most Central Americans because they were fleeing generalised violence rather than explicit persecution. These individuals were often referred to as 'non-convention refugees' to note their ambiguous position within the international refugee protection regime. Starting in the early 1980's, UNHCR recognised that the Refugee Convention definition was too restrictive and consequently took the position that countries receiving Central

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[1] Defined as persons who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result.

American refugees should be generous when assessing merits for protection. For example, in 1981 UNHCR recommended that all Salvadorans who had left their country since 1980 should be considered *prima facie*[2] refugees because they fled due to political events and were likely to suffer if forced to return home (Garcia 2006).

Central American countries, alongside other Latin American countries, heeded UNHCR's plea for more expansive protection of refugees; on 22 November 1984 they adopted the *Cartagena Declaration on Refugees* (Cartagena Declaration). The Cartagena Declaration retains the minimum standards of the Refugee Convention, but amends the definition to appropriately address forced displacement in Latin America. Accordingly, it defines refugees as 'persons who have fled their country because their lives, safety, or liberty have been threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances which have seriously disturbed public order' (para 27). The Cartagena Declaration is not a legally binding document, however many Central American countries have incorporated it into their national laws relating to refugee protection.[3]

Importantly, the Cartagena Declaration not only allows for more expansive protection of 'non-convention refugees' in Central America, but it also fundamentally represents the beginnings of a regionalist approach for addressing the refugee crisis. By drawing on the shared experiences and tailoring the document to reflect the local realities of forced displacement, these countries endorsed that regional cooperation could be the best way forward. As Barichello (2015: 197) comments, the Cartagena Declaration represents 'a part of a trend towards harmonisation and increasing protection and humanitarian assistance for victims of armed conflict and human rights abuses.

Acceding to the Refugee Convention and creating a supplemental regional document were important steps for creating a regional refugee protection regime. Moreover, a regional approach was finally viable in Central America because the conflicts in El Salvador, Guatemala, and Nicaragua were coming to a close. In August 1987, heads of state from Costa Rica, El Salvador, Guatemala, Nicaragua, and Honduras gathered to sign the *Esquipulas II Peace Accords*; the accords addressed ten major issue areas, including protection and assistance to forcibly displaced persons (Article 8). Evidently, stakeholders in the peace process understood enhancement of the refugee protection regime to be a critical component of peace, security, and development in the region. It is within this context that in 1989, UNHCR and the Organization of American States (OAS) held the International Conference on Central American Refugees (*Conferencia Internacional Sobre los Refugiados Centroamericanos,* CIREFCA) to provide a platform for addressing forced displacement in the isthmus (Pacheco and Sarti 1991).

At CIREFCA, the five aforementioned countries, Mexico, and Belize, convened to discuss refugee rights, repatriation and integration, assistance for IDPs, and other issues of concern. Importantly, CIREFCA was much more than a one-time conference with pledged commitments; it was a Comprehensive Plan of Action (CPA) that supported a wider regional political process that would run until 1995 as an integral part of the peace process and post conflict reconstruction (Betts 2009b). Furthermore, CIREFCA enhanced the international protection norms in the region by encouraging and assisting states to draft new and improved legal standards and promoting the adoption of measures to

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[2] *Prima facie* group determinations are recommended (or issued) by UNHCR in emergencies where the high number of refugees makes individual determinations impossible.

[3] Belize, El Salvador, Guatemala, Honduras, and Nicaragua (see Harley 2014).

regularise the situation of refugees and returnees. Noting the positive impact of the regional initiative, Betts (2009a: 92) argues that CIREFCA 'represents the single most successful example of UNHCR-facilitated international cooperation in the recent history of the global refugee regime'.

Before the CIREFCA process officially ended, Central American countries (alongside other Latin American countries) gathered on 7 December 1994 to sign the *San Jose Declaration on Refugees and Displaced Persons* (San Jose Declaration). This was part of an initiative to re-evaluate and revise the scope of protection for forcibly displaced persons in Latin America, and to reiterate the importance of the Cartagena Declaration (Barichello 2015). The next significant step in regional cooperation occurred on 16 November 2004, when Latin American countries adopted the *Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America* (Mexico Plan of Action, MPA). The MPA was more operational than the San Jose Declaration because it detailed concrete steps to address the main challenges of forced displacement. For example, it introduced three projects to be implemented across participating states: Cities of Solidarity, Borders of Solidarity, and Resettlement in Solidarity (Harley 2014). Furthermore, since its adoption, the MPA has facilitated the development of new legislation on refugee protection in Central America, specifically in Nicaragua (2008), Costa Rica (2010), and Mexico (2011) (Harley 2014).

Noting the success of aforementioned agreements, in the last decade the isthmus countries have come together to formulate three new instruments that enhance and strengthen the protections afforded to forcibly displaced persons. They adopted the *Brazil Declaration* (2014), the *San Jose Action Statement* (2016), and most recently, the *San Pedro Sula Declaration* (2017). These documents build on each other and seek to identify important gaps in the regional refugee protection regime; they demonstrate a strong regional commitment to assume state responsibility for protecting those forcibly displaced and afford them the full spectrum of fundamental human rights. Moreover, they overwhelmingly prioritise the contemporary refugee crisis that has already displaced thousands of Central Americans, specifically those living in the Northern Triangle (El Salvador, Honduras, Guatemala).

Addressing contemporary forced displacement

Throughout the last decade, increasingly high levels of chronic violence and insecurity have affected Central America. This is due to a confluence of factors that go beyond the scope of this article; however, it is sufficient to say that these factors include organised crime (drug cartels and urban gangs), high levels of poverty, and government corruption. As a result, high levels of violence and instability have unsurprisingly had a direct correlation with increased forced displacement in the region (Medrano 2017; Cantor and Plewa 2017).

Figure 1 demonstrates the general upward trend of cross-border forced displacement since 2014. In particular, the Northern Triangle countries have seen the most impact, with their figures climbing substantially each year; the number of asylum seekers grew by over 20% in 2018 alone. According to UNHCR, an overwhelming amount of these asylum claims are filed in the US. Applicants from Central America and Mexico made up 54% of all asylum applications in the US in 2018, with El Salvador as the most common nationality of origin at 33,400 claims (UNHCR, 2019e: 42).

UNHCR statistics also show that Central America has seen an increase of refugees and asylum seekers *within* the region. As of December 2018, there were approximately 73,500 refugees

and asylum seekers (climbing from 57,000 in 2017) (UNHCR 2019d: 7). Moreover, IDPs increased to 350,000, with Honduras contributing nearly half of that number. There are also 116,000 'other people of concern' to UNHCR, bringing the grand total of individuals with protection needs in Central America to 539,500 (UNHCR,

2019d: 9). This number is expected to increase significantly in 2019 due to recent political turmoil in Nicaragua and the spiralling economic and political crisis in Venezuela; UNHCR estimates that there will be 20,000 to 25,000 new asylum seekers from Nicaragua and 10,000 from Venezuela (UNHCR 2019d: 8).

Country of Origin	Refugees					Asylum seekers*				
	2014	2015	2016	2017	2018	2014	2015	2016	2017	2018
Belize	45	51	57	59	63	841	98	160	207	217
Guatemala	7,483	10,284	12,554	16,278	19,113	15,807	26,954	46,227	72,711	86,864
Honduras	4,159	6,851	10,508	14,412	18,827	10,147	19,455	35,203	59,777	76,514
El Salvador	10,965	14,778	19,621	25,873	32,543	18,307	31,454	62,167	104,896	119,257
Nicaragua	1,587	1,476	1,419	1,467	1,661	727	1,248	2,126	2,719	32,256
Costa Rica	417	379	208	190	197	127	218	308	486	535
Panama	89	69	40	31	34	30	56	84	111	136

Table 1. This table shows the number of refugees and asylum seekers originating from Central America who are displaced globally. These numbers were compiled from a UNHCR open source database on population statistics. The 2018 numbers are subject to minor changes, as they have not yet been published in formal reports (UNHCR 2019a).

* Per UNHCR data collection, this group includes persons whose application for asylum or refugee status is pending at any stage in the asylum process.

Evidently, the forced displacement context in Central America over the last decade has been nothing short of complex. Every country in the region is affected one way or another as either a place of origin, transit, asylum, and or return; more often than not, a country can be all of these things at once, further complicating the protection and assistance space for forcibly displaced persons. Considering this reality, Central American countries proactively decided to enhance their regionalised response for addressing forced displacement. Building on the above-mentioned regional cooperation and responsibility-sharing mechanisms, six states –Belize, Costa Rica, Guatemala, Honduras, Mexico, and Panama—came together on 26 October 2017 to adopt the *San Pedro Sula Declaration*. In a historic

moment for regionalised responses to forced displacement, the six countries agreed to work together to implement a regional Comprehensive Refugee Response Framework (CRRF) (UNHCR 2019b). The CRRF is an initiative that comes directly from the 2016 New York Declaration for Refugees and Migrants (New York Declaration) and that is an integral part of the Global Compact on Refugees (2018). The regional CRRF adopted through the San Pedro Sula Declaration is called the Comprehensive Regional Protection and Solutions Framework (MIRPS in its Spanish acronym). It provides a platform for addressing national displacement issues while also facilitating a comprehensive regional response for displacement concerns that is based on responsibility-sharing and solidarity.

It is important to briefly reflect on the countries participating and endorsing the MIRPS. Central America's brand of regionalism is such that partnership and collaboration with neighbouring states is welcomed, and even necessary. Although Mexico is not a Central American country, its inclusion was imperative because of the high number of forcibly displaced persons that either transit through or claim asylum in the country. Moreover, noting Mexico's extensive participations in previous regional efforts, it was a logical and pragmatic decision. Consequently, a regional response that did not include a strong commitment from Mexico would have been considerably less effective, seeing as involvement from all relevant geopolitical actors is crucial.

It is also noteworthy that the United States was present for the signing of the San Pedro Sula Declaration; according to a representative of a US based human rights NGO, the US outlined on-going efforts to address root causes of displacement in Central America (by means of foreign assistance), asserted a commitment to resettlement, and reaffirmed its support for developing strong asylum systems in the region (Acer 2017). From a regionalist perspective, the US' participation is welcomed because as explained above, an effective regional response is best ensured when the full range of geopolitical actors are involved. In this instance, the US exerts significant geopolitical influence over Central America because it is financially invested in security and development projects. It also receives a high number of Central American refugees and is controversially interested in stemming the flow of their arrival (Long 2019).

It is also relevant to highlight that there are two Central American countries that are not implementing the MIRPS: El Salvador and Nicaragua. Lack of participation from these countries is concerning as it jeopardises a truly regional response to the refugee protection regime in Central America. El Salvador's decision in particular raises red flags considering that it is the highest refugee producing country in the region and has over 70,000 IDPs (UNHCR 2019d: 9). Similarly, Nicaragua's expected rise in asylum seekers foreshadows a pressing need for the country to prioritise cooperative measures for addressing displacement.

It has been nearly two years since five Central American states and Mexico agreed to implement the MIRPS, and in this short time span there have been significant developments to improve refugee protection at a national level, while also participating in strategic partnerships at the regional level. A report completed by UNHCR (2018b), *Two Year Progress Assessment of the CRRF Approach: September 2016-September 2018* (hereafter Two Year Progress Assessment), provides valuable insight on progress made by the MIRPS countries, as part of broader CRRF initiatives. The report centres its analysis on the completion of the CRRF's four key objectives: ease the pressure on host countries and communities; enhance refugee self-reliance; expand third-country solutions; and support conditions in countries of origin for return in safety and dignity (UNHCR 2019b).

Overall, the Two Year Assessment's critique of MIRPS is optimistic, not just about the progress to date, but also about the potential of a regional approach to strengthen protection and assistance for refugees, asylum seekers, IDPs, and other displaced persons of concern. The MIRPS demonstrates the benefits of a multilateral approach to forced displacement and reaffirms the importance of supporting –through financial and technical resources, and responsibility-sharing mechanisms— refugee-hosting countries (UNHCR 2018b: 59). Moreover, the MIRPS (like CIREFCA) embodies the aims of a wider political agenda. It is nested within a regional peacebuilding initiative that sees solutions to forced displacement as

an integral part of security and stability in Central America.

Along with the Two Year Progress Assessment, UNHCR (2018a) produced a case study, *The MIRPS: A Regional Integrative Response to Forced Displacement*. Ostensibly, the case study reflects a positive disposition for regional cooperation. However, it is also candid about considerable challenges to be expected—something that the Two Year Assessment fails to appropriately elaborate on. For example, the case study elucidates that there are two significant compounding issue areas: 1) 'challenges to institutionalisation', and 2) 'a volatile regional displacement context' (UNHCR 2018a: 15). The former includes funding difficulties and retaining commitments during changing political cycles. The latter includes pressure on the refugee protection space due to new crises

(e.g. Nicaragua and Venezuela), and drastic policy changes in neighbouring countries that have direct impacts on forcibly displaced Central Americans.

