

Refugee



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REVUE CANADIENNE
SUR LES RÉFUGIÉS

Considérations en matière d'éthique
de la recherche auprès de personnes en
situation de migration forcée

CHRISTINA CLARK-KAZAK

Ethical Considerations: Research
with People in Situations of Forced
Migration

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Discretion to Deport: Intersections
between Health and Detention of
Syrian Refugees in Jordan

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and Refugees in Indonesia: From
Immigration Detention to Containment
in "Alternatives to Detention"

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Informational Barriers

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Considérations en matière d'éthique de la recherche auprès de personnes en situation de migration forcée

CHRISTINA CLARK-KAZAK, AVEC LE CONSEIL CANADIEN POUR LES RÉFUGIÉS, L'ASSOCIATION CANADIENNE D'ÉTUDES SUR LES RÉFUGIÉS ET LA MIGRATION FORCÉE, ET LE CENTRE POUR LES ÉTUDES SUR LES RÉFUGIÉS DE L'UNIVERSITÉ YORK¹

Préambule

La recherche auprès de personnes en situation de migration forcée nous permet de mieux comprendre leurs expériences et pourrait guider les prises de décision fondées sur des données probantes. Cette recherche crée aussi des opportunités et des défis particuliers en matière d'éthique. Le présent document vise à fournir aux chercheurs², aux organismes communautaires et aux personnes en situation de migration forcée, des informations sur les particularités des contextes de la migration forcée. Ces informations compléteront les principes et les cadres existants en matière d'éthique de la recherche auprès de sujets humains en général. Elles s'appuient sur les bonnes pratiques recensées lors d'un examen des documents provenant de la société civile, des gouvernements et de la littérature savante (voir à l'annexe 3 la liste des ressources).

Les contextes de la recherche sur la migration forcée sont particuliers pour les raisons suivantes :

1. Les personnes qui fuient en traversant des frontières ont des droits juridiques et des opportunités qui diffèrent de ceux des personnes nées dans le pays d'accueil. Le droit de rester dans le pays d'accueil peut être révoqué ou menacé sur la base de données recueillies pendant la recherche. Étant donné ce statut juridique précaire, les chercheurs qui travaillent avec des personnes en situation de migration forcée doivent bien connaître leurs obligations en matière d'éthique, pour minimiser les risques.
2. Les personnes déplacées sont souvent dans des situations où existent des relations de pouvoir inégal, sachant que leur survie ou leur statut juridique dépend de parrains, de fournisseurs de services ou du gouvernement. Cette situation extrême de dépendance peut remettre en question le caractère volontaire du consentement à participer à une recherche menée par ces organismes ou en partenariat avec ceux-ci.
3. Sachant que des groupes sont réputés mener des activités terroristes³ dans les pays d'origine ou d'asile, la recherche pourrait entrer en conflit avec des lois anti-terroristes. Par exemple, les répondants à la recherche pourraient divulguer des liens avec des groupes considérés comme ayant des objectifs terroristes, ou exprimer leur sympathie à leur égard. Comme les chercheurs ne sont pas protégés par les mêmes privilèges juridiques que les médecins et les avocats, il pourrait y avoir des limites à la confidentialité des informations communiquées, ce qui pose des défis sur le plan éthique.
4. Pendant tout le processus de demande d'asile, les personnes déplacées sont amenées à raconter plusieurs fois leur histoire : à des représentants de l'immigration, à des membres des professions juridiques, à des fournisseurs de services et à des décideurs. Les questions des chercheurs pourraient accroître la peine qu'ont les personnes déplacées à raconter des situations douloureuses de conflits, de violence, de violations et d'abus.

5. Bien que la recherche universitaire puisse contribuer à améliorer les politiques et les programmes pour les personnes en situation de migration forcée, les résultats de la recherche ne sont pas toujours partagés, de façon accessible et en temps opportun, avec les personnes déplacées et avec les partenaires hors du milieu universitaire.

Définitions

Dans le cadre de ces directives, *la recherche* est définie comme toute activité comprenant la collecte de données et la création de savoir, en collaboration avec les personnes déplacées. Cette activité inclut, sans s'y limiter, les entrevues, les groupes de discussion, les sondages, les expériences, les observations, ainsi que l'accès à des dossiers, à des données administratives et à des auto-ethnographies comprenant la collecte de données par des tiers. Il convient de noter que toutes les activités de recherche ne doivent pas nécessairement être approuvées par un comité d'éthique de la recherche; cependant, ces directives établissent des principes de bonne pratique dont on devrait tenir compte lors des recherches dans des contextes de migration forcée.

«*Les personnes en situation de migration forcée*» comprennent un large éventail de personnes déplacées, dont des demandeurs du statut de réfugié, des détenteurs du statut de réfugié, des personnes dont les demandes de statut de réfugié ont été rejetées, des victimes de la traite des personnes et des personnes déplacées à l'intérieur de leur pays. Ces directives s'appliquent à tous les groupes qui ont été obligés de quitter leur maison, et pas seulement aux détenteurs du statut de réfugié.

Principes directeurs

Notre recherche sur les personnes en situation de migration forcée sera guidée par les principes fondamentaux suivants :

Équité

Nous nous efforcerons de rendre les relations, lors de la recherche, le plus équitables possible, en ayant conscience de la dynamique du pouvoir et en prévenant les risques d'abus de pouvoir.

- Nous choisirons les répondants et les équipes de recherche en fonction de principes équitables.
- Nous inclurons une diversité de perspectives et éviterons les biais basés sur le genre, l'orientation sexuelle, l'âge, la capacité, la religion, la culture, l'ethnicité ou la nationalité.
- Nous aurons conscience de notre position, de nos préjugés et de notre responsabilité dans le cadre du processus de recherche.

- Nous chercherons à établir des relations basées sur la confiance mutuelle.

Droit à l'autodétermination

Nous respecterons et appuierons le droit des personnes en situation de migration forcée à prendre leurs propres décisions en ce qui concerne leur vie et leur niveau de participation à la recherche.

- Nous privilégierons les droits et le bien-être des répondants par rapport aux objectifs de la recherche.
- Nous respecterons la dignité des répondants dans la manière dont nous les présenterons – individuellement et collectivement.

Compétence

Nous respecterons notre obligation d'agir avec compétence.

- Nous choisirons des méthodes de recherche appropriées.
- Nous acquerrons une compréhension appropriée de la culture et de la diversité.
- Nous sélectionnerons, formerons et superviserons les assistants de recherche et les interprètes.
- Nous fournirons aux répondants des informations exactes sur leurs droits.
- Nous reconnaitrons nos limites et orienterons vers les personnes ou les services appropriés les répondants qui démontrent des besoins ou demandent de l'information.
- Nous accepterons notre obligation de diligence.

Partenariat

Nous inclurons les partenaires pertinents pour notre recherche dans tout le processus de recherche: depuis la conception de la recherche et la collecte de données jusqu'à l'analyse et la diffusion des résultats.

- Nous élaborerons des protocoles et des mécanismes appropriés pour permettre la pleine participation des partenaires pertinents.
- Nous déterminerons à l'avance des mécanismes de résolution de problèmes culturellement appropriés, qui serviront en cas de désaccords concernant les méthodes, la conception ou la diffusion de la recherche.
- Nous prônerons la copropriété de la recherche et reconnaitrons de manière respectueuse la contribution de chaque partenaire. S'il n'est pas possible de mentionner les coauteurs, par exemple lorsque les étudiants doivent écrire seuls des travaux ou des dissertations pour répondre aux exigences d'obtention de leur diplôme, ceci sera clairement expliqué à tous les participants à la recherche, dès le début du processus de recherche.

Application des principes éthiques fondamentaux, à la recherche dans des contextes de migration forcée

Consentement libre et éclairé

Tous les répondants doivent consentir, de manière libre et éclairée, à participer à la recherche après avoir été informés des risques et des avantages potentiels liés à leur participation. Ils doivent pouvoir se retirer de la recherche en tout temps. Les éléments suivants doivent être pris en considération lorsqu'on cherche à obtenir le consentement libre et éclairé de personnes en situation de migration forcée :

- Les personnes déplacées qui ont eu des interactions négatives avec les autorités ou qui ont des traditions culturelles particulières pourraient se méfier des formulaires de consentement écrit. Dans ces situations, un consentement oral devrait aussi être possible et des procédures claires sur la façon d'obtenir et d'enregistrer ce consentement oral devraient être fournies.
- Les chercheurs comptent parfois sur les fournisseurs de services ou sur les organismes d'aide aux réfugiés pour avoir accès à des répondants potentiels. Cependant, seul le répondant peut consentir à participer. Lorsque l'accès a été fourni par un « gardien », il est important que les répondants potentiels comprennent qu'ils ont le droit de refuser de participer à la recherche à n'importe quelle étape du processus, et que ce refus n'aura aucune conséquence sur les services ou le niveau d'aide qu'ils reçoivent. Il est aussi important de réfléchir à la façon dont l'anonymat des participants sera garanti étant donné que leur nom a été fourni par un organisme ou un fournisseur de services. Cet aspect doit être clairement expliqué dans le protocole et dans le processus de consentement.
- Bien qu'une compensation financière puisse être offerte pour dédommager les répondants de leur temps, des frais de garde ou des coûts de transport – et éliminer ainsi les obstacles à leur participation – cette compensation devrait être raisonnable et proportionnelle aux dépenses. Les personnes déplacées ayant des besoins financiers ne devraient pas se sentir contraintes de participer à la recherche pour des raisons financières. La compensation ne doit pas être liée au fait de participer jusqu'au bout à la recherche.
- La recherche profite rarement directement aux répondants eux-mêmes. Ceci doit être clairement expliqué aux personnes en situation de migration forcée, afin qu'elles ne participent pas seulement dans l'espoir de recevoir directement des avantages matériels, juridiques ou autres.

- Les répondants doivent être informés des risques sur les plans financier, émotif, social/communautaire ou autre, associés à leur participation, et particulièrement des limites de la confidentialité en cas de divulgation de criminalité ou d'automutilation, comme précisé ci-après.