The second issue area, 'a volatile regional displacement context', is arguably the most pressing concern when evaluating the MIRPS future successes. Perhaps stand alone, pressure from new crises and policy changes would not be damming enough to put to question the longevity of a regional refugee protection regime. However, these have unfortunately become compounding factors that led migration in the Americas to become *securitised*. The succeeding section will thus analyse how securitisation fundamentally jeopardises effective refugee protection and responsibility-sharing in Central America, both of which are at the core of a comprehensive regional approach.

Migrants from El Salvador cross the Rio Grande in Piedras Negras, Mexico with hopes of entering the United States.
Meneghini 2019

Securitisation as a challenge for regionalisation

Securitisation of migration in the Americas

Almost all relevant state actors either adopted the San Pedro Sula Declaration and the MIRPS, or endorsed it and offered support. However, despite these commitments to regional solutions, the competing trend of securitisation threatens these efforts. Securitisation is when an issue becomes a designated security concern because it is presented as 'posing an existential threat to a designated referent object' (Buzan et al.1998: 21). Traditionally, the referent object in question is the state, and the special nature of the threat legitimises extraordinary measures to safeguard national security. Security is a vague term void of legal meaning and is thus 'slippery and contested', providing states with a wide margin of discretion when establishing their national security agenda (Zedner 2003: 153). As a result, a lack of agreed standards on national security, or security for that matter, creates a legal vacuum that states can use to their advantage.

Over the last few decades, migration has become a securitised issue, resulting in devastating consequences for the rights and protections of forcibly displaced persons. Unfortunately, securitisation of migration is at the forefront of current US foreign policy and is subsequently shrinking the protection space offered by the regional refugee protection regime in Central America. A contemporary example is the current US president's tendency to criminalise, demonise, and effectively dehumanise migrants arriving to the US southern border. His comments about ridding the 'bad *hombres*' from the US may have seemed trivial at the time, but his continued securitised rhetoric has resulted in a series of direct assaults on US immigration law, IRL, and IHRL (Pierce and Selee 2017). This rhetoric

has only continued to increase, most notably following the migrant caravan of November 2018 (Cuffe 2018).

Sandoval Garcia (2017) explains that securitisation of migration, in the context of the Americas, has meant that illicit substances, terrorism, and migration are now represented as a single threat when governments are conducting or speaking about border control activities. As a result, individuals migrating because they were forcibly displaced are also seen as threats to security, rather than as recipients of international protection. Segura Mena (2016), provides an argument that is in discussion with Sandoval Garcia, however, she goes a step further to link the securitisation of migration to a US geopolitical strategy of political, economic, and military control over the Central American region. Segura Mena specifically analyses the Regional Conference on Migration, an ongoing inter-state cooperation mechanism since 1996, and posits that it represents a decisive moment in the institutional arrangement of a new regional migration regime, dominated by the migration-security nexus, and characterised by its multilaterisation efforts and by the criminalisation of cross-border mobility under irregular conditions (2016: 108). She notes that one of the most significant consequences of this US geopolitical strategy is the active participation of Mexico in the fight against southern migratory flows.

A study done by Arriola Vega (2017) on Mexico's southern border programmes corroborates Segura Mena's thesis. He concludes that 'Mexico has gradually played the role of a "migration manager" for the United States under a securitised lens. The southern border has become the main barrier to migration flows bound for the United States...'(Arriola Vega 2017: 6). In 2001 Mexico adopted the *Plan Sur* that heightened migratory controls at its southern border with the purpose of hindering Central American migration; since then, Mexico

has continuously increased its border security, most recently through the 2014 *Plan Frontera Sur*. By pressing Mexico to enhance its southern border controls, the US is effectively implementing a policy of 'externalisation of migration controls' that serves to expand and fuel the securitisation of migration. These externalisation strategies prevent migrants, including forcibly displaced persons, from reaching the territories or legal jurisdictions of destination states (Frelick et al. 2016). This is highly problematic because states are implicating themselves in violations of the principle of *non-refoulement*[4] (directly or indirectly). Regrettably, through such strategies, states are placing emphasis on national security to the detriment of the rights of migrants, although arguably, national security can be achieved by the advancement of human security (Jaskulowski 2017). Regardless of its morality or legality, the securitisation of migration has been fruitful for the US; between 2014 and 2017, Mexico has deported more migrants from the Northern Triangle than the US (Flores et al. 2019).

The discussion above conveys that the securitisation of migration in the Americas, driven and propelled by the US, is undoubtedly a significant challenge to the development of an effective protection framework for refugees, asylum seekers, and IDPs in Central America. A particularly problematic aspect of the regionalisation vs. securitisation dilemma is that Mexico is caught in the middle. The geopolitical position of Mexico, with serious economic and political dependence on the US, has led to its immigration policy revolving around the needs and whims of its neighbouring country (Sandoval Garcia 2017). This is evidenced by the increased deportations mentioned above, and by more recent developments that will be further explored below. Notwithstanding, Mexico has continuously affirmed its commitment to a regional refugee protection regime, most recently exhibited by its direct involvement in the MIRPS. Mexico's unique position in relation to both the US and Central America makes for an interesting investigation on the viability of an effective regional response to forced displacement in light of securitisation.

A case study: Looking in depth at Mexico's relationship with securitisation

Mexico is a particularly important MIRPS country because it holds the Pro Tempore Presidency as of February 2019. In this role Mexico coordinates joint efforts between MIRPS countries and other stakeholders to promote the development of enhanced national and regional policy towards forced displacement (ACNUR 2019). In April 2019, Mexico published a report that details the Pro Tempore Presidency's priorities until December 2019. The priorities include 'strengthening the regional and national dynamic in the promotion of shared responsibility among countries of origin, transit and destination (...) *based on the principle that all people, in spite of their situation, are rights holders*' (SEGOB and COMAR 2019: 1, emphasis added).

Quite contrastingly, around the same time that Mexico reinvigorated its commitment to the MIRPS, it also endorsed highly controversial asylum policies for newly arrived Central Americans. In a coordinated effort with the US, Mexico agreed to implement the Migrant Protection Protocols (MPP)

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[4] Art. 33(1) of the Refugee Convention states that 'No contracting state shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'. There is a more expansive definition in the Cartagena Declaration, which includes 'prohibition of rejection at the frontier', and acknowledges the principle as a *jus cogens* norm (art 3[5]).

also referred to as the 'Remain in Mexico Policy'. The MPP stipulates that migrants, including asylum seekers, who enter or seek admission to the US from Mexico illegally or without proper identification, are returned to Mexico while their immigration proceedings are underway (Department of Homeland Security 2019).

The US is highly criticised for this policy because it is in violation of domestic immigration law, IRL, and IHRL. The MPP overrides the requirement to have Mexico officially designated as a 'safe third country'[5] before returning refugees and asylum seekers from US territory, and also arguably violates the principle of *non-refoulement* by returning individuals with protection claims to a country that cannot guarantee their safety (Borger 2019; Gzeh 2019). Mexico's acceptance of the MPP is disconcerting considering that the US has a history of attempting to make Mexico a 'safe third country', while Mexico has continuously resisted this designation (Solomon 2019). Civil society groups in the US challenged the legality of the MPP in the courts, but it appears that individuals are still returned to Mexico (ACLU 2019). As of 24 June 2019, 15,079 people, mostly from the Northern Triangle, were returned to the border cities of Juárez, Tijuana, and Mexicali under the MPP (Human Rights Watch 2019).

Consequently, the MPP is discouraging migrants from seeking asylum in the US and is shifting responsibility onto Mexico. Even before the MPP, Mexico reported an increase in asylum applications; the number of asylum claims rose from 14,596 in 2017 to 29,625 in 2018, marking a 103% increase (UNHCR 2019g). Seeing as the MPP is only making it more difficult for migrants to access the US immigration

system, it is reasonable to expect that this upward trend will continue; as of March 2019 nearly 13,000 people have applied for asylum. If Mexico is thus pushed to attain responsibility for an increasing amount of asylum seekers, it should only be expected to do so after receiving the appropriate financial and technical support to enhance relevant legal infrastructure and social services. The Mexican Commission for Refugee Assistance (*Comision Mexicana de Ayuda a Refugiados*, COMAR) and the National Migration Institute (*Instituto Nacional de Migracion*, INM) already experience capacity issues because they are understaffed and underfunded. In fact, the head of COMAR affirmed that the agency needed six times its current resources to effectively respond to the asylum requests (Meyer 2019). As Mathew and Harley (2016:199) elucidate when outlining potential challenges of responsibility-sharing in regionalisation efforts, adequate resources are 'necessary to guarantee that the international protection of refugees is enhanced and not diminished and to ensure that states *share* rather than *shift* the responsibility to protect refugees' (emphasis added).

To better understand the devastating consequences of the MPP, I travelled to Tijuana, B.C., Mexico in early June 2019 to conduct an interview with Mr. Guerra, a staff member of Catholic Legal Immigration Network Inc. (CLINIC) and a consultant for *Al Otro Lado* (their partner organisation). *Al Otro Lado* is a bi-national, direct legal services NGO that has worked with migrants, asylum seekers, and refugees in the southern US border zone since 2012 (*Al Otro Lado 2019*). Mr. Guerra has coordinated Al Otro Lado's local efforts in Tijuana since October 2018 and he offers a unique and critical perspective on the fast-paced developments.

When asked about changes in US asylum policy and their effects on Central Americans waiting in Mexico, Mr. Guerra highlights the stark divergence between

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[5] US statutory standards state that in order to qualify as a 'safe third country', the country in question must be able to provide protection from persecution and a 'full and fair procedure for determining a claim to asylum or equivalent temporary protection' (8 USC §1158(a)(2)(A) (1994)).

statements and actions, affirming the argument that Mexico's policies on forced displacement are contradictory. He argues that when the crisis at the border escalated in late 2018 'it became really clear that the intent [of the Mexican government] was never actually to provide support' but instead 'the limited support that was provided [was] in such horrible conditions that it almost became a message of deterrence.' (Guerra, interview, 6 June 2019). He then explains how Mexico has been influenced –even compelled—by the US to follow through with repressive migration policies. He laments to have seen 'Mexico stumble and not really know what to do' in the face of the migration crisis, and in doing so, he intrinsically suggests that Mexico is vulnerable and looking to the US for guidance (ibid).

This allusion to geopolitical power dynamics becomes clearer when Mr. Guerra provides explicit examples on how the US and Mexico are cooperating in the border zones. For example, he points out that US Customs and Border Patrol (CBP) 'have forced local Mexican authorities to prevent, for example, unaccompanied minors from seeking protection' (Guerra, interview, 6 June 2019). He then describes a harrowing scene where CBP 'flat out created a human wall' to prevent eight unaccompanied minors from getting onto US territory, and subsequently turned them over to officials from the INM (ibid). The INM is meant to adequately screen apprehended migrants for protection concerns, but a 2017 report from the Citizens Council of the National Migration Institute (*Consejo Ciudano del Instituto Nacional de Migracion*, CCINM) found that there were no clear and effective mechanisms for identifying individuals with protection concerns, and thus evidenced that the INM violated the principle of *non-refoulement* in many of their returns or deportations (2017:13). As such, speculation that the INM continues to prioritise deportations over protection concerns—and increasingly

so, in order to alleviate the already overwhelmed migration system—would appear well founded (Frederick 2019). There is no way of knowing if the eight unaccompanied minors went into the care of social services or were deported, but in any case, their experience elucidates how both the US and Mexico are implicating themselves in violations of the principle of *non-refoulement*. Firstly, by not allowing these children to enter the US to claim asylum, and secondly, by likely deporting them back to a country they fled due to fear of persecution.

This anecdote highlights the informal – and illegal—ways that the US and Mexico are cooperating to stem the flow of migration. Importantly, this cooperation is not done on an ad-hoc basis. Rather, it is nested within the programmed and coordinated efforts that are 'legitimised' because of the aforementioned Migrant Protection Protocols (MPP). When speaking about the MPP, Mr. Guerra almost comically points out the irony in the name, commenting that 'it's more like Migrant *Persecution* Protocols' (Guerra, interview, 6 June 2019). The claim that the MPP is about persecution rather than protection is a bold and unapologetically critical comment on the US and Mexico's treatment of migrants and forcibly displaced persons. Moreover, with these comments Mr. Guerra is implicitly acknowledging the tension between regionalisation and securitisation. Mexico wants to be seen as a migrant friendly and human rights forward country, but due to pressure from the US, it is unable to follow through with its rhetoric. Mexico may be a MIRPS country, but it is sending messages of deterrence through its lack of social services, cooperation with the US on extreme immigration policies, and blatant disregard for the human rights of migrants. Throughout the entirety of the interview Mr. Guerra provided a plethora of information and anecdotes about on-going challenges facing migrants and forcibly displaced persons

waiting in Mexico. His final comments were moving and thought-provoking:

'…we need to remember that most individuals don't want to leave their home country. They are leaving because they are so desperate and we need to create processes in place so that they can actually be protected, and figure out ways to extend a loving hand instead of trying to continue to figure out ways on how to deter people, to criminalise people. No one deserves to be criminalised for trying to survive' *(Guerra, interview, 6 June 2019).*

This plea from Mr. Guerra rightfully indicates that the securitisation of migration has to stop. It is fully within the rights of forcibly displaced persons to have their protection claims heard, but instead the US continues to criminalise them and argue that they are taking advantage of immigration laws. Enforcing immigration policies in order to pursue national security objectives may be a legitimate concern for the US, but their tendency to do so with complete disregard for IRL and IHRL is unjustifiable. Unfortunately, the MPP is just one of the many policy changes enacted by the current US administration to deter Central Americans from seeking asylum at the southern border, and by derivative, to jeopardise the regionalisation of the refugee protection regime in the isthmus.

The consequences of these securitised policies are devastating for both migrants and displaced persons, and Mexico is undeniably complicit in sustaining systematic human rights violations. By allowing the US to return people with protection concerns to its territory, Mexico is jeopardising the legitimacy of the regionalisation efforts exemplified by the MIRPS. Undeniably, through its participation in the MPP, Mexico is neither strengthening the regional refugee protection framework,

nor promoting responsibility-sharing and solidarity. Moreover, Mexico is setting precedent for Central American countries to accept and implement the US' securitized migration policies. Not long after the MPP, on 26 July 2019, the US government announced a 'safe third country' agreement with Guatemala (Restuccia, 2019). Refugees and asylum-seekers who travel through Guatemala will need to seek legal protection in Guatemala before placing asylum claims in the US; this agreement is highly problematic because Guatemala does not meet the US legal requirements to be a 'safe third country' (Gzeh, 2019). While it is making significant strides as a MIRPS country to enhance and strengthen refugee protection and assistance, the increasingly high figures of forcibly displaced persons (86,864 Guatemalan asylum-seekers worldwide in 2018) indicate that Guatemala is not ready or capable of offering protection for all Central Americans crossing through its territory. Unfortunately, in light of this development, one can presume that similar agreements with other Central American countries are likely to follow.

Conclusion

This article assessed the extent to which regionalism of the refugee protection regime in Central America has been effective. It lays out the continuous and extensive efforts on the part of Central American countries—and points to a definite trend in regionalisation of the refugee protection regime—beginning with the Cartagena Declaration in 1984 and culminating with the San Pedro Sula Declaration in 2017. However positive these regional efforts have been in fostering responsibility-sharing and solidarity, and fruitful in developing a more comprehensive and harmonised system for addressing forced displacement, the unfortunate reality is that their effectiveness is jeopardised by the competing trend of securitisation.

This research does not presumptuously declare that the regionalisation of the refugee protection regime in Central America is condemned to fail because of securitisation. Rather, it has highlighted that securitisation carries many challenges that have a direct impact on the ultimate aim of fostering a refugee protection regime that can respect, protect, and fulfil the human rights of forcibly displaced persons. Moreover, the securitisation of migration has brought with it an ever-changing protection space that is nearly impossible to keep up with. Considering the almost weekly changes in US policy (during the Spring and Summer of 2019), it is unlikely that the securitisation of migration will decelerate anytime soon. The situation is fluid, and the unpredictability of short and long-term developments hampers effective and predictable structures from being established.

In light of the many unfortunate circumstances directly infringing on forcibly displaced persons' ability to enjoy their rights under IRL and IHRL, UNHCR recently placed a call to action in Central America. On 12 June 2019, the agency appealed for further regional talks to address forced displacement, noting that the strained capacity of the refugee protection regime placed 'growing numbers of individuals and families at grave risk and [created] situations that no country can address alone' (2019f, para 1). A few days later, on 26 June 2019, a disturbing image went viral: a Salvadoran migrant and his two-year-old daughter lying face down, lifeless, in the waters of the Rio Grande (Linthicum 2019). This image renewed attention on the Central American refugee crisis and stressed the importance of heeding UNHCR's call to action. Undoubtedly influenced by both the UNHCR and the viral photo, on 26 July 2019, El Salvador announced its decision to join the MIRPS (UNHCR 2019c).

Participation from El Salvador in the MIRPS is a crucial step forward for ensuring the effectiveness of a regional refugee protection regime in Central America. As mentioned in the second section, in 2018 El Salvador was the highest refugee producing country in the region (with 32,543 refugees and 119,257 asylum seekers worldwide) and has over 70,000 IDPs. At least in principle, El Salvador's decision to join the MIRPS is a strong and symbolic 'never again' message that shows a commitment to addressing the push factors of forced displacement, and the detrimental effects of the securitisation for migration that push individuals towards increasingly dangerous travel routes. It is too soon to tell if and how El Salvador's inclusion will directly improve the protection space in Central America, but nonetheless, it is a laudable development for regionalism of the refugee protection regime. Seeing as the forced displacement crisis in Central America is dynamic and ever-changing, it is more important than ever to follow developments closely and critically.

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Between Torture and Hiding: The North Korean Migration Case in China

Phillip Kraeter

Different reasons underlie North Koreans' decisions to cross the border into China irregularly, including state-driven persecution, economic hardship and hunger. While some fall under the refugee definition set out in 1951 Refugee Convention, others classify as refugees sur place given the inhumane treatment and serious harm they would face upon return to North Korea. Although those fleeing the North Korea would be classified as refugees according to several international instruments signed by China, Chinese authorities continue to refuse recognising their refugee status, classifying North Koreans instead as 'economic migrants' and repatriating them to North Korea by force. This article examines the challenges faced by North Korean refugees in regard to accessing international protection and the extent to which both North Korea and China fail to fulfil their obligations under international refugee and human rights laws. Despite bilateral agreements with North Korea, it argues that the automatic repatriation of North Koreans by China is an unlawful procedure and that both North Korea and China must conform to international agreements to protect North Korean citizens fleeing the country. Based on an analysis of the legal framework in place, as well as a consideration of the broader geopolitical context at play, this article suggests several recommendations for improving the situation of North Koreans in China.

Introduction

Although the main destination of choice for those fleeing has been the Republic of Korea (South Korea), it is estimated that in total between 100,000 and 300,000 people have arrived in China from North Korea (Margesson, Chanlett-Avery, Bruno 2007: 4) by 2007–a number which is likely to have increased since, although up-to-date figures from reliable sources are difficult to obtain. Yet inconsistencies and disagreements persist over the classification of those who arrived from North Korea in China. Whilst North Korea refers to the migrants as 'defectors', the United States and other third parties utilise the term 'refugee'. China, however, makes use of the term 'economic migrant'. While they could be classified as refugees and protected against repatriation to North Korea according to several international instruments signed by China, Chinese authorities have refused to recognise their refugee status and repatriating them to North Korea by force.

This repatriation brings with it further problems, as North Korea is known to commit several human rights violations

such as torture or dehumanising treatment on migrants after being returned to their country (Lee et al 2001: 227). The political situation in the region complicates the matter further. Whilst China fears the consequences of a collapse of North Korea, it is also reliant upon it as buffer zone between China and South Korea, and more precisely the influence of the United States. Therefore, it is in China's national interest to find a risk-free solution to this issue, while not provoking allies or being viewed by the international community in a negative light.

This article seeks to answer the following questions: What challenges have North Koreans fleeing North Korea since 1990 faced in accessing international protection? To what extent are North Korea and the China fulfilling their obligations under international refugee and human rights law? The scope of this article is set after 1990, as this marks the time of Sino-South Korean relaxation and further coincides with the natural disasters that took place starting 1995. Further, the case of China was chosen due to the complex interplay between international treaties vis-à-

vis national law, and the contradicting interpretations of actions by the government in question.

It analyses the legal framework in place in China as well as North Korea, including relevant international treaties. It also offers reflections on the contemporary situation and broader geopolitical context in an attempt to understand China's and North Korea's position vis-à-vis those fleeing into Chinese territory. Finally, the article concludes by exploring possible solutions to improve the matter in question and considers remaining research gaps.

In terms of methodology, it is important to note that neither North Korea nor China grant access to information on the issue. No interviews were therefore conducted directly by the author. Aside from drawing on articles pertaining to the legal and political situation, the majority of sources are based on testimonials of North Koreans, reports, or interviews from NGOs and academics who have gained access to migrants. Sources were selected based on relevance to the topic of North Korean migrants in China, on the root causes of the problem, and on potential solutions and treaties in place, which should protect them.

North Korean 'economic migrants' in need of protection

To establish an understanding of the legal framework in place, several definitions need to be laid out. At the core of this lies the decision of the Chinese government to classify North Korean migrants as 'illegal economic migrants', rather than 'refugees' (Ra 2015: 44). The United Nations High Commissioner for Refugees (UNHCR) Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status understands an economic migrant as 'a person who voluntarily leaves his country (…) exclusively for economic considerations.' (UNHCR 2011: 15). Yet, a refugee is understood under the 1951 Refugee Convention (Refugee Convention) as any person who is outside their country of nationality and is unable or unwilling to return there or avail himself to the protection of that country, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion (Refugee Convention Article 1A(2) 1951). While there is no universally accepted definition of the term 'persecution', it can be inferred from article 33 of the Refugee Convention that a threat to life or freedom of an individual on the account of race, religion, nationality, political opinion or even membership in social groups would constitute persecution (UNHCR 2011: 13). A fear of persecution may be established where the state is responsible for the persecution or where there is an absence of state protection against other actors.

Applying these definitions to the present case, there seem to be two main umbrella categories of people fleeing North Korea into China. The first refers to individuals fleeing North Korea for fear of persecution at the hands of state forces, who would satisfy the definition of a refugee as laid out in the 1951 Refugee Convention and its 1967 Protocol. The second category is comprised of those individuals leaving North Korea for other reasons, such as famine or better economic opportunities, making them economic migrants strictly speaking. The lines between these two umbrella categories are blurred, however. Famine and economic deprivation, for example, are sometimes part and parcel of persecutory measures against families or particular groups of individuals considered hostile to the regime. Due to a system of social classification in North Korea, for example, those who the regime considers to be in a hostile group could face restricted access to jobs or food. In addition, even those who may not be considered as hostile by the state but who leave North Korea nonetheless risk facing inhumane treatment as objectors

to the regime upon return. This classifies them as 'refugee sur place' (Chan and Schloenhardt 2007: 225), a term used to describe a person who was not a refugee when they left their country, but who becomes a refugee at a later date, due to a change of circumstances in their country of origin or as a result of their own actions (UNHCR 2011).

Thus, it is important to note that even those who have left North Korea due to economic hardships or hunger may nevertheless become eligible for international protection after leaving the North Korea. North Korea officials are known to inflict harsh treatment on individuals who have left the country and are then repatriated by Chinese officials. Such treatment includes torture, imprisonment, or even execution (Chan and Schloenhardt 2007: 226; Lee et al 2001: 227). In fact, articles 117 and 47 of the North Korean Criminal Code make it a punishable offense to leave the country without possession of valid travel certificates and corresponding permission from the authorities (Chan and Schloenhardt 2007: 221). Furthermore, crossing a border illegally is a 'crime of treachery against the Fatherland by defection' according to article 62 of the Criminal Code (Kim 2015: 127; Margesson, Chanlett-Avery and Bruno 2007: 9). This shows that North Korea aims to punish those being disloyal, further strengthening the position of refugees sur place.

Understanding existing laws and treaties in North Korea and China

North Korea has signed four international treaties relating to human rights, namely: The International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and political Rights (ICCPR), the Covenant on Elimination of All Forms of Discrimination against Women (CEDAW) and finally the Convention of Rights of the Child (CRC)

(Amnesty International 2004, 2). The aforementioned articles of the North Korea Criminal Code stand in direct conflict with at least one international treaty signed by North Korea, the ICCPR. Amnesty International finds that North Korea's article 117 of the Criminal Code violates article 12(2) of the ICCPR, which states that 'everyone shall be free to leave any country, including its own' (Amnesty International 2004, 29). It further notes that officials of the frontier administration, who are found helping someone cross the border and flee, face a sentence of two to seven years in a labour camp, as per article 118 of the North Korean Criminal Code (2004: 29). However, given the lack of available information, there is some debate among scholars regarding the level of punishment inflicted upon those found guilty of illegally crossing the border. While Kim cites a minimum punishment of five years if found guilty of treachery by defecting (2015: 127), Chan and Schloenhardt argue there is a standard sentence of seven years (2007: 221). Some scholars also cite death by execution as the final punishment for severe offenses. Such a 'severe offense' could for example be contact with South Korean citizens or religious organisations like Christians in northeast China while fleeing North Korea (Kang 2016: 71). It is seen by North Korea as unlawful political expression which is understood as an ideological crime and therefore warrants persecution in North Korea (Cho 2013: 226).