Confidentialité et respect de la vie privée

Les chercheurs ont le devoir de protéger les renseignements personnels des répondants et de ne communiquer aucune caractéristique d'identification qui compromettrait l'anonymat, particulièrement si l'échantillon est petit. Plus particulièrement, il faudrait tenir compte des considérations suivantes pour la recherche dans des contextes de migration forcée :

- La protection juridique des chercheurs est limitée quand des tiers utilisent des assignations à témoigner dans des procédures criminelles ou des poursuites civiles. Cette question est particulièrement importante étant donné la criminalisation de la migration et la vaste portée des lois antiterroristes. Les répondants devraient être informés de ces risques. Les chercheurs devraient éviter de recueillir des données potentiellement incriminantes et se limiter à des données directement pertinentes pour le sujet de la recherche. Ces données devraient être rendues totalement anonymes immédiatement après leur collecte afin qu'aucune information ne puisse être directement liée à une personne en particulier. Dans la mesure du possible, les chercheurs devraient éviter de recueillir des données contenant des identificateurs personnels.
- Les chercheurs et les répondants devraient aussi savoir que les outils de sondage électroniques, dont les serveurs sont hébergés à l'extérieur du Canada, sont soumis aux lois des pays tiers, lesquelles peuvent inclure, dans certains cas, l'accès à toutes les données recueillies. Si c'est le cas, le formulaire de consentement devrait inclure des renseignements sur l'accès, le stockage et les limites potentielles de la confidentialité.
- Dans certains cas, les répondants révéleront spontanément des situations préjudiciables, comme des abus, de l'exploitation ou de l'automutilation. Le chercheur devra alors clairement expliquer les limites de la confidentialité, particulièrement s'il existe des normes disciplinaires prévoyant une obligation de signalement pour les chercheurs. Il faudra aussi avoir une stratégie pour orienter les répondants vers des ressources externes lorsque de telles situations sont révélées.
- Dans certains cas, l'identification des répondants à la recherche peut avoir de graves répercussions sur leur sécurité, leur bien-être, leur statut de migrant et

leur admissibilité à des services. La confidentialité des informations est alors cruciale. Les chercheurs devraient s'assurer de crypter les données et de les conserver de manière sécurisée; ils devraient aussi retirer toute caractéristique qui pourrait identifier le répondant, notamment par association.

- Bien que les documents audiovisuels puissent être des données importantes, ces documents posent des difficultés particulières en ce qui concerne la confidentialité et l'anonymat. Ils devraient être utilisés avec précaution, et seulement avec la permission explicite de toutes les personnes apparaissant dans les documents. Les répondants à la recherche devraient pouvoir demander, à n'importe quel moment, la destruction des documents audiovisuels dans lesquels ils apparaissent.
- Les interprètes, les chercheurs et toutes les autres personnes qui participent au processus de recherche doivent signer une entente de confidentialité.
- Lorsque les répondants à la recherche souhaitent que leur nom apparaisse dans la recherche, les chercheurs doivent respecter ce désir d'autodétermination et trouver un moyen d'y répondre, sans compromettre l'anonymat des personnes qui ne veulent pas être identifiées.

Minimiser les risques de préjudice et maximiser les retombées de la recherche

- Les chercheurs devraient s'appuyer sur des recherches semblables et y collaborer, pour éviter des recherches excessives sur certaines populations.
- Les chercheurs devraient éviter les sujets délicats et qui peuvent conduire à un nouveau traumatisme – comme la violence sexuelle et la torture – sauf s'ils sont directement liés au sujet de la recherche. Dans ces cas, des ressources et des services externes doivent avoir été identifiés et être disponibles si un aiguillage est nécessaire.
- Il faut tout mettre en œuvre pour inclure une diversité de perspectives dans les études, et adopter une méthodologie et des stratégies de recrutement précises afin de tenir compte d'un éventail de perspectives et de besoins en matière de recherche, basés sur l'âge, le genre, la sexualité, la capacité, la classe, la race, l'éducation, l'alphabétisation et la langue.
- Les chercheurs devraient s'assurer de diffuser largement les résultats de leurs recherches dans les langues pertinentes, par le biais de divers médias (oral, écrit, visuel), et ils devraient indiquer clairement aux répondants où les résultats seront disponibles.

Annexe 1 : Liste de vérification pour les chercheurs

1. Ai-je besoin d'une approbation déontologique pour ce projet? Si oui, comment puis-je l'obtenir?
2. Le cas échéant, ai-je partagé mon protocole en matière d'éthique avec les partenaires concernés?
3. Qui profitera de cette recherche?
4. Qui d'autre fait de la recherche sur ce sujet et auprès de quelle population? Avons-nous coordonné nos activités pour éviter des recherches excessives?
5. Quelles sont les limites potentielles de la confidentialité? Quelles stratégies ai-je mises en place au cas où l'on me révélerait des situations de criminalité, d'exploitation ou d'automutilation?
6. Qui n'est pas inclus dans ma proposition de recherche? Quelles stratégies puis-je utiliser pour faciliter la participation de ces personnes?
7. Comment inclurai-je les partenaires concernés dans toutes les phases de mon projet, depuis sa conception jusqu'à la diffusion des résultats? Quels mécanismes et quels protocoles sont en place pour assurer leur pleine participation?
8. Ai-je prévu dans le budget de mon projet une compensation pour le temps et les autres ressources que les partenaires non universitaires investiront dans la recherche, notamment les répondants, les membres des comités consultatifs, les recruteurs de répondants et les personnes qui facilitent la participation d'autres répondants?

Annexe 2 : Liste de vérification pour les organisations et les personnes qui travaillent dans des contextes de migration forcée et qui sont contactées pour participer à une recherche

1. S'il y a lieu, le chercheur a-t-il obtenu l'approbation déontologique de son établissement d'attache? S'il n'existe pas de processus d'approbation déontologique, comment les principes du consentement, de la confidentialité et de la réduction des préjudices seront-ils évalués et appliqués?
2. Le chercheur a-t-il adopté un processus approprié de consentement libre et éclairé?
3. Comment communiquerons-nous avec nos clients et nos collègues pour qu'ils comprennent qu'ils ne sont pas obligés de participer à la recherche pour continuer à recevoir nos services?
4. Comment le respect de la vie privée et la confidentialité des données seront-ils assurés?
5. Quels sont les processus en place si la recherche révèle des situations de criminalité, d'exploitation ou d'automutilation?
6. Qui n'est pas inclus dans la recherche? Quelles modifications et quelles stratégies pourraient être adoptées pour faciliter la participation de ces personnes?
7. Comme le chercheur partagera-t-il les résultats de la recherche?

Annexe 3 : Ressources connexes⁴

Directives et protocoles connexes en matière d'éthique

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NOTES

- 1 Préparé par Christina Clark-Kazak et adopté par les comités exécutifs du Conseil canadien pour les réfugiés (CCR), de l'Association canadienne d'études sur les réfugiés et la migration forcée (ACERMF) et du Centre pour les études sur les réfugiés de l'Université York (CRS). Les individus suivants étaient sur le comité du projet et ont contribué des idées qui se retrouvent dans ce document : Tanya Aberman, Idil Atak, Michael Casasola, Sherman Chan, Alison Collins-Mrakas, Janet Dench, John Dubé, Sue Grafe, Celia Haig-Brown, Jennifer Hyndman and Michaela Hynie. Nous sommes reconnaissants des contributions des participants de l'atelier à la Consultation d'automne 2016 du CCR, à laquelle Johanna Reynolds et John Carlaw ont également facilité des groupes. Ce document s'inspire également du Code d'éthique sur le parrainage adopté par le CCR. Le financement du projet fut fourni par le Conseil de recherches en sciences sociales; Immigration, réfugiés et citoyenneté Canada; et *Refuge : Revue canadienne sur les réfugiés*. Nous sommes reconnaissants des contributions en

nature du CCR, de l'ACERMF, du CRS et du MOSAIC. La traduction vers le français du texte original en anglais fut faite par Marie-Noelle Ecobichon.

- 2 Dans ce document, le masculin (singulier ou pluriel) est utilisé comme représentant de tous les genres, dans le seul but d'alléger le texte.
- 3 Les lois antiterroristes ont une vaste portée et peuvent changer. Il est donc important que les personnes qui travaillent dans des contextes de migration forcée tiennent

compte de ces lois et de leurs répercussions sur leur travail. Ce document ne valide en aucune façon les lois en vigueur.

- 4 Tanya Aberman organisa cette section en utilisant la recherche ultérieure de Chizuru Nobe Ghelani.

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Ethical Considerations: Research with People in Situations of Forced Migration

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Preamble

Research involving people in situations of forced migration deepens our understanding of their experiences and has the potential to inform evidence-based decision-making, but also poses particular ethical challenges and opportunities. This document is intended to provide researchers, community organizations, and people in situations of forced migration with information on the particularities of forced migration contexts to complement established ethical principles and frameworks on research with human subjects more generally. They draw on good practices identified in a scan of civil society and government documents and academic literature (see appendix 3 for a list of resources).

Forced migration research contexts are particular several ways:

1. People who flee across borders are subject to legal rights and opportunities that are different from those for citizens born in the host country. The right to remain in the host country can be revoked or jeopardized on the basis of data collected during research. Given this precarious legal status, researchers working with people in situations of forced migration need to carefully consider ethical obligations to minimize risks.
2. Displaced people are often in situations of unequal power relations where they depend on sponsors, service providers, and/or the government for survival and/or legal status. This extreme dependence may call into question the voluntary nature of consent to participate in research conducted by, or in partnership with, such organizations.
3. Given the operation of groups deemed to be engaged in terrorism² in countries of origin and asylum, research

may run into conflict with anti-terrorist legislation. For example, research respondents may disclose links to, or express sympathy with the objectives of, groups deemed to have terrorist aims. Because researchers are not protected by similar legal privileges for doctors and lawyers, there may be limits to confidentiality of information, posing ethical challenges.