Scholars such as Chan and Schloenhardt (2007) note that there are numerous factors which further complicate these matters and make it difficult to determine the realisation of the law. One reason cited is North Korea's unwillingness to permit external human rights monitoring bodies into the country. As a result, much of the information in the literature is based on media reports, government sources, or anecdotal evidence. Due to these challenging conditions, many NGOs

have left North Korea, citing the difficulty to obtain information without direct access to North Koreans. There is also general frustration when dealing with the government due to its apparent disregard of several articles of the North Korean Constitution of 1998, including the rights of freedom of speech, press, assembly, demonstration, and association (Chan and Schloenhardt 2007: 217). Although this law grants the above rights in theory, Lee (2001: 227) explains that the situation in North Korea reveals several human rights violations, such as torture. Despite signing these four international human rights treaties, North Korea is not seen as cooperative in fulfilling its obligations of upholding the rights of refugees.

An additional problem is the role China plays and the actions it has taken in this multi-faceted issue. China serves as one of the main temporary destinations for North Korean refugees. Although UNHCR estimates that there are between 30,000 and 50,000 North Koreans living as refugees in China since 1990 (Margesson, Chanlett-Avery, Bruno 2007: 4), some estimate there are as many as 300,000 (Ibid: 4). A reason for this large discrepancy is that UNHCR has no direct access to North Korean migrants, as many remain in 'underground' movements attempting to stay hidden. China's role in this is interesting due to the aforementioned reluctance to view North Korean migrants as refugees. China, unlike North Korea, is a party to the 1951 Refugee Convention, signed by China in 1982 (Ra 2015: 43). In the 1970s and 1980s, China also ratified several other international human rights instruments and treaties (Song 2014: 5). The Chinese government, however, denies UNHCR direct access to refugees in China, making it challenging to uphold the Refugee Convention (Kim 2015: 136). China has responded by proclaiming that the situation is an internal matter and therefore refuses to provide UNHCR with further access (Cho 2013: 208; Ra 2015: 44).

Song (2014: 3-4) identifies China's legal framework as the reason it is dealing with the situation in this way. She warns that the biggest challenge in dealing with cross-border human displacement into China is the absence of a refugee definition in Chinese domestic law. In particular, China's Constitution is silent on the legal status of international treaties and their respective hierarchy in the domestic legal system. At the same time, China has not codified the definition of a refugee into domestic law, nor has it been directly applied by Chinese courts. Thus, although scholars such as Ra, Kim, Chan and Schloenhardt condemn China for violating its international obligations by disregarding treaties, Song argues that this is due to the disregard on the side of the Chinese government about the legal status of international treaties, including the definition and rights of refugees established in the Refugee Convention (Ra 2015: 45; Kim 2015: 136; Chan and Schloenhardt 2007: 224; Song 2014: 6).

With this in mind, the question remains whether the domestic legal framework or a signed international treaty holds greater importance. Song attempts to explain this difference using the example of article 46 of China's Law on Exit and Entry Administration of 1986, which states that 'foreigners seeking asylum for political reasons [who are] subject to the approval of governing authority in China, are allowed to stay and live in China'. In 2013, this was updated to provide that applicants for refugee status may stay temporarily in China during the application process and that those granted refugee status may stay in China. Yet, this law did not cover the issue of who qualifies for this refugee status, nor the procedures of this status determination (Song 2014: 7). Song therefore argues that the main issue underlying China's approach to North Korean migrants is that China is relatively new to refugee protection and has little to no knowledge about the international refugee regime. Particularly

as prior to the mid 1990s, China had limited experience with asylum seekers and its legal framework makes little difference between refugees, tourists, and immigrants (Song 2014: 8).

Reasons causing North Koreans to cross into China

There are several different conditions which catalysed the movements of North Koreans into China. This section outlines how economic downturn and famine, in addition to state-driven persecution, forced the citizens of North Korea to consider other options and gave rise to the present case of North Koreans fleeing to China.

In 1995, North Korea was hit by excessive floods, destroying crops en masse, leading to a national famine that lasted until 1998 (Cho 2013: 196). These heavy floods which began in North Korea damaged agricultural activities, leading to a substantial food shortage that has not been adequately solved (Chan and Schloenhardt 2007: 220). The situation further exacerbated by droughts during the 2000s, fully collapsing the agricultural industry. To this day, this shortage has not been fully handled and has in fact worsened by an ongoing drought (Choe 2019). It is estimated that 2 to 3.5 million people starved to death from 1995 until 1998, yet the North Korean government claims that the death toll was around 220,000 (Cho 2013: 197). Although natural disasters are not something in control of the government entirely, the response certainly is. In the case of North Korea, the country has yet to fully recover from this natural disaster of this scale.

However, for North Koreans, famine and natural disasters are not the only issue at stake. North Koreans live within an ongoing system of social classification, despite article 65 of the constitution calling for the right to equality (Lee et al 2001: 218). There are three main groupings in place: 'core' class, making up roughly 30% of the population;

'wavering' class, equal to roughly 50% of the population; and 'hostile' class, with the remaining 20% of the population (Cho 2013: 187).[1] As access to information is scarce in the North Korean context, these numbers could be slightly outdated, but still serve as the most recent credible classification. The core class forms the elite, with preferred access to food, medicine, education, and employment, while the wavering class consists mostly of the working class, with professions such as teacher, technician, soldier, and farmer (Chan and Schloenhardt 2007: 218). Lastly, the hostile class represents those disloyal to North Korea (Cho 2013: 187). This is not to say that 20% of the population has been directly involved in acts of treachery. Rather, it is based on North Korea's system of 'collective responsibility'. Due to the strong ongoing family ties, collective responsibility prescribes that relatives of those breaching the law are equally punishable (Chan and Schloenhardt 2007: 218; Chang, Haggard and Noland 2008: 9). This punishment can even extend to multiple generations and is intended to cleanse the population of any and all opponents. Therefore, mere opinions of a relative can blacklist a person from receiving adequate quality of education or job offers over generations, even if this relative is long dead.

This social classification system is propped up by North Korea's prison system, which is further broken down into four different types of hard labour facilities, resembling modern-day gulags (Cho 2013: 189). Interrogation techniques such as water torture are applied to determine the degree of imprisonment. North Korean officials reject the existence of such institutes, however, despite estimates that between 150,000 to 200,000 prisoners are being detained there (Ibid: 190-192).

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[1] Core class = *haek-sim kyechung*, wavering class = *tong-yo kyechung* and hostile class = *jok-tae kyechung*. The latter has no right to education, employment or medical services of any kind despite article 65 (Cho 2013, 188).

In order to strengthen the prison and social class systems, North Korea also adopted stricter border control in the early 2000s. This included instructions for border guards to shoot attempted border crossers on sight (Human Rights Watch 2013; Kim 2015: 127). However, the tightening of border control does not just pertain to North Korea. China has also pledged stricter controls and supports this by imposing repatriations.

In addition, for decades, North Korea has also been an outlier within the international community, despite continued efforts to establish political ties to several countries. Under Kim Il-Sung, North Korea's supreme leader until 1994, an ideology termed 'Juche' was formed. This can be understood as an ideology of self-reliance and a person being master of its own destiny and that North Korea should be the centre of interest and be the driver of its own progress. This ideology is one of the reasons of the present political and economic isolation of North Korea (Amnesty International 2004: 2). The early 1990s also saw a decline in trade with China over the normalisation of Sino-South Korean relations. Whilst the North Korean government may have been able to cope with these two conditions on their own, the fall of the Soviet Union in 1991 made this impossible, as it meant losing 40% of its imports (Cho 2013: 196). The social classification, applications of torture techniques paired with isolation to the international community due to policies such as 'Juche' play a cumulative role in this debate. Although some factors certainly have a larger impact on this situation, they all contribute a part in the development of North Koreans crossing into China.

China's neglect to offer protection to North Koreans

The massive arrival of North Koreans in China sparked the question of who can be classified as a refugee in China. As previously mentioned, due to a lack of a refugee definition in Chinese domestic law, there have been no effective mechanisms to ensure implementation of the relevant treaties China has signed (Song 2014: 14). According to UNHCR Guidelines, an individualised assessment to determine refugee status should take place (UNHCR 2011: 165). Instead, China simply denies the refugee status of North Korean migrants by claiming they have illegally entered China for economic reasons. Further, sheltering North Korean refugees can result in imprisonment in China, even for non-Chinese citizens (Ra 2015: 45).

At the core of this reaction, according to Chinese officials, lies the 1961 Sino-Korean treaty, which obliges China to return all North Korean nationals who entered China without a valid travel ID (Chan and Schloenhardt 2007: 224). The 1998 China-North Korea Bilateral Agreement on Mutual Cooperation for the Maintenance of State Safety and Social Order additionally creates an obligation on China to repatriate North Korean defectors (Ra 2015: 44). Despite scholars finding these agreements in violation of international treaties signed by China, such as the Refugee Convention or the Universal Declaration of Human Rights, China disregards these claims by classifying the border crossers as economic migrants, rather than refugees in need of protection (Ra 2015: 44; Chan and Schloenhardt 2007: 224). In their eyes, this means they would not be in breach of the principle of non-refoulement enshrined in article 33(1) of the Refugee Convention, which prohibits the return of a refugee to where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (Chan and Schloenhardt 2007: 234-235).

It is worth noting, however, that China in fact would be under an obligation not to repatriate North Koreans migrants arriving in China, regardless of whether

they qualify for refugee status, given widespread evidence that North Korea makes use of torture techniques to interrogate defectors, and that those repatriated face harsh conditions including execution. This is because unlike North Korea, China is a signatory to the Convention Against Torture (CAT), which it ratified in 1988. Article 3 of the CAT, prohibits parties from returning, extraditing, or refouling any person to a state 'where there are substantial grounds for believing that he would be in danger of being subjected to torture'. China's extradition law of 2000 further prohibits extradition of persons who have or will probably be subjected to torture or other cruel, inhuman, or humiliating treatment or punishment (Cho 2013: 212). Nonetheless, China knowingly conducts a procedure of automatic repatriation, citing bilateral treaties and political relationships with North Korea.

The Chinese viewpoint is supported by the 'last in time' law, which states that the treaty which was signed last should supersede others and can be seen as shielding China and the North Korean action in this instance (Cho 2013: 219-220). Consequently, the law is often regarded as undermining the implementation of the Refugee Convention and other instruments, as governments could simply re-negotiate treaty commitments by enacting new legislation. The 'last in time' law requires that all existing parties need to be a part of both treaties in question for one to override the other. While Article 27 of the Vienna Convention on the law of treaties and institutions such as UNHCR view international agreements to outrank bilateral ones, the Chinese government seems to disagree (UN 1969: 339; Margesson, Chanlett-Avery, Bruno 2007: 3). As a result, North Koreans are still automatically repatriated by Chinese authorities, despite being bound by the Refugee Convention and other relevant instruments.

To assist in resolving this situation,

UNHCR proposed a special humanitarian status for North Korean refugees, allowing them to obtain temporary documentation for the protection from forced return (Ra 2015: 58). This led to a 17% increase in the granting of work visas to North Koreans in 2013, totalling 93,000 (Ibid: 59). To avoid criticism, China has granted North Korean refugees who successfully entered a diplomatic compound the right to leave to a third country. This is done to avoid repatriation and therefore creates the ability of a smooth transition into the final destination for the refugees in question (Chan and Schloenhardt 2007, 237).[2] Despite this, China simultaneously tightened the security around these compounds and demanded embassies to hand over North Koreans to Chinese authorities. This seems to violate the principle of *non-refoulement*, as diplomatic compounds have a responsibility not to return them (Ibid: 238). A possible way to address the concerns regarding the classification of refugees and who to protect, would be to fall back on the implementation of an individualised assessment system, as prescribed by UNHCR. Yet, to understand fully why China has been avoiding such a system to date in the case of North Koreans fleeing into China, its underlying motives should be considered.