4. Throughout the process of asylum, displaced people are called upon to tell their story many times: to immigration officials, to legal professionals, to service providers, and to decision-makers. Researchers' questions may add to the burden of recalling painful experiences of conflict, violence, violations, and abuse.
5. While academic research has the potential to contribute to improved policy and programming for people in situations of forced migration, findings are not always shared with displaced people and non-academic partners in an accessible and timely manner.

Definitions

In this document, *research* is defined as any activity that involves data collection and knowledge creation with and by people in situations of displacement. This includes, but is not limited to, interviews, focus group discussions, surveys, experiments, observation, and access to case files, administrative data, and auto-ethnographies involving third-party participant data collection. It should be noted that not all of these research activities are necessarily subject to Research Ethics Board approval; however, this document sets out principles of good practice that should be considered whenever research is undertaken in contexts of forced migration.

"People in situations of forced migration" includes a

broad spectrum of displacement, including refugee claimants, those with refugee status, people whose refugee claims have been rejected, trafficked persons, and internally displaced persons. The ethical considerations set out in this document apply to all groups who have been forced to leave their homes, not just those individuals who have refugee status.

Guiding Principles

Our research with people in situations of forced migration will be guided by the following key principles:

Equity

We will strive to make our research relationships as equitable as possible, by being conscious of power dynamics and guarding against risks of abuse of power.

- We will select research respondents and research teams on the basis of equitable principles.
- We will include a diversity of perspectives and avoid assumptions based on gender, sexual orientation, age, ability, religion, culture, ethnicity, or nationality.
- We will be aware of our own positionality, biases, and responsibility in the research process.
- We will work to develop mutual trust in relationships.

Right to Self-Determination

We will respect and support the right of people in contexts of forced migration to make their own decisions about their lives and the degree of participation in research processes.

- We will privilege the rights and well-being of research respondents over the objectives of the research.
- We will uphold the dignity of our respondents in our portrayal of them—individually and collectively.

Competence

We will respect our duty to act competently.

- We will select appropriate research methods.
- We will acquire appropriate cultural and diversity understanding.
- We will screen, train, and supervise research assistants and interpreters.
- We will provide research respondents with accurate information on their rights.
- We will recognize our own limits and make appropriate referrals when research respondents demonstrate needs and/or request information.
- We will accept a duty of care.

Partnership

We will include relevant partners in our research throughout the research process: from design to data collection and analysis to dissemination of results.

- We will develop appropriate protocols and mechanisms to ensure full participation of relevant partners.
- We will decide in advance on culturally appropriate conflict resolution mechanisms in case of disputes over methods, design, or dissemination.
- We will promote co-ownership of the research and respectfully acknowledge each partner's contributions. In cases where co-authorship is not possible, such as degree requirements that students be solely responsible for writing papers or dissertations, this will be clearly explained to all involved in the research from the beginning of the research process.

Application of Key Ethical Principles to Research in Contexts of Forced Migration

Voluntary, Informed Consent

All research respondents must voluntarily and formally consent to participate in research after having been informed of the potential risks and benefits of their participation. They must be able to withdraw from the research at any time. The following issues should be taken into account when obtaining voluntary, informed consent from people in situations of forced migration:

- Displaced people who have had negative interactions with authorities and/or from different cultural traditions may be suspicious of written consent forms. Oral consent should be provided as an option in these cases, with clear procedures on how to obtain and record such oral consent.
- Researchers may rely on service providers or refugee organizations to gain access to potential respondents. However, only the research respondents themselves can consent to participate. In cases where gatekeepers have been involved, it is important that potential research respondents understand their right to refuse to participate at any stage in the research process, and that this refusal will not affect service provision or level of care. Further consideration should also be given to how the anonymity of the participants will be guaranteed, given that they have been referred by an agency/service provider. This must be clearly articulated in both the protocol and consent process.
- While financial compensation can be offered for people's time and/or child care and/or transportation costs in order to remove barriers to participation, it should be proportionate and reasonable. Displaced people in financial need should not feel pressured to participate

for financial reasons. Compensation must not be tied to or depend upon completion of the research study.

- Research rarely directly benefits individual respondents. This needs to be clearly explained to people in situations of forced migration, so that they do not participate only in the hope that their participation will bring direct material, legal, or other benefits.
- Respondents should be made aware of the financial, emotional, community/social, and other risks of participating, particularly the limits of confidentiality on any disclosure of criminality or self-harm, as discussed below.

Confidentiality and Privacy

Researchers have a duty to protect respondents' personal information and not disclose any identifying characteristics that would compromise anonymity, especially if sample sizes are small. In particular, the following considerations should apply to research in forced migration contexts:

- Researchers have limited legal protection when third parties use subpoenas in criminal proceedings and civil litigation. This issue is particularly significant, given the criminalization of migration and far-reaching anti-terrorism legislation. Research subjects should be made aware of these risks. Researchers should avoid collecting potentially incriminating data and only those directly relevant to the research topic. These data should be completely anonymized immediately upon collection, so that no information can be directly linked to a particular individual. Wherever and whenever possible, researchers should avoid collecting data with personal identifiers.
- Researchers and respondents should also be aware that electronic survey tools with servers that are housed outside of Canada are subject to third country legislation, including, in some cases, access to all data collected. In these cases, the consent form should include information on access and storage and potential limits to confidentiality.
- In some cases, research respondents will spontaneously reveal adverse incidents, such as abuse, exploitation, and self-harm. The researcher should make clear the limits of confidentiality in these cases, especially in cases of disciplinary norms where researchers have a duty to report, as well as have a strategy for referral to external resources in case of such incidents.

- In some cases, the identification of research subjects can have serious consequences for their safety, well-being, migration status, and/or eligibility for services. In these instances, confidentiality of information is paramount. Researchers should take extra care to encrypt and securely store data and to remove any characteristics that could identify research subjects, including by association.
- While audiovisual materials can be important data, they also pose particular challenges in confidentiality and anonymity. They should be used with caution, and only with the explicit permission of all people appearing in these materials. Research subjects should have the opportunity to request the destruction of such audiovisual materials in which they appear at any time.
- Interpreters, researchers, and others involved in the research process must sign a confidentiality agreement.
- Where research subjects wish to be named in the research, researchers must respect this desire for self-determination and find ways to do so that does not compromise the anonymity of others who do not wish to be identified.

Minimize Harm and Maximize Benefits of Research

- Researchers should build on and collaborate with similar research to avoid over-researching some populations.
- Researchers should avoid sensitive and potentially re-traumatizing topics—such as sexual violence and torture—except when they are directly relevant to the research topic. In these cases, external resources and services must be identified and readily available in case a referral is necessary. All efforts will be made to minimize harm.
- All efforts should be made to include a diversity of perspectives in research studies, with specific recruitment strategies and methodology to include differential perspectives and research needs based on age, gender, sexuality, ability, class, race, education, literacy, and language.
- Researchers should ensure maximum dissemination of research results in relevant languages and in multiple media (oral, written, visual) and clearly indicate to research subjects where such research results will be available.

Appendix 1

Checklist for Researchers

1. Do I need ethics approval for this project? If so, how can this be obtained?
2. Where applicable, have I shared my ethics protocol with relevant partners?
3. Who will benefit from this research?
4. Who else is doing research on this topic and with this population? Have we coordinated efforts to avoid over-researching?
5. What are the potential limits to confidentiality? What strategies do I have in place to deal with situations where criminality, exploitation, or self-harm are disclosed?
6. Who is not included in my proposed research? How can I facilitate the participation of these individuals?
7. How will I include relevant partners in all phases of my project: from design to dissemination? What mechanisms and protocols are in place to ensure full participation?
8. Have I factored into my project budget compensation for the time and other resources non-academic partners invest in research, including as respondents, serving on advisory committees, recruiting other respondents, and facilitating the participation of other respondents?

Appendix 2

Checklist for Organizations and Individuals Working in Contexts of Forced Migration Who Are Approached to Participate in Research

1. If required, has the researcher obtained ethics clearance from the home institution? If so, has the researcher provided a copy of the ethics approval documents, as well as the contact information for the institution's research ethics board? If no ethics clearance processes are in place, how will the principles of consent, confidentiality, and harm reduction be assessed and applied?
2. Does the researcher have an appropriate voluntary, informed consent process?
3. How will we communicate with our clients and colleagues so that they understand that they do not have to participate in the research in order to continue to receive our services?
4. How will the privacy and confidentiality of data be ensured?
5. What are the processes in place in case research reveals criminality, exploitation, or self-harm?
6. Who is not included in the research? What modifications and strategies could facilitate the participation of these individuals?
7. How will the researcher share the results of the research, including anonymized data?

Appendix 3: Related Resources³

Related Ethical Guidelines and Protocols

- Canadian Council for Refugees. "Code of Ethics for Groups Involved in the Private Sponsorship of Refugees." 2010. <http://ccrweb.ca/en/code-ethics-groups-involved-private-sponsorship-refugees>.
- European Commission Directorate-General for Research and Innovation. "Guidance Note: Research on Refugees, Asylum Seekers & Migrants." n.d. http://ec.europa.eu/research/participants/data/ref/h2020/other/hi/guide_research-refugees-migrants_en.pdf.
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NOTES

- 1 Prepared by Christina Clark-Kazak and adopted by the Executive Committees of the Canadian Council for Refugees (CCR), the Canadian Association for Refugee and Forced Migration Studies (CARFMS), and York University's Centre for Refugee Studies (CRS). The following people were on the project committee and contributed to the ideas contained within this document: Tanya Aberman, Idil Atak, Michael Casasola, Sherman Chan, Alison Collins-Mrakas, Janet Dench, John Dubé, Sue Grafe, Celia Haig-Brown, Jennifer Hyndman and Michaela Hynie. We gratefully acknowledge the contributions of participants in the workshop at the CCR Fall Consultation in November 2016, at which Johanna Reynolds and John Carlaw also facilitated groups. This document also draws inspiration from the CCR's code of ethics for private sponsorship. Funding was provided by the Social Sciences and Humanities Research Council; Immigration, Refugees and Citizenship Canada; and, *Refuge: Canada's Journal on Refugees*. We

acknowledge the in-kind contributions of CCR, CARFMS, CRS and MOSAIC.

- 2 Anti-terrorist legislation is far-reaching and changeable. It is important for people working in forced migration contexts to acknowledge these laws and their implications for their work. This document in no way validates this legislation.

- 3 Collated by Tanya Aberman, with previous research assistance provided by Chizuru Nobe Ghelani.

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Discretion to Deport: Intersections between Health and Detention of Syrian Refugees in Jordan¹

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Abstract

Detention and deportation of migrants is a clear performance of state sovereignty that relies on discretionary practices and policies. The ongoing conflict in Syria highlights the strain and social disruption in neighbouring countries that host the majority of the world's Syrian refugees. This article looks at Jordan's policies to detain and deport Syrian refugees. Documented reasons for detention and deportations include work permit infractions, including the deportation of Syrian doctors and medical practitioners, as well as deportations for communicable diseases. Detention and deportation policies in Jordan are highly discretionary, making interventions and advocacy on behalf of those detained difficult. Detention and deportation can also have disproportionate impact on populations that are already marginalized, including members of the LGBTI community, survivors of sexual and gender-based violence, and those engaged in sex work.

Résumé

La détention et la déportation des migrants constituent de manière évidente une conduite de souveraineté étatique basée sur des politiques et des pratiques discrétionnaires. Le

conflit actuel en Syrie éclaire les tensions et les perturbations sociales dans les pays voisins, qui hébergent la majorité des réfugiés syriens du monde. Cet article examine les politiques jordaniennes de détention et de déportation des réfugiés syriens. Les motifs documentés de détention et de déportations comportent les infractions de permis de travail, y compris la déportation de médecins et de praticiens médicaux syriens, ainsi que les déportations motivées par des maladies transmissibles. En Jordanie, les politiques de détention et de déportation sont très discrétionnaires, ce qui rend difficiles les interventions et la défense des droits des personnes détenues. La détention et la déportation peuvent également toucher de manière exagérée des populations déjà marginalisées, y compris les membres des communautés LGBTQIA, les survivants à des violences sexuelles et sexistes, et les personnes pratiquant le travail du sexe.

Introduction*

The notion that Syrian refugees are detained and deported back into zones of active conflict is shocking. However, such detentions have been documented in the neighbouring countries of Turkey, Lebanon, and Jordan, which host the majority of the world's Syrian refugee

* The findings in this piece rely on field research from the summer of 2015 by the author as a researcher for the International Human Rights Program, University of Toronto Faculty of Law. At time of publication, deportations of Syrian refugees continue to be routinely documented in Jordan. In October 2017, Human Rights Watch released an investigative report detailing multiple allegations of *refoulement*, or forced return, to zones of active conflict in Syria. See Human Rights Watch, "I Have No Idea Why They Sent Us Back: Jordanian Deportations and Expulsions of Syrian Refugees," 2 October 2017, <https://www.hrw.org/report/2017/10/02/i-have-no-idea-why-they-sent-us-back/jordanian-deportations-and-expulsions-syrian>.

populations. The threat of detention and deportation is profoundly damaging for an already traumatized refugee population. These policies also disrupt social cohesion in the host country and exacerbate protection issues for marginalized communities, especially when the detention and deportation of Syrians is linked to health-care concerns and human rights abuses.

The broader use of detention as a mechanism to interdict and control refugee populations has been widely noted, particularly in so-called transit countries that serve as an intermediary to a final destination.² However, countries like Jordan do not neatly fit this transit-country label. Jordan already had a large Syrian population before the start of the conflict, and it will likely continue to host significant numbers for the foreseeable future. As a result of Jordan's explicitly exclusionary policies, Syrian refugees remain impermanently permanent³—not fully Jordanian but also not simply transiting. As a result, they continue to be vulnerable to discretionary policies of detention and deportation at the hands of Jordanian authorities.

In times of crisis,⁴ a nation under threat strengthens and polices its borders by enacting increasingly hardline policies of control over migrants.⁵ In particular, detention and deportation of migrants highlight this performance of sovereignty, as these practices sharply differentiate between those who can and cannot remain. For example, scholars of detention practices such as Mainwaring and Silverman have described state practices of detention as a spectacle,⁶ a practice that is at once both visible and obscure.⁷ Detention practices as a particular enforcement spectacle of interdiction and migration control have also been discussed.⁸ In particular, it is the discretionary nature of detention that allows the state to benefit from being able to enact unfair policies with few safeguards, under the guise of having to protect its security in times of crisis. Discretion in detention practices also exacerbates issues of access to justice for detainees and perpetuates ongoing human rights abuses.⁹ By stripping them of their rights, these discretionary practices also render detainees as undesirable, detainable, and ultimately, deportable.¹⁰

While Jordan should be commended for handling a large number of Syrian refugees over the last six years with relative stability, Jordanian detention policies are an ineffective way to control the numbers of Syrian refugees and instead perpetuate a discretionary system that is in direct contravention of international law. Jordan exercises its broad discretion to detain and deport Syrian refugees for a host of reasons that the state sees fit. These can include vague "security threats," work permit infractions, including by Syrian doctors and medical personal who are gravely needed in the strained Jordanian health-care system, as well as detention and deportations of people living with communicable diseases,

such as tuberculosis and HIV/AIDS. The intersection between health concerns and detention is particularly troubling. Jordan's robust health-care system, once a leader in the region, has been under ongoing strain since the start of the Syrian conflict and the need to expand services to the war-affected Syrian population.

This strain on the health-care system is coupled with Jordan's broader problematic policy to deport *any* foreigner, refugee or not, who is found to be HIV positive.¹¹ Jordan's need to police its borders and prevent the incursion of a manufactured threat of a communicable disease results in a punitive system that stigmatizes people living with communicable diseases. These policies also deter people who may be living with communicable diseases from coming forward and seeking treatment for fear of detention and deportation, resulting in exceptionally low reporting rates and a lack of awareness of the impacts of the spread of infection among refugee and host population.

Methodology

This article is based on fieldwork conducted by the author on behalf of the International Human Rights Program (IHRP) based at the University of Toronto Faculty of Law. In May and June 2015, the IHRP conducted 45 interviews with 51 individuals in Turkey (Istanbul, Gaziantep, and Antakya) and Jordan (Amman and Irbid), including lawyers, doctors, frontline practitioners working with NGOs and INGOs, and Syrian refugees. The primary purpose of this research was to ascertain Canada's refugee policies and their impacts on Syrian refugees and host populations living with HIV, and resulted in an internal report written for the Canadian government.¹² However, troubling patterns of detention and deportation policies in Jordan also emerged, forming the basis of this article. A further piece on broader practices of attrition through enforcement in Jordan's and Turkey's detention policies is forthcoming.¹³

All interviews adhered to strict confidentiality principles and were conducted using an open-ended questionnaire. Most interviews were conducted in private offices of NGOs and INGOs, while some were more informal. Many interviews with service-providers and NGO and INGO workers were followed up with by email or Skype. The interviewees were fully informed about the nature and purpose of our report and the manner in which their information would be used. They were also explicitly provided the option of not participating or remaining anonymous in the final report. All of the interviewees agreed to share their experiences and participate in the research; some chose anonymity and others changed or deleted their names for security reasons during the course of the interview or in subsequent communications with the authors. None of the interviewees

received incentives in exchange for their participation. The interviews were conducted in-person with the exception of approximately 10 interviews, which were conducted either by phone or email, including correspondence with an organization in Beirut, Lebanon. Additional contacts were gathered using the snowball sampling method based on established contacts in the region through journalistic, legal, and not-for-profit networks.

Part 1 of this article will provide a brief overview of the ongoing Syrian conflict and Jordan's responses to the large numbers of Syrian refugees it continues to host. Part 2 will highlight the documented cases of detention and deportations and how detention intersects with the discrimination of already marginalized groups, exacerbating their isolation and fear of deportation. Part 3 will discuss recommendations for reform, including targeted domestic interventions to ongoing detentions and deportations, as well as international pressure to end Jordan's problematic detention and deportation policies, which are in contravention of the principle of *non-refoulement* and international law.

Part 1: Syrian Conflict and Jordan's Responses

The former UN high commissioner for refugees António Guterres has characterized Syrian refugees as "the biggest refugee population from a single conflict in a generation. It is a population that needs the support of the world but is instead living in dire conditions and sinking deeper into poverty."¹⁴ As of August 2016, the United High Commissioner for Refugees (UNHCR) estimated the number of Syrian refugees at 4.8 million.¹⁵ In addition, there are at least 7.6 million internally displaced people (IDPs) within Syria.¹⁶ Exact numbers of fatalities are difficult to verify in the ongoing conflict. However, according to the Syrian Centre for Policy Research, a non-governmental independent think tank, by 2016 war fatalities would amount to over 470,000, and the number of injured and killed since the start of the conflict in 2011 was approximately 11.5 per cent of the population.¹⁷ Syrian civilians are targeted in urban centres by the Assad regime¹⁸ and by armed militants including members of the Islamic State, also known as ISIS.¹⁹ As a result of ongoing violence, huge numbers of Syrians have fled to neighbouring countries such as Turkey, Jordan, and Lebanon, estimated to hold as high as 95 per cent of the total number of refugees.²⁰ This has created a precarious situation for the refugees as well as host country communities as the conflict continues.

Under international law, there is an obligation on all signatories to the 1951 Refugee Convention to provide international protection, including physical relocation of refugees. When protection cannot be guaranteed in the country where refugees first sought asylum, resettlement to a third country becomes an option. The UNHCR is mandated by its statute and

by the UN General Assembly Resolutions to oversee resettlement as one of the three "durable solutions" to refugee crises around the world.²¹ Resettlement is a small but vital piece of the international refugee response. However, the UNHCR estimates that only approximately 3 per cent of the overall Syrian refugee population has been offered viable resettlement.²² Therefore, neighbouring countries continue to deal with large numbers of arriving Syrian refugees.²³ This creates a strain on resources and social services and exacerbates the tension between host populations and Syrian refugees. It also unfortunately exacerbates problematic policies of interdiction, detention, and deportation of Syrian refugees.