The geopolitical context and China's underlying motivations

North Korea acts as a geographical buffer zone between China and U.S. troops located in South Korea. This suggests that in any action China takes, it seeks to neither create a pull factor to encourage a greater influx of North Korean refugees, nor to provoke an ally or destabilise the North Korea

[2] The final destination for a vast majority of North Koreans is South Korea. Partially, this is because of article 3 of the South Korean Constitution, granting any North Korean national South Korean citizenship.

(Margesson, Chanlett-Avery, Bruno 2007: 12). Therefore, in order for China to reconsider its strategy of forced repatriation, it must be reassured first that actions such as granting UNHCR access will not lead to an exodus from North Korea into China, or a collapse of the North Korean regime entirely. As this is a big threat China faces, it must be addressed in order to reach an outcome for this case (Chan and Schloenhardt 2007: 239-240). A suggestion towards such reassurance would be to allow China to draft such agreements with UNHCR, settling for a compromise until another solution is found.

The survival of North Korea is seen as a core factor for China because a fall of the regime could potentially be a catalyst for a new Korean war, or cause an even larger, unwanted influx of North Korean refugees into China (Cho 2013: 202). Although this means that the Chinese-North Korean alliance is relatively one sided, these sacrifices go hand in hand with China's position in the East Asian region to become a superpower. A North Korean dismantling would be negative for such endeavours and is therefore not wanted by the Chinese government. This, although not justifying the breach of international law, does go far in explaining the Chinese stance and sheds lights on the motivation behind procedures such as forced repatriation of North Korean refugees.

Conclusion

The case of North Korean migration in China explored in the present article presents layers of complexity relating to legal frameworks on a national and international level. Further complications are added by the actions taken based on international agreements signed. Both China and North Korea are to blame for this. The study indicates that a true solution is not in sight, and that the access to protection for North Koreans fleeing into China is not an issue that will

be resolved on its own.

However, if China is assured that complying with international treaties and responsibilities does not threaten the existence of North Korea, a solution could possibly be negotiated on more realistic terms. Currently, an issue that prevents reaching a solution with positive outcome for North Koreans is the Chinese blanket statement that all North Korean refugees are in fact economic migrants. Not only does this seem to violate China's obligations under international law, but it also fails to take into account the need for individualised assessments to be conducted when evaluating the asylum claims of North Koreans. Such assessments would need to be conducted in a way where they conform to international instruments, yet would not damage existing bilateral agreements, making them a realistic and worthwhile consideration. To then adequately make the separation between who is an economic migrant and a refugee, a case-by-case assessment needs to be implemented. This would allow China to comply with the 1951 Refugee Convention and other obligations under the CAT.

Despite analysing the situation facing North Korean migrants and refugees from a multi-layered perspective, future research on this topic could aim to explore the role of the international community in greater detail, including its roles and responsibilities in terms of accessing information. This is especially important as NGOs themselves continue to find themselves with limited access to information in and about North Korea. Moreover, as it was not possible to conduct interviews for this study, this article does not capture how North Korean refugees feel about the procedures put in place. Further studies on the topic should therefore aim to integrate their voices into the analysis.

The economic situation in North Korea is not likely to improve soon, and equally starvation may continue to drive citizens abroad in search for food. It is

important to keep in mind that those fleeing North Korea do not do so for a single motivation. Apart from those that flee for persecution reasons laid out in the 1951 Convention, it is important to acknowledge the protection needs for those whose flee economic hardships and famine and may become refugees sur place due to the fear of political persecution or mistreatment upon return. In order to solve the root of the issue, more must be done by the international community to nudge North Korea towards addressing these issues. For this to be realised, however, the use of execution, torture and violations of the rights of freedom of movement, opinion, speech and assembly must be prohibited in North Korea.

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Beyond the 'Women-and-Children' Bias in Human Trafficking: A Study of Haitian Migrants in the Dominican Republic

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The anti-trafficking agenda has faced at least two main criticisms – it privileges criminal justice over human rights and it focuses excessively on sexual exploitation and prostitution. Human trafficking has historically been linked with sexual exploitation of women and children, and despite attempts to broaden the scope, these associations have persisted. Scholars have called for new ways of framing trafficking which can effectively capture the complexities of this phenomenon and adequately represent the affected populations. This paper argues that an excessive focus on 'women-and-children' victims precludes an examination of a wider cross-section of vulnerable populations. Using the case of Haitians in the Dominican Republic, it proposes that a human security perspective that explores intersectional identities is best suited for studying human trafficking as it more closely examines the different factors which render people vulnerable to trafficking.

Introduction

A comprehensive study on human trafficking in the Dominican Republic, released in early 2019, detailed a dark reality of internal trafficking of women, children, and adolescents (OBMICA 2019). Similar assertions had been made in successive Trafficking in Persons (TIP) Reports which also flagged neighbouring Haiti as a human trafficking hotspot (United States Department of State 2016; 2017; 2018). These reports focus heavily on the vulnerabilities of women and children, primarily for sexual exploitation. Both Haiti and the Dominican Republic are source, transit, and destination countries (United States Department of State 2016). Despite highlighting forms of forced labour among women, children, and adolescents, OBMICA's (2019) study does not reflect more extensive forms of forced labour in the Dominican Republic. Similarly, the TIP Reports flagged other forms of forced labour practices but fell short of suggesting policies that could address them. What becomes apparent from these reports is that women and children are not the only victims, and that exploitation involved in human trafficking extends beyond sexual ends. All these

have implications on how trafficking is conceptualised, who is considered a victim, what constitutes trafficking, and ultimately, how policymakers respond to the problem.

Human trafficking research suffers from a scarcity of reliable data, compounded by the absence of a commonly accepted and widely applied definition of the phenomenon (Savona and Stefanizzi 2007). Whereas the Palermo Protocol defines human trafficking,[1] the interpretation and application of said definition varies widely. The problems of data and definition have implications for both scholarship and policy relating to human trafficking. For example, in the Latin America and Caribbean region, sex trafficking is highlighted as the most prominent form of human trafficking, and women and children are identified as the most common victims (Langberg 2005; Seelke 2011). However, this may be owing to an inherent bias in methods

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[1] The Palermo Protocol defines trafficking from three main angles: the actions, the means and the purpose. Actions range from recruitment and transportation, to receiving or harbouring persons; means could be fraud, deception, coercion, abuse of power, among others; and the purpose as exploitation which may be for prostitution, sexual exploitation, forced labour and other similar forms.

of identification, or in the perceptions which are held of possible forms and victims of trafficking (Meshkovska et al. 2015). Furthermore, states such as the Dominican Republic with a pre-existing challenge of undocumented migration may place greater emphasis on smuggling, which is a criminal offense both for the smuggler and the smuggled than on trafficking, which is a criminal offense for the trafficker and not for the victim (Tejeda and Wooding 2012).

This paper responds to the need for an analytical frame in human trafficking literature that can encompass the diversity of trafficking's implications and victims. It draws on insights from gender and human security, and in particular intersectionality as a possible response to the call for an analytical frame that focuses on disempowered people – not just women and children – as being vulnerable to exploitative means, processes, and ends – therefore to trafficking. The study uses primary and secondary sources including global, regional, and national reports to assess the case of trafficking of Haitians in the Dominican Republic. It uses an analytical approach which centres the intersectionality of trafficking vulnerability to argue that the predominant focus on sex trafficking and the inherent bias towards women and children as victims overlooks other forms of exploitation, affecting a wider cross-section of Haitian migrants.

Whereas successive reports from both the United Nations Department of State (United States Department of State 2016; 2017; 2018) and the UNODC (2009; 2012; 2014; 2016; 2018) have highlighted the significant problem of human trafficking in the Dominican Republic, this issue appears infrequently in scholarly literature, especially relating to Haitian migrants (Petrozziello and Wooding 2011; Wooding 2011). The vulnerabilities of Haitian migrants are, nonetheless, often discussed in ways that highlight how their intersectional identities predispose them to marginality

(Martinez 1999; Wooding and Moseley-Williams 2004; Cloud 2009; Kristensen and Wooding 2013). Petrozziello and Wooding (2011) demonstrate how these intersectional identities of poor, black, Haitian women increase their vulnerability to human trafficking into and within the Dominican Republic. This perspective, however, falls short of addressing the ways in which Haitian migrants in general are vulnerable to trafficking because of the intersection of race and class, along with the excessive focus on women and children in human trafficking. Consequently, anti-trafficking policies and scholarly work risk ignoring such migrants. This paper aims to inform anti-trafficking policies that protect the most vulnerable and marginalised populations, as well as contribute to a literature of human trafficking that captures the breadth of the phenomenon and its victims.

Human trafficking: Between criminal justice and human rights

Human trafficking has predominantly been considered as an issue that affects women since the early 20th century (Chuang 1998; Bruch 2004; Gallagher 2010). The primary focus has been on forms of sexual exploitation, especially prostitution – which will be referred to as 'sexualisation' in this paper. The most widely accepted definition of human trafficking has been codified in the UN General Assembly Protocol to Prevent, Suppress and Punish Trafficking in Persons, *especially Women and Children* (emphasis added), hereafter the Palermo Protocol (2000). This enshrined trafficking as a criminal activity by placing it under the purview of the United Nations Convention on Transnational Organized Crime (Bruch 2004; Gómez-Mera 2016).

One strand in the antitrafficking literature calls for a human rights approach to human trafficking, over one of criminal justice (Chuang 1998;

Gallagher 2001; 2010; Bruch 2004). The current antitrafficking regime includes legally binding provisions enabling states to prosecute perpetrators, without providing clear protections for victims (Bruch 2004; Gallagher 2010; Martin and Callaway 2011; Gómez-Mera 2016). The Palermo Protocol does not provide a mechanism for identifying victims of trafficking, and therefore victims may either be conflated with other forms of irregular migration or may be criminalised for activities they are forced to undertake based on their trafficked status (Hoshi 2013; Gómez-Mera 2016; Malloch 2016; Schloenhardt and Markey-Towler 2016). Victims could consequently be prosecuted rather than protected.

The proposed human rights alternative, however, is far from univocal. Some scholars portray the victim as being predominantly women, and therefore consider that rather than adopt a broad human rights approach, the focus should be on improving rights for women who are exploited by traffickers and then criminalised in jurisdictions where they are trafficked (Chew 1999; Jordan 2002; Miko 2007; Kapur 2008; Williams 2008). They argue that mostly women and children are frequently trafficked for sexual exploitation and prostitution. This link with trafficking and prostitution is riddled with human rights violations, which justifies a human rights approach protecting primarily vulnerable women and children (Miko 2007).

Others, however, are critical of this approach which is considered loaded with moral questions concerning the abolition of prostitution (Chuang 1998; Bruch 2004; Sharma 2005; Brysk 2012). Gendered discourse that seeks to rescue women and children, largely ignores more widespread structural causes of insecurity and vulnerability, and therefore does not adequately address preventative mechanisms (Raigrodski 2015; Russell 2016). Here, 'gendered' refers to the ways in which trafficking is conceived in scholarship and policy as primarily based on dichotomies of male perpetrator and female victims. The focus on women and children as innocent, powerless victims is problematic because it gives an erroneous delimitation of the 'identity' of victims, and by focusing on sexual exploitation it excludes several other forms of trafficking and other potential victims ((Ferree 2013; Meshkovska et al 2015). As governments apply policy responses, more restrictive immigration policies may unduly target women, and even voluntary migrant women may end up being conflated with victims of trafficking (Chew 1999).

Parallel to the human rights approach is the commonly held view linking labour rights considerations to human trafficking. Human rights approaches need to focus more on forced labour practices and exploitative processes which impede the enjoyment of fundamental human rights (Hathaway 2008; Obokata 2010; Brysk 2012). This perspective focuses both on the exploitative ends of trafficking and the processes which induce them. There is a demand for exploitable labour, sustained by structural flaws within exploitative labour markets that make workers vulnerable, for example through disproportionate dependence on their employers (Williams 2008; Pope 2010; Shamir 2012; OBrien 2016). Exploited migrant workers may find themselves with no options for seeking justice without themselves being prosecuted (Bravo 2009; Pope 2010; Chuang 2014).

Clearly, there is a need for greater understanding of the vulnerabilities to which different populations are exposed, the causal mechanisms of these vulnerabilities, and the kinds of trafficking to which these populations become victim. While the Palermo Protocol has presented a broad definition of trafficking, the ways in which this definition is interpreted both in scholarship and in practice continue to exclude various forms of trafficking and to discredit some victims. Bruch's (2004) call for new models for approaching

the study of human trafficking may well find an answer in a focus on gender and human security using intersectionality as an analytical framework.