This article focuses on the responses in Jordan and its policies of detaining and deporting Syrian refugees for work infraction, including those of Syrian medical professionals, as well as potential deportations of Syrian refugees with communicable diseases. As noted above, the designation of Jordan as a transit country must be problematized. While some Syrian refugees do continue to third countries after arriving in Jordan, and some are resettled, the majority of Syrians in Jordan are likely to remain there indefinitely. As such, they become enmeshed in the Jordanian formal and informal economies, and access Jordan's social and health-care services. They are also a major source of international humanitarian and development funding for Jordan. With the Syrian conflict showing no signs of abating, it is unlikely that the majority of Syrian refugees will be leaving Jordan. However, the Syrian refugee population continues to occupy a precarious space in Jordan, as seen by their detention and deportability.

Jordanian Responses to the Syrian Conflict

The Hashemite Kingdom of Jordan shares its northern border with Syria. Since the start of the Syrian conflict in 2011, Jordan has received approximately 1.257 million registered and unregistered refugees.²⁴ The UNHCR coordinates the overall refugee response in collaboration with the Government of Jordan. Jordan has two main refugee camps housing Syrian refugees: the Zaatari refugee camp complex and the Azraq refugee camp, both under the mandate of the Syrian Refugee Affairs Department (SRAD) of Jordan and managed by the UNHCR. There is also a privately operated Emirati Jordanian Camp, access to which is difficult to obtain and operates its own set of admission standards outside the mandate of the UNHCR.²⁵ Tent cities have also appeared around Ramtha, Cyber City, and King Abdullah Park, near the border with Syria's southern Dara'a Province, and there is a large urban refugee population in cities such as Irbid, Mafraq, and Amman. According to a UNHCR report, 84 per cent of Syrian refugees in Jordan were living outside refugee camps in 2014.²⁶ Unfortunately, the exact numbers of Syrians living outside Jordanian refugee camps are difficult to verify. Many

Syrians were already living and working in Jordan before the start of the conflict, and families have blended for generations. Syrians are also involved in both formal and informal economies in Jordan without registering with the UN or with the Jordanian authorities.

While informal border points remain open along the Jordan-Syria border, according to Human Rights Watch, as of April 2015, all crossings had been officially sealed.²⁷ This created a precarious security situation where thousands of Syrian refugees were trapped in border areas as they tried to enter Jordan. For example, Human Rights Watch obtained satellite imagery of approximately 175 tent structures in June 2015.²⁸ By June 2016, the International Committee of the Red Cross (ICRC) estimated that “around 60,000 people [were] currently without food, water or healthcare.”²⁹ These border regions operate outside the reach of the Jordanian authorities and are very dangerous. They are cut off from humanitarian assistance, and as a result of a suicide bombing attributed to ISIS on 21 June 2016, Jordan completely sealed its borders.³⁰

Jordan's Refugee Policies

The principle of *non-refoulement* is the “cornerstone of asylum and of international refugee law.”³¹ Under the Refugee Convention, the principle of *non-refoulement* prohibits a state from removing refugees to their country where their life or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.³² Article 33 (1) of the 1951 Convention relating to the Status of Refugees states, “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.”³³ This principle ensures that all persons can fully enjoy their human rights, including right to life, liberty, and security of the person, and freedom from torture or cruel, inhuman, or degrading treatment of punishment. Returning a refugee to persecution or danger threatens these rights.

However, Jordan has not signed or ratified the 1951 UN Convention Relating to the Status of Refugees or its 1967 Protocol. Nevertheless, Article 21 of the Jordanian Constitution prohibits the extradition of political refugees,³⁴ and according to the UNHCR, the Jordanian government considers Syrians to be refugees.³⁵ Jordanian law also lacks clear domestic refugee legislation or policy to protect refugees.³⁶ For example, Law No. 24 of 1973 on Residence and Foreigners' Affairs requires those entering the country as political asylum seekers to present themselves and register at a police station within three days of arrival.³⁷ Article 31 grants the administrative body of the Ministry of the Interior the power

to determine whether persons who entered illegally will be detained and deported, on a case-by-case basis.³⁸ Moreover, the law does not identify explicit conditions under which individuals will be eligible for asylum.³⁹

Jordan is a signatory to the 1984 UN Convention against Torture⁴⁰ and is bound by Article 3 not to return or expel any persons to states where they would be in danger of being tortured.⁴¹ Jordan also issued its only domestic refugee-specific directive in 1998 in the form of a memorandum of understanding (MOU) with UNHCR.⁴² This MOU gives UNHCR the right to determine the refugee status of asylum-seekers in Jordan. Article 1 of the MOU removes any geographic and time limitations for asylum-seekers, and Article 2(1) respects the concept of *non-refoulement*.⁴³ According to the UNHCR, in the absence of any international or national legal refugee instruments in force in Jordan, the MOU “establishes the parameters for cooperation between UNHCR and the Government.”⁴⁴ This cooperation includes UNHCR interventions in the detention of refugees, as will be discussed below.

Part 2: Deportations from Jordan

Jordanian policies of detention and deportation have long been discretionary and have raised numerous critiques about procedural justice safeguards. Groups such as Human Rights Watch have criticized Jordan's broad administrative detention regime and point out that “governors and other officials routinely circumvent the criminal justice system when they detain people by administrative order and without judicial review.”⁴⁵ The Global Detention Project's 2015 report on Jordan's immigration detention practices details how Jordan's ad hoc system of laws governing migration, refugee status, and detention results in a highly discretionary system with few procedural safeguards for detained migrants. While the 1973 Law on Residence and Foreigners' Affairs and the Crime Prevention Law and the Act No. 9 of 2004 on Prisons and Reinsertion Centres provides very basic procedural guarantees for all detainees, there is a “lack of uniformity or transparency in the decision-making process [which] leaves many immigrants vulnerable to human rights violations and arbitrary detention.”⁴⁶ Charting the history and statistics of Jordan's immigration detention practices is difficult, as the Jordanian government does not make these statistics available.⁴⁷ However, multiple cases of torture, deprivation of rights, and death have been noted, including the death of a Syrian refugee in the Zaatari Refugee Camp.⁴⁸

Forcible detainment and deportations to Syria were documented in a number of interviewees in May and June 2015. While there were no any official reports by the Jordanian authorities of these deportations, and exact numbers were difficult to verify, the UNHCR has publicly acknowledged that they are aware of deportations of Syrian refugees from Jordan.⁴⁹

However, there were local reports on the deportation of Syrians from Jordan. For example, Hazm al-Mazouni, a Syrian journalist with the Ammanet news agency based in Amman, Jordan, was the principal investigator on a report released in June 2015 that documented 58 deportations since 2014.⁵⁰ During his interview on June 2015, Mr. al-Mazouni estimated that there were also 11 cases of children under 18 years deported from Zaatari camp with their families back to Syria. In Mr. al-Mazouni's experience, deportations occur relatively quickly, often less than 24 hours after the person is apprehended. Out of the 19 cases found by Mr. al-Mazouni and his colleague, 16 were also deported on Fridays and Saturdays, which are considered holidays in Jordan. Mr. al-Mazouni thought this was to curtail access to legal representation and the UNHCR. According to Mr. al-Mazouni, out of the 19 cases investigated, one person died in Syria in a bombardment, while five people were in detention, with at least some inside an al-Nusra prison. Four people were volunteers with local organizations and were deported alongside wounded Syrian refugees, allegedly for not being allowed to work in Jordan.⁵¹

In 2015, the UNHCR was aware of these deportations and, given its close relationship with the Jordanian government, it serves as the primary advocacy mechanism for the release of those detained.⁵² The UNHCR's deportation unit liaises with the governorate that has administrative oversight over enforcing deportations and intervenes on individual cases. The UNHCR also has a 24-hour hotline and liaison officers who attempt to find out where the person is detained and intervene as soon as possible to secure the person's release. The UNHCR also has some access to the administrative detention facilities where people are held in order to halt any deportations. The UNHCR is also aware of children in detention and works to secure their release.⁵³

Deportations for Work Permit Infractions

During the course of fieldwork in 2015, interviewees noted that one main reason for deportation of a Syrian refugee was work permit infractions. This included documented cases of practising Syrian physicians and medical personnel.⁵⁴ However, as a result of pressure following an international conference (also known as the Jordan Compact) in London in February 2016, Jordan publicly committed to provide a target of 50,000 work permits for Syrians by the end of the 2016.⁵⁵ As a reward for this pledge, the European Union ratified a new tariff-free export agreement with Jordan and business would benefit when they pledged that Syrian refugees would comprise 25 per cent of their workforce after three years.⁵⁶

This public push for work permits in Jordan has garnered mixed results at best.⁵⁷ For example, information

dissemination about implementation of this policy varies greatly, both for agencies supporting refugees as well as refugees themselves.⁵⁸ Also, there are also issues with the formalization of work and the fear felt by refugees of losing benefits such as food vouchers or supports from international organization when they receive a work permit.⁵⁹ There is also no explicit mention of work permits for medical practitioners or specialists who could benefit from such a regime. Therefore, while the following data were gathered before changes were made to the work permit regime in Jordan, the findings remain relevant to highlight the many challenges for Syrians wishing to work in Jordan and potentially facing detention or deportation as a result of being unable to access legal work.

A number of interviewees noted the difficulty faced by medical practitioners when trying to work legally in Jordan. For example, the Justice Centre for Legal Aid (JCLA) is a legal aid organization in Amman, Jordan, that regularly represents Syrian refugees living and working in Jordan. In the JCLA's experience, only a few people with "rare PhDs from Syria" were given work permits in Jordan before the Jordan Compact in 2016. For the rest of the Syrian population they must resort to working without a permit, and if they are caught by Jordanian authorities, they may be sent to a refugee camp or deported back to Syria. This happened to Yaser,⁶⁰ a middle-aged Syrian lawyer who sat in on the meeting with the JCLA staff and was volunteering at the organizations. He came with his family to Jordan from Syria but was caught working without a work permit, detained, and ultimately sent to Azraq refugee camp. After a few weeks, he managed to escape from the camp, walked through the desert to catch a transport truck to Amman, and rejoined his family in Amman. He is now especially careful about his work and status as a Syrian urban refugee living in Jordan. Yaser now spends his time volunteering at the JCLA, lending his legal expertise from Syria, but continues to be unable to work without proper authorization.

The JCLA has documented other cases of refugees being deported and has represented Syrian clients facing deportation from Jordan. According to an assistant at the clinic, the idea is that if "you are a refugee, you shouldn't work, and UNHCR should be paying for your food. You should not be influencing the Jordanian economy." However, the inability to work and earn a sustainable income creates a host of problems, including access to health care and services. For example, while Yaser's family is covered for comprehensive health care by virtue of being present in Jordan before the start of the conflict, he has access only to coverage available to uninsured Jordanians and must pay for any additional care.

The detention and deportation of Syrian doctors and medical personnel has also been observed. Dr. Khalid

al-Adi⁶¹ was a physician from Syria who came to Irbid, a city in northern Jordan, in October 2014. He was working as a physiotherapist in Syria but had to escape to Jordan because he was wanted by the Syrian authorities. He now worked in Irbid, Amman, and Ramtha as an intermediary referring physician in a network of 50 doctors, including approximately 20 Syrian physicians. Dr. al-Adi sent Syrian patients who contacted him to Jordanian doctors who were able to provide them with the required services. Doctors such as Dr. al-Adi were clearly in high demand: over the course of the two-hour interview in June 2015, his phone rang non-stop, and he received over three thousand WhatsApp messages from his patients that day alone.⁶²

In June 2015, Dr. al-Adi was aware of at least 10 Syrian physicians who had been deported from Ramtha hospital in early 2015. These physicians were working with wounded refugees and were referring to specialists working in Ramtha, a city in the northwest of Jordan. Once they disappeared, Médecins sans frontières took on the mission in Ramtha. Dr. al-Adi was also aware of the imprisonment and deportation of three other Syrian doctors with whom he worked regularly who were deported in approximately March 2015 for working without a work permit. Two additional Syrian doctors were then caught for working in a hospital. According to Dr. al-Adi, they were initially detained but had since received bail and were fighting their deportations in court.⁶³

Doctors like Dr. al-Adi cannot openly practise medicine in Jordan. Some practise under the name and licence of Jordanian doctors, with some having to pay up to 300 dinars to do so.⁶⁴ This created an unwelcome environment for Syrian physicians in an overburdened medical system. As Dr. al-Adi noted, “Unfortunately we are losing our own Syrian doctors. Many are leaving to Germany. For example, a rare specialist in bone diseases and three other neurosurgeons are gone. This is a huge loss for the Syrian situation, as they were a huge gain. We need these kinds of specialists ... For example, a specialist doctor, a cousin of mine, is the only doctor in vascular surgery in the north of Jordan. But because of the strictness of the Jordanian government, he chose to go back to work inside Syria in January 2015.”⁶⁵ The threat of detention and deportation forces many Syrian physicians to either abandon their practice completely, or greatly limits the scope of their work.

The detention and deportation of Syrian doctors is a troubling phenomenon. As the once-robust Jordanian health-care system becomes increasingly taxed to provide services to both Syrians and Jordanians, actively engaging Syrian medical experts and doctors would alleviate some of the strain. For example, there is only one hospital in the Middle East dedicated to providing free reconstructive surgery for people injured in war.⁶⁶ The Jordanian health-care system

is dealing with complex cases as a result of the conflict in Syria. Many cases require ongoing medical care, such as physiotherapy, rehabilitation, and prosthetics support for adult and children amputees. According to Hazm Almazouni, journalist with Ammanet, “Physiotherapy treatment is very limited and only a few sessions are offered. NGOs try to fill in, but do not have capacity, and others do it at random. People need time and care to adjust to their new life with lost limbs, and have to get used to wearing prosthetics. Some have lesions and allergies and it is very difficult.”⁶⁷ As a number of physicians explained, cases involving trauma and complex medical needs as a result of war wounds such as burn victims, amputees, and refugees requiring ongoing rehabilitation were not widely present in the Jordanian medical system before the Syrian conflict. In addition, cases involving psychological trauma and vulnerable survivors of sexual and gender-based violence (SGBV) and detention inside Syria also require ongoing care and access to treatment and services that is very difficult to obtain in Jordan.

Detention and Deportation for Communicable Diseases

Another troubling reason why Syrian refugees may be detained and deported from Jordan is for having a communicable disease, such as tuberculosis or HIV/AIDS. According to UNAIDS, Jordan is among 59 countries, territories, and areas that deny entry or residence to people because of their HIV status.⁶⁸ Jordan is also one of 26 countries that deport people who are living with HIV.⁶⁹ The UNHCR has explicitly stated that deportation of a refugee solely on the basis of their HIV status would breach the 1951 Convention and customary international law.⁷⁰

A number of interviewees noted that a refugee may be *refouled* back to Syria for having a communicable disease, such as HIV/AIDS or tuberculosis. According to a human rights lawyer in Amman specializing in combating the stigma around LGBTI and HIV/AIDS issues in Jordan, it is Jordanian policy to deport anyone who tests HIV+ while undergoing registration in Jordan, including an HIV+ Syrian refugee.⁷¹ However, it is not clear whether any HIV+ Syrians have actually been removed from Jordan under this policy. Nonetheless, for a researcher with Human Rights Watch, there was “no question that people are being deported” back to Syria for less serious reasons in 2015.⁷² This observation was echoed by Jordanian and international medical experts working in Amman, as well as on the northern border with Syria.⁷³ A number of medical experts in Jordan also noted the deportations of Syrian patients in the middle of the course of treatment for “security reasons.”⁷⁴ It is unclear what security reasons warrant deportation in the middle of medical treatment, but a number of interviewees suspected that being diagnosed with a communicable disease would qualify as

a ground for deportation. Two cases of HIV+ Iraqi refugees were referred to the Jordanian government for access to anti-retroviral treatment but had since disappeared.⁷⁵ It is unclear whether they were deported by the Jordanian authorities or whether they were in detention. There have also been documented cases of Syrian sex workers being deported on the grounds of work permit infractions as well as potential communicable diseases.

The impact of survival strategies and the fear of deportation is felt in the NGO community in Jordan. For example, Souriat without Borders is a small local NGO focusing on primary care and rehabilitation of Syrian war wounded in Amman, Jordan.⁷⁶ Dr. Hafiz, the head doctor, noted that in his practice he had come across cases where the Jordanian government has deported people back to Syria for a variety of reasons, including the deportation of wounded persons who entered Jordan seeking treatment. Dr. Hafiz stressed that Jordan was dealing with an unprecedented number of refugees, many of whom had serious medical issues.⁷⁷ According to Dr. Hafiz, the threat of detention and deportation only exacerbates people's reluctance to seek treatment, especially for stigmatized communicable diseases. Communicable diseases such as HIV/AIDS are a very publicly sensitive issue that the Jordanian government does not openly discuss, especially pertaining to the Syrian refugee population. While testing for HIV/AIDS does sometimes occur as part of the registration process, it is unclear whether these tests are accurate and how the medical information is handled, resulting in issues of discrimination and breaches of confidentiality. In the experiences of the physicians interviewed, while large samples of blood may be collected from the Syrian refugee population, there simply is no capacity to test everyone. There were also a number of cases reported of Syrian refugees being able to register without ever providing a blood sample.

Discrimination of People Living with Communicable Diseases

Discrimination against people living with communicable diseases further exacerbates their isolation and lack of access to treatment. It also creates a further deterrent to seek services for fear of being detained and deported. These risks disproportionately affect marginalized groups such as members of the LGBTI community, survivors of SGBV, and sex workers.⁷⁸ The ongoing Syrian conflict creates complex protection problems with legal, medical, and social dimensions that increase the risk of HIV infection. These risks disproportionately affect vulnerable groups, such as LGBTI, survivors of SGBV, and sex workers. The choice to highlight these groups is not meant to conflate them with higher incidences of communicable diseases. However, there is recognition that these groups are more vulnerable to transmission

and do not have access to regular treatment and services as a result of their marginalization.⁷⁹

LGBTI Discrimination

LGBTI rights are very contentious in Jordan and, as a result, LGBTI individuals keep a low profile. Driving the LGBTI community underground increases risk factors of HIV infection, as people are less willing to openly identify if they need testing or treatment. In addition, large portions of the LGBTI population in Jordan may not even be aware of the risk of infection, since outreach and education on prevention of STIs such as HIV are virtually non-existent.

Survivors of SGBV

There are documented cases of sexual violence inside the Zaatari and Azraq camp complexes, as well as within the urban refugee population.⁸⁰ The Zaatari refugee camp complex houses approximately 79,150 refugees⁸¹ and the Azraq refugee camp houses approximately 26,820 refugees.⁸² The JCLA and other community advocacy groups have been documenting cases of sexual abuse and sexual harassment in Azraq and Zaatari camp since the start of the Syrian refugee conflict. While there is some SGBV psychosocial support provided to women and children by the NGOs and INGOs working in the camps, the method of delivery is problematic and some women refuse to attend these services. According to one worker, "Awareness sessions can be offered on a daily bases, but women prefer to walk over two kilometres to get bread for their children rather than sit in an awareness workshop. Instead, NGOs should go door-to-door when talking about sensitive issues."⁸³ It is also unclear whether there is any focus on communicable diseases and the potential detention and deportation that can result by openly identifying.

Increase in Forced Sex Work and Forced Marriage⁸⁴

In Jordan, domestic labour laws do not allow the majority of Syrian refugees to work.⁸⁵ The Jordanian Constitution explicitly states in Article 23 that the right to work is reserved for Jordanian citizens.⁸⁶ However, as discussed above, the recent push to issue an increased number of work permits for Syrian refugees is meant to alleviate the need for Syrians to resort to informal work. However, many Syrian refugees simply do not have the means to pay the registration fee required for the work permit and medical coverage, especially for large families, and resort to remain in the informal economy.⁸⁷ The UNHCR estimates that one in six Syrians living in Jordan live in extreme poverty and "desperate living conditions"⁸⁸ with incomes below US\$3.20 per day.