A gender and human security approach to human trafficking

It is necessary to consider gendered vulnerabilities as a category in examining labour migration, exploitation, and oppression, since women are overrepresented in some forms of trafficking. Women can face particular vulnerabilities during the migratory process such as significant levels of gender-based violence including attacks, robbery, and rape by scouts who collect bribes to get them across the border (Petrozziello and Wooding 2011; Wooding and Petrozziello 2013). What is important to note, however, is that using gender as the only category of analysis reinforces the dominant trafficking discourse and ignores other factors which render people susceptible to trafficking, and consequently shrouds other forms of exploitation that are not reflected in human trafficking policy and research.

Human security as a concept and policy direction emphasises safeguarding the individual from vulnerability and insecurity. The concept has been criticised for being too broad and policy-oriented to have much analytical utility (Chandler 2008a; 2008b), or for having too much faith in established institutions such as the state (Newman 2010). These institutions, while charged with tackling insecurity may also be sources of oppression and disempowerment. Human security is also universalising (Ferree 2013). That is, while claiming to shift the focus to the individual, human security presents problems and solutions based on broad categories rather than focusing on specific realities of different populations. A gender and human security perspective could mitigate against this universalism since a gender analysis highlights important

fragmentations involving difference or intersections that offer greater clarity in identifying sources of vulnerability and insecurity. This approach casts human trafficking as a threat to the trafficked persons rather than as an affront to state security (Yousaf 2018; Lobasz 2009). Consequently, it shifts the focus to people in situations of vulnerability vis-à-vis more dominant groups. This perspective also examines how stereotypes of categories of practices, perpetrators and victims are reproduced.

Postmodern feminist thought – in particular its contributions to gender and intersectionality – helps contextualise the operationalisation of human security by revealing the diversity in sources and systems of oppression and the unique challenges that different people face. Gender operates both as a category and as a process (Steans 1998; Beckwith 2005). Gender as a category refers to a 'multidimensional mapping of socially constructed, fluid, politically relevant identities, values, conventions, and practices conceived as masculine and/or feminine' (Beckwith 2005: 115). It is not 'a stable identity or locus of agency from which various acts proceed; rather, it is an identity tenuously constituted in time – an identity instituted through a stylized repetition of acts' (Butler 1988: 519). As a process, gender refers to the differential effects that structures and or policies can have on both women and men, and relates to 'behaviours, conventions, practices and dynamics engaged in by people, individuals, institutions and nations' (Beckwith 2005: 132).

A postmodern feminist lens provides an avenue for mobilising the concept of gender as not just a concept of binary identities, but of intersectional traits that collectively form part of an individual's (or group's) identity. Intersectionality focuses on how an individual is socially located in intersecting and mutually constitutive social identities which shape experiences in society (Shields 2008; Ferree 2013). Here, the focus is on how such social identities serve as categories

of discredit, disempowerment, and vulnerability and result in a compounded marginalisation which is much greater than the sum of its parts (Crenshaw 1989). That is, some populations may be multiply marginalised especially where categories such as race and class intersect with gender. The intersectional identity of a poor, black woman, for example, places her closer to the margins of society and renders her more vulnerable to various forms of discrimination, domination, and exploitation (Crenshaw 1991; Lobasz 2012). Ultimately, the sources of injustice that a gender analysis allows us to examine are disempowering and oppressive systems which could affect both men and women and which may be perpetuated by men and women alike (Peoples and Vaughan 2014; Nash 2008).

A key concept in this body of literature is that of embodiment – the idea that constructed identities such as gender are internalised, performed, and corporally materialised. Social values are ascribed to genetic and phenotypical differences playing out in a social hierarchy regulated by power and dominance. In this context, some bodies carry greater value than others. These bodies may differ along gender lines, racial lines, class lines or an intersection of these categories, and are valued based on how well they conform to or transgress ideal types in a given social context (Butler 1993; Grosz 1994; Gatens 1996; Alcoff 2006). Assumptions about different bodies serve as demarcations between full and lesser citizens and thus determine whether the state will treat them with all the attendant protections and benefits or regulate them in less desirable ways if they are non-citizens (Bacchi and Beasley 2002). This concept clarifies the ways in which intersectional, corporeal identities qualify and disqualify members of a social space and how multiple marginalities render some populations more vulnerable to trafficking than others. The migrant body or the trafficked body is more vulnerable to the extent that it does not fit the norm of the citizen because of its race, class, and even gender (Russell 2016).

Haitian migrants, exploitation, and human trafficking in the Dominican Republic

There has been a long history of migration from Haiti to the Dominican Republic across the porous shared border, and through more formal labour migration initiatives for sugar plantations (Vásquez Frías 2013; Martinez 1999). Consequently, there is a community of Dominico-Haitians who have remained on the fringes of the society because of their social status, their inability to advance due to discriminatory policies of nationality and naturalisation, and as descendants of Haitian migrants, they are considered inferior to the 'Hispanic' Dominican population (Wooding and Moseley-Williams 2004). There are between 340 000 (OBMICA 2018) and 500 000 (ONE 2013) Haitian immigrants living in the Dominican Republic, representing over 80 percent of the total immigrant population. They work informally primarily in agriculture and construction. Most are undocumented migrants who crossed the border to take up jobs in these sectors where there is high demand. However, there is an enduring paradox which accompanies this clandestine but functional labour migration. These migrants are indispensable to the economy, yet they are considered a threat to cultural and national identities (Ferguson 2003; Wooding and Moseley-Williams 2004).

Although there have been reports of human trafficking among these migrants, the Dominican Republic does not systematically collect and classify such data (IOM and INM RD 2017). One of the earliest studies highlighted a critical absence of reliable data on trafficking, while noting that the Dominican Republic was already considered a leading source country in Latin America and

the Caribbean, and among the top ten countries globally (IOM 2006). Haitians, Dominicans, Colombians, Venezuelans, Peruvians, and Chinese were among the most common victims of trafficking who were primarily women and children (girls and boys). Table 1 below summarises the different categories of labour in which victims of trafficking were found.

The Dominican government has, however, pursued an antitrafficking agenda. In 2003 the government passed the Law on Illicit Smuggling of Migrants and Trafficking of Persons. This law provides no gender delimitations in defining trafficking and in theory covers a broad cross-section of forms

Categories of Labour	Dominican Republic as a country of:		
	Origin	Transit	Destination
Agriculture (M)	*		*
Construction (M)	*		*
Vendors (M, W)	*		*
Forced Prostitution (W)	*	*	*
Commercial Sexual Exploitation (M, W)	*		*
Sex Tourism (M, W)	*		*
Domestic Servitude (W)	*		*
Bride Trafficking (W)	*		
Illegal Adoption (M, W)	*		

Table 1. Human Trafficking in the Dominican Republic 2001 - 2005. (Adapted from IOM 2006)

Key: M – Men; W – Women

of trafficking and victims.[2] Furthermore, the government has outfitted an institutional infrastructure to tackle this issue: the Interinstitutional Commission Against Trafficking in Persons and Illicit Migrant Smuggling (CITIM) created in 2007, the Interinstitutional Committee on the Protection of Migrant Women (CIPROM), the National Migration Institute (INM RD), and the Office of

the Special Prosecutor for Trafficking in Persons and Illicit Migrant Smuggling. There is also a fund for the assistance and protection of victims of trafficking which assists with travel costs, food, medication, and other related expenses (Tejeda and Wooding 2012).

In addition, the government launched an overarching, multi-year National Plan Against Human Smuggling and Illicit Trafficking of Migrants which was initially scheduled to run from 2009 to 2014 and was relaunched in 2017 to run until 2020. This plan outlined three key focuses. Firstly, there was a human rights approach which established preservation and protection of the human rights of victims as the main objective of anti-

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[2] Definition of trafficking in the 2003 law: 'the capture, transportation, transfer or reception of people, using threat, force coercion, abduction, fraud, deception, abuse of power or situation of vulnerability or granting or receiving payments to obtain the consent of a person who has authority over another, for the purposes of sexual exploitation, pornography, debt bondage, forced labour or service, irregular adoption, slavery and/or analogous practices, or the extraction of organs.'

trafficking efforts. Secondly, there was a focus on gender which acknowledged that the causes and consequences of trafficking were different for men and women, and that women were more vulnerable because of social, cultural, and economic exclusion. Thus, the National Plan included gender indicators and affirmative action measures in favour of women. Finally, there was a focus on age which recognised that children and adolescents had specific vulnerabilities, special rights, and needs. The National Plan would be implemented according to the three P's – prevention, prosecution, and protection (CITIM 2010).

Analysts have criticized this policy for targeting migrant smuggling more so than human trafficking, however. Where it did address human trafficking, efforts were more geared towards stemming the trafficking of women – particularly Dominican women – outside the country. Thus, other vulnerable populations such as Haitian women or Haitian migrants more generally were not paid any specific attention during the implementation of this antitrafficking initiative (Petrozziello and Wooding 2011; Tejeda and Wooding 2012). While the government framed it as a human rights issue and considered the differential ways in which gender influenced vulnerability to human trafficking, the absence of an intersectional perspective resulted in a binary interpretation of gender and human trafficking. This interpretation fed into predetermined assumptions that victims were more than likely women and perpetrators were more than likely men. Even with this 'women-and-children' bias, policy makers may still have ignored vulnerable Haitian migrant women. An intersectionality framework of analysis may therefore be more helpful in revealing the vulnerabilities of this group of women, and of Haitian migrants in general.

Class and vulnerability

Social inequalities including distribution of income, assets, employment, education, and health care, are key determinants of vulnerability, and therefore major contributing factors to human trafficking (Perry and McEwing, 2013; Barner, Okech and Camp, 2014). Most victims of human trafficking in the Dominican Republic are from marginalised socio-economic backgrounds, with very little education and other resources (IOM and INM RD 2017). This position of socio-economic disempowerment makes them vulnerable to the different recruitment tactics employed by traffickers. Whereas intra-Caribbean migration is generally female dominated and usually comprises more highly educated people than the recipient population, Haitian migrants tend to be lesser educated males (IOM 2017). Poverty, unemployment, and illiteracy are push factors for these frequently irregular migrants (Wooding and Moseley-Williams 2004; Seelke 2011). Generally, people from impoverished regions on the periphery of development move to areas of marginally improved living standards (Martinez 1996). Irregular migrants end up in especially vulnerable positions and are consequently susceptible to protracted human rights violations, and this is especially true for Haitians in the Dominican Republic (Ferguson 2003; IOM 2017). Social class, then, is one aspect of intersectional, marginalising identities which contributes to structural causes of trafficking.

Migration is not just a pursuit of a better life; it is often an escape from the challenges faced at home. People of lower social classes are exposed to various kinds of vulnerabilities within their own societies. Economic,

political, and environmental crises have differential impacts on the society and often force the most socially vulnerable, the poor with little opportunities to cope, to migrate. Underdevelopment plagues Haiti which suffers from chronic food insecurity in a context of considerable rural poverty and extreme polarisation between the rich minority and the poor majority. This economic situation is compounded by persistent political instability. Furthermore, the successive, catastrophic natural disasters sealed the fate of many Haitians, forcing them to seek temporary or permanent solutions across the shared border (Felima 2009; Lundahl 2013). In addition to these push factors, there is also a demand for cheap, migrant labour in the Dominican Republic, which has been experiencing sustained economic growth and development (OBMICA 2016; 2017; 2018; OECD and ILO; 2018).

Impoverished Haitians, however, lack the necessary resources to cover the costs of migration and are therefore more readily exploitable by unscrupulous go-betweens. Lacking resources often means taking unofficial or illegal channels for migration and relying on these middlemen to secure passage and employment (Cloud 2009; Petrozziello and Wooding 2011; Wooding and Petrozziello 2013). Their social status predisposes them to working in the informal sector, providing unskilled labour for low wages. They are often indebted to employers or smugglers who then hold this as a kind of Damocles sword above them. This exploitable informal labour, therefore, reinforces their social status by locking them into a system with very little opportunity for upward mobility.

Haitian migrants, therefore, live in precarious conditions characterised by poverty and deprivation (ONE, 2013; 2018). In addition to social marginalisation, these migrants have limited access to vital services. They are often met with political and social hostility, and several barriers to accessing health care, education, and the justice system. Over 43 percent of Haitian migrants have only a primary education, while 35 percent have less than primary level education. This is in stark contrast to other migrants in the Dominican Republic, most of whom (82 percent) have tertiary level education (OECD and ILO 2018). These socio-economic conditions predispose Haitian migrants, more so than others, to working in the informal sector doing so-called 3D jobs – dirty, dangerous and demeaning/difficult. They work primarily in agriculture, construction, and domestic services – areas in which they have been particularly prone to exploitation with very little opportunities for recourse if abused (ONE 2013; Wooding and Petrozziello 2013; OECD and ILO 2018). This coupled with considerations of the intersection of race, nationality and citizenship (which will be discussed below), renders these migrants multiply marginalised, and therefore places them in situations of extreme insecurity and vulnerability.