The difficulty of working legally in Jordan exacerbates an increase in sex work.⁸⁹ Peace Link Operator, an NGO launched in 2015 in Irbid, Jordan, provides psychosocial support and

services to vulnerable women and girls who have experienced SGBV as a result of the war in Syria, as well as women who have entered the sex trade in Jordan. They have worked with 200 Syrian women and 13 Jordanian women who have been engaged in the sex trade. They provide psychosocial support and long-term evaluation, access to social workers and psychiatrists, and a number of projects for the women and girls to join.⁹⁰ Rima Tahat, co-founder of Peace Link Operator, has noted a steady increase of prostitution in the Zaatari and Azraq refugee camps. Women engage in sex work or are sold to other men for the night by their own husbands or families for as little as 70 JD/US\$98.⁹¹ Peace Link Operator has documented 13 such cases from Zaatari camp. Ms Tahat spoke of workers in camps, truck drivers, or private security officers who pay Zaatari refugee girls and women for sex.⁹²

Ms Tahat also observed instances of early and forced marriage, often motivated by economic pressures: “One woman told me, ‘I can’t let her [the daughter] go to school, I want to marry her off. It is OK to marry her off at 11. She will mature with him.’ They don’t care who will marry her, just whoever will pay more.”⁹³ Peace Link Operator, which worked in prostitution, has worked with cases where young girls were forcibly married off or forced to enter the sex trade in Jordan’s urban centres. For example, in April 2015, the NGO started working with two girls they found in Mafraq city. In addition, in a publicized case, 11 Syrian girls were captured by Jordanian police for prostitution in Irbid, and were subsequently detained in Azraq camp.⁹⁴ According to Rima Tahat, if a woman is caught engaging in sex work, “The choice is to either go back to the camp or face expulsion to Syria. If she doesn’t have family in the camp, she will be sent back, unless she is able to pay off the officials.”⁹⁵

In Ms Tahat’s experience, women engaged in sex work cannot be approached directly to offer counselling or testing and treatment for communicable diseases. Instead, trust must be nurtured through psychosocial services until the woman is willing to talk about her traumatic experiences.⁹⁶ The women have come to trust staff at Peace Link Operator, and according to Ms Tahat, “Sometimes they do not want to take the prescribed medicine and are ashamed to talk to Jordanian doctors. They prefer to talk to someone they know.”⁹⁷

Lack of Focus on Treatment and Prevention Education

While there is recognition among medical professionals and humanitarian workers that communicable diseases are on the rise, there is reticence to discuss this sensitive issue, even in international organization. For example, international humanitarian organization staff in Amman acknowledged that there continues to be a general lack of awareness in Jordan about safe sex practices and how they are linked to the transmission of communicable diseases such as HIV.

However, with increased population mixing, individualized sexual violence, and early marriage on the rise, they stated, “It is a myth that [HIV] won’t happen here.” For example, four IRC medical volunteers interviewed in Irbid, Jordan, in June 2015 saw approximately 400 Syrian families a month for health monitoring, including cases of communicable diseases. They emphasized that shame and stigma continue to affect disclosure of contracted infections. According to one IRC nurse volunteer, “We have seen cases where they think they have an infection but because they are not well educated and ashamed to say that they have this disease, and they do not tell.”⁹⁸ The team also noted a lack of strict confidentiality policies and case management between NGOs, especially when dealing with sensitive topics such as sexually transmitted diseases.⁹⁹ This exacerbates people’s unwillingness to disclose their communicable disease out of fear of being reported to the authorities, detained, and deported. In fact, the IRC team noted one case of a family deported en masse to Syria when one member was found to have a communicable disease, suspected to be HIV.¹⁰⁰ However, it was not possible to verify this deportation.

In Peace Link Operator’s work inside the Azraq refugee camp, the NGO also noted a gap between the focus of humanitarian organizations and the reality in the field. While some international organizations focus on issues such as personal hygiene and pregnancy prevention in Jordan, they do not work on sensitive issues such as HIV prevention and infection. According to Ms Tahat, “No one tries to deal with sensitive areas like this.”¹⁰¹ The JCLA and IRC teams also noted the inadequacy of outreach activities to directly address HIV and other communicable diseases, and the reluctance of Syrian refugees to attend seminars that could increase their stigma if they were openly identified as survivors of SGBV, LGBTI, or living with or vulnerable to HIV infection. As a result, Tahat saw the work of local organizations with connections to the community as being able to gain access to vulnerable populations to offer them culturally appropriate services.¹⁰² While local efforts can begin to address the chronic need for related health services and information, dedicated funding and further resources are needed to reach as many affected people as possible.

Focus is also needed on education about the risks of detention and deportation as a result of disclosing one’s status as a person living with communicable diseases such as HIV. This includes strengthening access to mechanisms to stop deportations from Jordan, as well as local and international advocacy to prevent deportations altogether.

Part 3: Mechanisms to Stop Detention and Deportation from Jordan

Early intervention and advocacy is the most successful way to prevent deportations back to Syria. Organizations such

as the Arab Renaissance for Democracy and Development (ARDD) and JCLA, as well as the UNHCR, routinely intervene and have stopped a number of deportations. For example, as noted by lawyers at one community legal centre, in the last week of May 2014, a Syrian husband and wife were caught working as sex workers. As noted by a Jordanian lawyer, Syrians in Jordan are desperate for work, and sex work is on the rise in order for families to survive. The husband was detained in the city of Irbid, and the Jordanian authorities planned to deport his wife and their four children. However, the deportation was stopped by the legal team at the centre.¹⁰³

Importantly, detention and deportations from Jordan do not fall under the purview of Jordanian courts. Instead, the governor of the Interior Ministry has the ultimate jurisdiction to detain and deport Jordanians and non-Jordanians. In the experience of one Jordanian legal team, the governorate exercises its discretion to detain and deport people arbitrarily: "It is all about the governor's mood that day."¹⁰⁴ This makes advocacy efforts for counsel to intervene in Syrian detention and deportations very difficult. In the experience of this legal team, there is no access to a tribunal or appeal in accordance to principles of procedural justice. Instead, the decision whether to deport a person or not rests on an informal conversation with the governor on a case-by-case basis. The governor can also impose additional days in detention as he sees fit. In a poignant example of the discretionary nature of detention, a Jordanian lawyer recalled one case of a Syrian female detainee that was declared free to go, but at the last minute the governor decided that he would keep her in detention for additional days in order to "teach her a lesson."¹⁰⁵

Ultimately, deporting Syrian refugees back to Syria is in contravention of the Jordanian MOU with the UNHCR and a clear violation of the principle of *non-refoulement*.¹⁰⁶ While there are no official government reports to corroborate these deportations, the UNHCR has acknowledged that they are aware of deportations of Syrian refugees from Jordan,¹⁰⁷ including documented deportations for work permit infractions (including Syrian doctors treating their patients),¹⁰⁸ and deportation for "security concerns," including families with children.¹⁰⁹ Human Rights Watch also documented cases of Syrian patients being deported mid-treatment from hospitals,¹¹⁰ and a number of sex workers have also been deported back to Syria. Jordan has been internationally criticized for the detention and deportation of other groups of refugees, such as its problematic policy to deport eight hundred Sudanese refugees in early 2016.¹¹¹ There has also been some pushback from donor nations to suspend funding to Jordan if these deportations continue.

However, there been little attention paid to the deportations of Syrians back into the zone of active conflict.

While Jordan is not a signatory to the 1951 Convention, it is a signatory to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and as such is bound by Article 3 not to return or expel any persons to states where they would be in danger of being tortured.¹¹² Jordan also ratified the International Covenant on Economic, Social, and Cultural Rights, which clearly stipulates universal rights to physical and mental health.¹¹³ The right to health is also recognized in numerous Articles of the Convention on the Elimination of All Forms of Discrimination Against Women,¹¹⁴ and the Convention on the Rights of the Child,¹¹⁵ as well as Article 25 of the Universal Declaration of Human Rights,¹¹⁶ all of which Jordan has ratified.

Jordan's deportations of Syrian refugees back into active conflict is not only a violation of international law. This practice can also exacerbate incidences of undisclosed communicable diseases, which can result in increased exposure both for the Syrian refugee population as well as the host country population. For example, while numbers of HIV are low among refugee and host-country populations in Jordan,¹¹⁷ the social disruption and instability due to the ongoing Syrian conflict creates an environment for increased exposure to HIV and other communicable diseases. For refugees who identify as LGBTI, as survivors of SGBV, or as sex workers, marginalization, precarious living situations, and unequal access to resources in host countries aggravate the risk factors that can render them vulnerable to HIV infection.

There is a need to raise awareness of health rights in Jordan and with Syrian refugees living there. According to Dr. al-Adi, a Syrian doctor working in Irbid, Jordan, "It is very necessary to speak up now, while numbers are small. If we don't, there will be huge costs to economy and human life. I am positive there will be lots of HIV cases."¹¹⁸ Raising awareness of the right to testing and treatment could help to promote prevention and counter discrimination against persons living with HIV. However, as journalist Hazm Almazouni, told IHRP, there is no such "culture of rights" among people who may be most vulnerable to HIV, and "people often do not know they are being discriminated because they do not understand their rights."¹¹⁹ Even if people are aware of discrimination, they are afraid to self-identify, as they do not want to place themselves at increased risk of detention, deportation, and further mistreatment by Jordanian authorities. Deporting Syrian physicians for practising in Jordan is a grave misstep, as Jordan struggles to meet the complex medical needs of the Syrian refugee population. Instead, specifically targeted efforts to introduce Syrian physicians into the strained Jordanian medical system and economy

would alleviate the lack of doctors and medical personnel needed to serve both the Syrian refugees and the Jordanian population.