Race, citizenship, and the vulnerable migrant

The racialised relationship between Haitian migrants and their Dominican hosts reflect patterns of 'otherness' based on social construction of in-groups and out-groups underpinned by assumed homogenous racial or ethnic social identities. Migrants are presented by the media, political actors, and other powerful stakeholders as 'suspect communities' who do not belong to

the host society (Breen-Smyth 2014; Anderson 2006). Discernible markers of difference such as race or religious practices function as symbolic barriers between the immigrants and the host societies and contribute to migrant marginalisation (Zolberg and Woon 1999; Lucassen 2005; Anderson 2013; Erel et al. 2016; Ibrahim and Howarth 2016). When race and ethnicity are superimposed on citizenship such that the racial category influences the legal category, the result is a racialized demarcation between citizen and non-citizen (Calavita 2005; Guild 2009; Chavez 2013; Erel et al. 2016). These symbolic boundaries then contribute to essentialist stereotypes about the non-citizen 'others' who are denied the legal right to belong (Bail 2008; Bridget Anderson 2013; Guild 2009; Pugh 2017; Hainmueller and Hopkins 2015; Calavita 2005).

Dominican identity has historically been constructed around an Indo-Hispanic identity which is in opposition to a black Afro-descendant identity ascribed to Haitian neighbours (Martinez 1999; Craemer and Martínez 2016; Candalario 2007; Simmons 2009). The resultant *antihaitianismo*[3] is a kind of othering whereby Haitians embody Dominicans' cultural contrast and ultimately pose a threat to their colonial heritage and culture (Martinez 1999; Guilamo 2013). Racial tensions affect not only Dominicans with Haitian ancestry but also Dominicans with darker skin who do not fit the 'Hispanic' ideal (Martinez 1999; Ferguson 2003; Wooding and Moseley-Williams 2004; Cloud 2009; Nolan 2015). Despite miscegenation in the Dominican Republic with more African than Indian ancestry, most people self-identify as

indio[4] although phenotypically they may be considered *negro*[5] (Gates 2011; Lamb and Dundes 2017; Torres-Saillant 1998). The resulting racialised, anti-Haitian sentiment contributes to marginality and vulnerability.

In turn, the state has perpetuated this racialized divide with policies such as those undertaken by former dictator, Trujillo, who sought to whiten or "hispanify" the Dominican Republic (Howard 2001; Ferguson 2003; Ricourt 2016). Such discrimination continues to be a major challenge for Haitian immigrants, with institutionalised forms of othering through policies on nationality and citizenship. Dominicans of Haitian descent have struggled to prove their citizenship not only because of discriminatory practices of state officials but also because their ambiguous status in the country, as well as their social circumstances act as barriers to accessing the proper documentation (Ferguson 2003; OBMICA 2016; 2017; 2018). People in these conditions are vulnerable to abuse and exploitation because they do not have access to formal systems such as education, justice, health and the formal job market. They are more likely to be arrested and deported, or to end up working in exploitative conditions (Cloud 2009; Kristensen and Wooding 2013).

Gendered conceptualisations of human trafficking do not effectively capture how the interplay of race and citizenship create vulnerabilities for migrants. Migrant bodies are exploitable because they fall outside of the ideal of the 'embodied citizen'. If class, race, and access to citizenship are structural contributors to human trafficking,

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[3] Anti-Haitianism

[4] Indian (indigenous)

[5] Black

and if these factors are indeed causing the marginality of Haitian migrants then one would expect Haitians – not just Haitian women – to figure prominently in any trafficking data from the Dominican Republic. Similarly, one could expect that specific anti-trafficking measures would target this population. In the following section we will examine how an intersectional perspective highlights fissures in traditional 'women-and-children' assumptions about human trafficking.

Intersectionality and the gendered trafficker-trafficked dichotomy

'Discourse about trafficking continues to rest on moral indignation about violations of womanhood, and support migration-management policies and tighter border controls – greater policing of migrant and third world populations' (Kempadoo 2007: 82). Persistent *machismo* – the strong patriarchal social system in Latin American societies – is a major driver for trafficking because it perpetuates discrimination against women and children (Wooding and Moseley-Williams 2004; Seelke 2011; OBMICA 2016). These strong gender prejudices are indeed factors of vulnerabilities for women and children as they result in entrenched forms of social, cultural, economic, and political exclusions (IOM 2006; Belliard 2008; Petrozziello and Wooding 2011; UNFPA 2012; IOM and INM RD 2017). Subjugation, exclusion, and the structural as well as somatic violence of this patriarchal system tacitly legitimate the idea that power imbalances between men and women in such a system make the latter exploitable. These gendered assumptions in turn shape the discourse around human trafficking in general, as it is assumed that the male-female power dynamics map onto a corresponding trafficker-

trafficked relationship. Therefore, rather than focusing on a broader set of extreme forms of exploitation, policymakers place emphasis on women and children who are trafficked for commercial sex or adoption (Wooding and Moseley-Williams 2004; Seelke 2011). Herein lies the cognitive bias which Meshkova et al. (2015) suggest exists in antitrafficking policies.

The persistent focus on women and children victims in Western countries is consistent with the interpretation of human trafficking as largely being for the purposes of sexual exploitation or more specifically, prostitution. It is, therefore, informed by moralizing, anti-prostitution sentiments in western Judeo-Christian cultures, as well as among lobby groups which frame prostitution as inherently exploitative (Sharma 2005; Gallagher 2010). Add to this the fact that the intersection of race, gender, and class cause some female bodies – women of colour – to be more likely victims of trafficking (Butler 2015). These 'outsiders' or multiply marginalised groups do not 'embody' the ideal citizen but rather by their very identity and the activity which they pursue – prostitution in this case – they contravene certain sociocultural norms (Russell 2016). This legitimises the exploitation of these populations, for example Haitian women, who find themselves in a social hierarchy of inferiority and vulnerability 'as women (not men), Haitian (not Dominican), dark-skinned Afro-descendants (instead of "Indian" mulattos), poor (not rich or middle-class), and undocumented' (Petrozziello and Wooding 2011:43).

This creates a binary that opposes the 'women-and-children' victim to the male perpetrator. Russell (2016:319) talks about an 'essentialized version of identity – victim of trafficking', which has a dual role of enabling and disabling. This identity creates boundaries, opening

possibilities for protection on the one hand and on the other hand closing doors to agency. Victimhood comes with an image of helplessness and a need to be rescued (Russell 2016). The state is expected to provide protection for this victim based on obligations outlined in the Palermo Protocol as well as national legislation. Being categorised as a victim is, therefore, essential to accessing the protection mechanisms of the state. In this context, gendered stereotypes around trafficking become disqualifiers for some groups of trafficked persons. It is less likely that a man would be considered as a trafficked person, for example, because he doesn't fit the ideal identity of the victim.

Here, the UNODC's Global Report on Trafficking published since 2009 is a useful complement to data presented in more recent government reports. Between 2003 (when the Dominican anti-trafficking law was passed) and 2008, some 265 cases of adult female victims versus seven adult male victims were referred to the Center of Orientation and Integral Investigation. Furthermore, 254 of these cases were for sexual exploitation while only 16 were related to labour exploitation, and two related to forced marriage (UNODC 2009). Both the 2014 and the 2016 reports highlighted a decrease in the instances of women being trafficked globally and an increase in the trafficking of children and men. Globally, men were averaging around 30 percent of victims while forced labour accounted for about 40 percent of all cases of trafficking. In fact, in Latin America and the Caribbean, forced labour accounted for more than half of detected cases. For the Dominican Republic, the reports suggested that there was still a heavy flow of victims of trafficking from Haiti especially since a characteristic of the flow of trafficking in the region involved

movement from places of economic blight to more prosperous countries (UNODC 2014; 2016).

As demonstrated in Table 2 below, published results of anti-trafficking efforts over the last three years in the Dominican Republic reveal that only women and children were identified as victims of trafficking and were given assistance by the state. If forced labour is recognized as a form of human trafficking and exists in male-dominated industries such as agriculture and construction; and if there has been a steady increase in the cases of trafficked men globally and in the Latin America and Caribbean region, then one could ask: 'where are the men in this data?' Unless the Dominican Republic is singular in Latin America and the Caribbean, the regional trend suggests that at least some adult male victims of trafficking should be captured in this data.

The male-dominated construction industry in the Dominican Republic, where over 80 percent of the labourers are Haitians, is prone to extreme forms of exploitation. A 2012 study highlighted four broad types of exploitative practices (OBMICA 2012). Firstly, there was unfree recruitment whereby employers used deceptive recruitment practices and confiscate the documents of the workers. Secondly, without documents, laborers were tied to their employers, not being able to seek work elsewhere or prove their immigration status to authorities. Furthermore, they were forced to stay longer than had been agreed without getting the wages that were due. Thirdly, they were assigned the most hazardous jobs without any form of protection. Labourers were often threatened with dismissal, deportation, or even death. Finally, migrant construction workers were in conditions of life and work under duress: forced overtime beyond legal

limits; limited freedom of movement; threat of physical violence; exclusion from future employment; threat of imprisonment (OBMICA 2012).

Subsequent migration reports have highlighted that similar conditions persist (OBMICA 2016; 2017; 2018). Intersectional identities make Haitians vulnerable to trafficking as an exploitable labour force in the construction industry. Yet, this predominantly male labour force does not appear on the antitrafficking radar, because men are not 'victims of trafficking.' One can consequently infer that the fundamental flaw lies at the point of problem definition – gendered conceptualisations of trafficking seem to have precluded men from being considered as victims of trafficking by the Dominican authorities. Assumptions about female victimhood have effectively excluded the possibility for there to be male victims. Instead there are narrow perceptions of forms of trafficking and kinds of victims, which carry through to anti-trafficking policy and the collection of trafficking data (Meshkovska et al. 2015).

Victims Identified and Assisted	2016	2017	2018
Males (minors)	20	13	71
Females (minors)	63	44	0
Females (adults)	74	45	25
Males (adults)	0	0	0
Total	157	102	96

Table 2. Human Trafficking Statistics for the Dominican Republic

Source: Ministry of Foreign Affairs, Dominican Republic – Informe del Gobierno de la Republica Dominicana Sobre Acciones en Materia de la Trata de Personas y el Tráfico Ilícito de Migrantes

The disparities presented here also lead us to consider the dual effect that gendered perspectives on trafficking have of excluding women from consideration as perpetrators themselves. As an illustration, the widely practiced phenomenon *restaveks,* which originated in Haiti, involves using Haitian children to work as indentured, unpaid laborers in domestic servitude under extreme conditions of physical, verbal, and sexual abuse. The children are often forced to work as mendicants or perform paid sexual favours in order to contribute to their indebtedness to the household that offers them shelter (Cloud 2009; Seelke 2011). However, the gendered trafficking discourse tends to mask the role that women play either as initiators, facilitators, or perpetrators of this exploitative process. To the credit of the Dominican Republic, their prosecution record, as shown in Table 3 below, demonstrates an acknowledgement that men and women alike may be perpetrators of trafficking. Yet this acknowledgement is still closely related to gendered and sexualised conceptions of human trafficking. Policymakers assume that women traffickers are often involved in trafficking of other women and young children for sexual exploitation (Ministerio de Relaciones Exteriores 2017; 2018; 2019; OBMICA, 2018; Vargas, 2019). Therefore, they still are not considered as possible perpetrators of other forms of trafficking such as forced labour.

Further, the three official reports from the Dominican government from 2016 to 2018 neither mention Haitians broadly nor Haitian women more specifically as victims of trafficking (Ministerio de Relaciones Exteriores 2017; 2018; 2019). This is, however, in stark contrast to the evidence presented in other sources. The IOM has highlighted trafficking of Haitians across the shared border as an enduring feature of population flows between

Convicted Perpetrators	2016	2017	2018
Male	6	9	4
Female	7	6	3

Table 3. Convictions for Human Trafficking

Source: Ministry of Foreign Affairs, Dominican Republic – Informe del Gobierno de la Republica Dominicana Sobre Acciones en Materia de la Trata de Personas y el Tráfico Ilícito de Migrantes

the two countries because of economic, political, and environmental factors which render them particularly vulnerable (IOM 2006; IOM and INM RD 2017). In fact, Petrozziello and Wooding (2011), having conducted extensive qualitative studies with Haitian women along the border, concluded that migrant Haitian women are especially vulnerable to various forms of exploitation including those linked to trafficking. This vulnerability is related to, among other factors, the fact that they work in precarious conditions in the informal sectors with little or no regulation and hardly any vigilance over working conditions, whether it be sex work or domestic labour. Yet, Haitian women do not appear in official trafficking data.

The antitrafficking regime has historically functioned along racial lines focusing initially on the trafficking of white women (Bruch 2004). This suggests that some bodies were more worthy of victimhood. In the Dominican Republic, Haitian women are entirely absent from official data on human trafficking. The trafficked victims identified in official reports are primarily Dominicans and Venezuelans, consistent with previous critiques of the implementation of the government's antitrafficking policy – that is, the focus was largely on Dominicans while ignoring the trafficking of Haitians (Petrozziello and Wooding 2011). There were no reported cases of trafficking of Haitians recorded since 2016 yet there

were 52,348 cases of smuggled Haitians in 2017 and 134,605 in 2018 (Ministerio de Relaciones Exteriores 2018; 2019). The possibility for conflating smuggling and trafficking has been raised by critics who suggest that without a clear mechanism for identification, antitrafficking efforts have an intrinsic loophole for the confusion of trafficking victims with other forms of irregular migration or smuggling (Bruch 2004; Gallagher 2010; Gómez-Mera 2016), and this has certainly been the case for Haitian migrants in the Dominican Republic (Petrozziello and Wooding 2011).

This then illustrates that anti-trafficking policies that conceptualise trafficking in gendered dichotomies of male perpetrator and female victims are fundamentally flawed because they may still exclude multiply marginalised women. In this case, the state disqualifies poor, dark-skinned Haitian women from being considered as victims of trafficking, and therefore from accessing protection. The intersectional identity then plays a dual role of rendering the Haitian woman vulnerable to trafficking on the one hand and invisible to anti-trafficking efforts on the other. She is, therefore, marginalised by disempowering structural forces and subject to continued exploitation because she does not embody the ideal victim. As poor, foreign, black, Haitian, and a woman, she is not the embodied citizen. The Dominican woman, however, and the phenotypically and culturally similar Venezuelan are worthy of victimhood and therefore worthy of the state's anti-trafficking efforts.

Ironically, it is this same heightened discrimination against multiply marginalised groups such as Haitians, which puts them on the radar of anti-smuggling efforts (Petrozziello and Wooding 2011; Tejeda and Wooding 2012). Since smuggling is a criminal

activity for both the smuggler and the smuggled, this label appears more fitting for the body of 'the other', the contrast of the ideal citizen. These bodies are not only exploitable but also excludable. The state has no obligation to provide protection for a smuggled migrant because he or she is a criminal (Gallagher 2010), and therefore the state can use this as a pretext to exclude the Haitian. Here, the multiply marginalised person is not worthy of victimhood, yet the state imputes agency to this disempowered person by establishing that she chose to be smuggled across the border.

It is not the intention of this paper to argue whether men or women are more frequently perpetrators or victims respectively. Rather it argues that gendered perspectives determine who is victim or perpetrator and that these binary identities shroud broader processes of exploitation affecting Haitian migrants – children and adult, women and men. Here, scholars of intersectionality remind us that marginalised populations do not have homogenous experiences (Crenshaw 1989; 1991; Butler 2015). Class and race, intersecting with gender, result in significant power differences within the category of women such that a poor Haitian woman, for example could be multiply marginalised vis-à-vis a middle-class – or even poor – Dominican woman. Furthermore, even as the gendered dichotomy is flawed, the victim/trafficker dichotomy is also not as rigid as policy prescriptions suggest (Warren 2012). In fact, the labels of powerless victims and cruel traffickers are often imbued with moralising judgements of the sex trade in general (Sharma 2005; Lobasz 2012). These judgements and the policies they inform obscure more fluid dynamics between trafficker and trafficked and ignore the agency of supposed victims (Warren 2012; Russell 2014).

Conclusion

This paper has argued that gendered framings of human trafficking offer a distorted view and result in ill-adapted antitrafficking policies, which neither target a representative set of forms of trafficking nor attend to the broad spectrum of potential victims. Historical biases in the anti-trafficking regime towards trafficking for sexual exploitation are partly to be blamed for this, and it certainly has not helped that the Palermo Protocol explicitly elevates 'especially women and children' as victims. Furthermore, the heavy emphasis on criminal justice has caused prosecuting the perpetrator to take precedence over protecting the victims. Yet, the flaw is not entirely on the framing of the human trafficking outlined in the Palermo Protocol. Rather, it is a question of narrow interpretation. Here, a gender and human security analysis provides a useful framework for considering the vulnerability of marginalised groups and the broader forms of trafficking to which they may be subjected.

We have examined how intersectional identities and the resultant multiple marginalities fuel the vulnerability of Haitian migrants and result in multiple exclusions vis-à-vis the antitrafficking regime – exclusions that make them potential victims of trafficking and prevent them from being recognised as such. Haitians who do not embody the ideal educated, Hispanic, male Dominican citizen in a context where *Hispanidad* and *machismo* are revered, are in positions of insecurity and exploitability (Martinez 1999; Seelke 2011). Yet, assumptions about trafficking and victimhood become problematic for both male and female victims. Antitrafficking initiatives focused on women and children overlook men as possible victims even

though Haitian migrant men are exposed to various forms of exploitative and forced labour conditions in industries such as construction. Furthermore, marginalised Haitian women who are vulnerable because of the intersection of race, class, and gender, have not been deliberately targeted by Dominican antitrafficking policies and do not appear in the state's official human trafficking data. Thus, sexualised and gendered conceptualisations of trafficking do not attend to the vulnerabilities of the most marginalised populations.

Ultimately, an intersectional analysis highlights that a response to Bruch's (2004) call for new models for understanding human trafficking may be found in a gender and human security approach both to scholarship and anti-trafficking policymaking. An intersectional lens shows how embodiments of marginality and belonging shape the experience of the trafficked persons and preclude some from being identified as victims by relevant state policies. By embodying the contrast of the ideal citizen, Haitian migrants constitute the exploitable other who falls outside the scope of predetermined racial or ethnocultural, and socio-economic criteria which would make them worthy of protection. Therefore, both scholarship and anti-trafficking practice should shift from gendered assumptions about such dichotomies as traffickers and trafficked or victims and villains. Instead, scholars and policymakers should account for the ways in which different categories of trafficking and trafficked have been excluded from analysis and from policy discussions. Finally, the antitrafficking regime should focus squarely on the human rights and human security of the victim rather than predominantly on the criminalisation of the trafficker.

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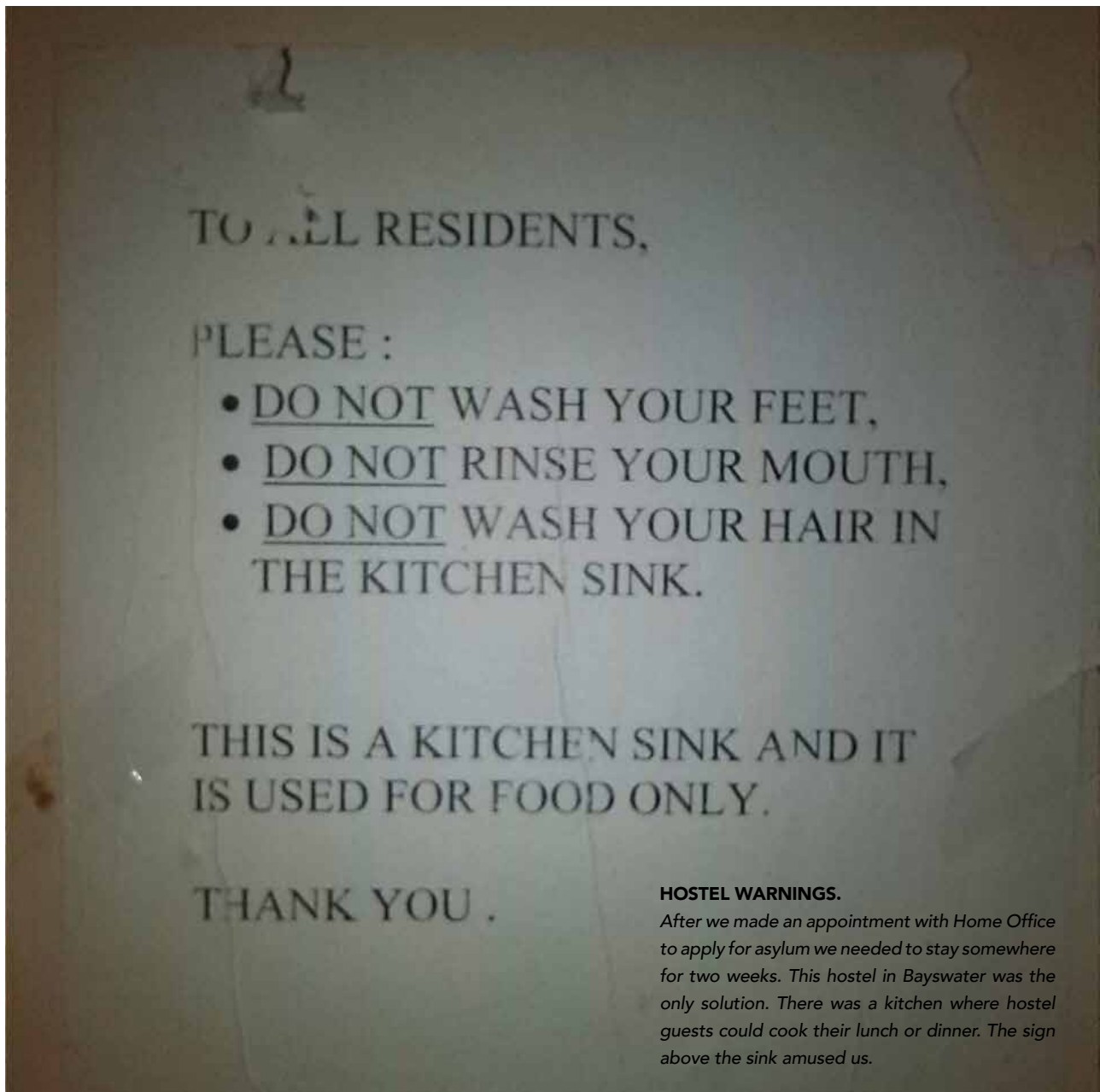
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HOSTEL WARNINGS.

After we made an appointment with Home Office to apply for asylum we needed to stay somewhere for two weeks. This hostel in Bayswater was the only solution. There was a kitchen where hostel guests could cook their lunch or dinner. The sign above the sink amused us.

Journey Signs of Asylum Seeking

ERNEST ZHANAEV

This project tells a six-month photographic story which I started when I applied for asylum in the United Kingdom, wandering across the country while living in hostels or accommodation provided by Home Office. I took these photographs on a smartphone to capture the signs of the surrounding environment I saw. I spotted the signs in the streets of London, Birmingham, Leicester and some of them in the housing rented by Home Office in 2015.

Discovering England by travelling and residing in different places brought me an understanding how people live outside London. Born in the Soviet Union, I see things that are very much familiar but I am also challenged by

previously unknown things, unsure of the truth and beliefs within the language and instructions reflected in these signs.

'Journey Signs' should tell the viewer that an asylum seekers' world during the application process is a very narrow one. The signs I chose to capture are not necessarily positive and can lead to anxiety that overwhelms asylum seekers like myself. It is these extremities in the language within such signs that attract the depressed mind squeezed in the everyday circumstances of uncertainty, bureaucracy, and poverty. To me, the tendency to notice only slogans full of negativity reflects the mental state of those who spot them. It made me feel as if I am still an outsider, detached from the real positivity of the environment I have come to live in and narrowing my world into a corridor of signs and words.

POLICE ARE AWARE.
The smell of smoke lingered in the corridors, as well as anti-social behaviour among the residents of the house. Yet the other asylum seekers I met who live here almost never complain or violate any rule.

WHO PROTECTS WHAT? *The sign fencing a demolished area said there were trees behind it to protect. I did not know what trees exactly, perhaps they were far in the distance or this was an outdated sign of another place. What struck me was the dissonance of offering protection to something which had become a place of ruins and neglect rather than people seeking asylum.*

Please do not throw baby
nappies or rubish out of
your room window, ^{and} room
will be cancel if you do.

Thanks you.

WINDOW WARNINGS. *Stained bedding and smeared walls are nothing if even windows are covered by something unpleasant, with warnings obscuring the view and tarnishing the perspective of the outside world.*

The photographer

Ernest Zhanaev is a human rights writer and consultant based in the UK since 2014. He was instrumental in making the Kyrgyzstan parliament adopt the UN Optional Protocol to the Convention Against Torture and latter to pass legislation for greater financial transparency in electoral law. He also edited English news for the independent Ferghana News covering developments in Central Asia. Now a consultant for international organisations and think tanks, Ernest researches human rights issues in post-Soviet countries specialising on freedom of speech, social and political development.