Any durable solutions and future directions for responses to the Syrian conflict must address the impact on host countries such as Jordan and position draconian and discretionary policies of deporting Syrian refugees back into active conflict in the broader social context. Jordanian detention policies are an ineffective way to control the numbers of Syrian refugees and instead perpetuate a discretionary system that directly contravenes international law. Concerted local advocacy to prevent detention and deportations of Syrian refugees should be bolstered by an international response directly condemning the Jordanian practice that is in contravention of the principle of *non-refoulement*. However, as the ongoing policy to detain and deport Syrian refugees in Jordan highlights, it is a result of ongoing social disruption, strained economy and health sector, and overall lack of resources for the small country of Jordan to deal with millions of Syrian refugees who will likely continue to live in Jordan for the foreseeable future. The Jordanian government and INGOs are obliged to uphold the right to health care and should explicitly address the spread of communicable diseases that are linked to social processes of survival strategies in a marginalized population. One way to uphold the universal right to health while meeting its obligations of *non-refoulement* is to advocate for specific work permits for doctors, nurses, and other medical professionals, which would both alleviate the pressure on the Jordanian health-care system while allowing more Syrian refugees access to legal work.

NOTES

- 1 The author would like to acknowledge the International Human Rights Program at the University of Toronto Faculty of Law for allowing me the use of the data that form the basis of this article, in particular Mr. Samer Muscati, director of the IHRP; Ms Kristin Marshall, staff lawyer, who also collected the data; and the Elton John AIDS Foundation, which funded the IHRP project. The author would also like to thank Ms Etaf Roudan, journalist with *Ammanet* in Amman, Jordan, without whom none of this work would have been possible, as well as all the interviewees who graciously shared their time for this project.
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- 3 See also literature on permanent temporariness: Jennifer Hyndman and Alison Mountz, "Another Brick in the Wall? Neo-refoulement and the Externalization of Asylum in Australia and Europe," *Government and Opposition* 43, no. 2 (2008): 249–69. And Jennifer Hyndman and Wenona Giles, "Waiting for What? The Feminization of Asylum in Protracted Situations," *Gender, Place & Culture* 18, no. 3 (2011): 361–79.
- 4 The term *crisis* is used in an illustrative way only, as this article does not want to perpetuate the damaging discourses of associating refugee movements with tropes of fear, flood, or influx. See also J. Blommaert, "Language, Asylum, and the National Order," *Current Anthropology* 50, no. 4 (2009): 415–24; Liisa Malkki, "Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization," *Cultural Anthropology* 11, no. 3 (1996): 377–404; Malkki, *Purity and Exile: Violence, Memory, and National Cosmology among Hutu Refugees in Tanzania* (Chicago: Chicago University Press, 1995).
- 5 See also Sarah Ahmed, "Affective Economies," *Social Text* 22, no. 2 (2004): 117–39; Susan Buck-Morss, "A Global Public Sphere?" *Situation Analysis* 1 (2002): 10–19.
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 - 34 Constitution of the Hashemite Kingdom of Jordan, 1952 (Jordan), article 21.
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- 51 International Human Rights Program in-person interview with anonymous doctor, Irbid, Jordan, 3 June 2015. See also Human Rights Watch, "Jordan: Syrian Medical Workers Deported," 8 December 2014, <https://www.hrw.org/news/2014/12/08/jordan-syrian-medical-workers-deported>. See also Hazim al-Hamwi and Musab Shawabkeh, "Jordan Puts the Lives of Syrian Refugees at Risk by Forcibly Returning Them to Their Country," *Ammannet*, 15 June 2015, <http://ar.ammannet.net/news/251221>. See also Human Rights Watch, "Jordan: Vulnerable Refugees Forcibly Returned to Syria," 23 November 2014, <https://www.hrw.org/news/2014/11/23/jordan-vulnerable-refugees-forcibly-returned-syria>.
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- 69 Ibid., 23.
- 70 UNHCR, "Note on HIV/AIDS and the Protection of Refugees, IDPs and Other Persons of Concern," 2006, at para 24, <http://www.unhcr.org/444e20892.html>. The UNHCR argues that a person with HIV/AIDS does not fall within the national security exceptions provided within these provisions, as they are meant to apply as a last resort to persons representing "a very serious future danger to the security of the country of refuge"; see para 26 and notes 26 and 27.
- 71 Name has been changed, International Human Rights Program in-person interview, Amman, Jordan, 3 June 2015.
- 72 International Human Rights Program in-person interview with Adam Coogle, Human Rights Watch, 1 June 2015, Amman, Jordan.
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- 75 Ibid.
- 76 The organization was started by five women to address lack of resources devoted to the rehabilitation of men, women, and children affected by the Syrian conflict, including war widows and unaccompanied minors. They have seen approximately 230 patients suffering from paralysis head

- injuries, amputations, and other war-related wounds. Dr. Amir Hafiz, the head doctor at Souriat without Borders, stated that while the organization continues to focus on providing primary care and a space for rehabilitation services for Syrian refugees, they have also started to provide free English classes to over 200 students. Souriat across Borders also supports a variety of community activities, such as hosting an art auction by Syrian artists living in refugee camps and mounting a theatre production of *Romeo and Juliet* by Syrian children healing at the health centre, all as part of its efforts to raise funds for the war wounded and to provide ongoing rehabilitation and community engagement.
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- 105 Ibid.
- 106 While Jordan is not a signatory to the 1951 Convention, it is a signatory to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and as such is bound by Article 3 not to return or expel any persons to states where they would be in danger

- of being tortured (non-refoulement), see article 3; Jordan's 1998 Memorandum of Understanding with the UNHCR expressly prohibits refoulement in Article 2(1), UNHCR, "Memorandum of Understanding between the Government of Jordan and UNHCR."
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Accommodating Asylum Seekers and Refugees in Indonesia: From Immigration Detention to Containment in “Alternatives to Detention”

ANTJE MISSBACH

Abstract

Considered the last ‘stepping stone’ before Australia, Indonesia plays an important role in immobilising secondary movements of asylum seekers and refugees in Southeast Asia. While migration scholarship has dedicated substantial attention to immigration detention and the deplorable living conditions inside immigration detention centres (IDCs), this article explores “alternatives to detention” (ATD) in two Indonesian localities: the city of Makassar and the province of Aceh. Seeking to contribute to a critical examination of ATD more generally, this article examines individual freedom, mobility, mechanisms of care and aid provision, protection of rights, self-determination, and matters of personal safety. The article illustrates the remaining limitations and the lack of rights that asylum seekers and refugees in Indonesia continue to face outside of IDCs. A durable solution, in the form of integration, is not available to asylum seekers and refugees, as they are prevented from integrating into the local host societies, and their social and economic mobility remains widely restricted. Yet at the same time, despite more physical mobility in ATD, asylum seekers and refugees remain contained within Indonesia as their onward movement remains deterred as well.

Résumé

Considérée comme le dernier tremplin vers l’Australie, l’Indonésie joue un rôle important pour bloquer les

mouvements secondaires des demandeurs d’asile et des réfugiés en Asie du Sud-Est. Tandis que les études sur la migration se sont beaucoup focalisées sur la la détention des immigrants et les conditions de vie déplorables dans les centres de détention des immigrants (CDI), cet article explore des alternatives à la détention (AD) à deux endroits d’Indonésie: la ville de Makassar et la province d’Aceh. À des fins plus générales de contribution critique sur les CDI, il étudie la liberté individuelle, la mobilité, les mécanismes de soins et les dispositions d’aides, la protection des droits, l’autodétermination, et les questions de sécurité personnelle. Il illustre enfin les limites persistantes et le manque de droits auxquels font toujours face, en Indonésie, les demandeurs d’asile et les réfugiés à l’extérieur des CDI. Du fait qu’on les empêche de s’intégrer aux sociétés hôtes locales et que leur mobilité sociale et économique est extrêmement limitée, on ne leur offre pas de solution durable sous la forme d’une intégration. En dépit d’une certaine mobilité physique dans le cadre des AD, les demandeurs d’asile et les réfugiés restent confinés à l’intérieur de l’Indonésie du fait qu’on les décourage également d’aller de l’avant.

Introduction

In June 2013, Human Rights Watch published a damning report entitled *Barely Surviving: Detention, Abuse, and Neglect of Migrant Children in Indonesia*, which highlighted the situation of hundreds of incarcerated minor asylum seekers and refugees in immigration detention centres

(IDCs); it also provided insights into the more general situation of almost 13,000 adult asylum seekers and refugees in Indonesia at the time.¹ Primary responsibility for the lack of protection, maltreatment, and abuse in detention was attributed to the Indonesian government,² but Human Rights Watch attributed secondary responsibility to the Australian government, which had long provided substantial funding to the Indonesian immigration detention system in order to deter the irregular onward movement of those immobilized people to Australia.³ Exactly one year later, the Office of the United Nations High Commissioner for Refugees (UNHCR) introduced a new global strategy, “Beyond Detention 2014–2019,” to help governments cease detaining asylum seekers and refugees. The three main goals agreed under this strategy are “(1) to end the detention of children; (2) to ensure that alternatives to detention (ATD) are available in law and implemented in practice; and (3) to improve conditions of detention, where detention is necessary and unavoidable, to meet international standards.”⁴ To assist Indonesia implement the strategy, a National Action Plan was drawn up with relevant Indonesian ministries, the UNHCR office in Jakarta and its local implementing partners, the International Organization for Migration (IOM), and the Indonesian Human Rights Commission (KOMNAS HAM).⁵

In light of growing recognition of detention’s harm to detainees as well as its high financial costs, governments around the world are exploring more cost-effective and humane options for accommodating immobilized asylum seekers and refugees.⁶ ATD rose to greater international attention with the launch of UNHCR’s “Beyond Detention” strategy in 2015. An outcome of intense lobbying by NGOs, such as the International Detention Coalition (a global network of more than 300 NGOs) and Asia Pacific Refugee Rights Network (APRRN), the strategy picks up the call for accommodating asylum seekers in residential housing, open transit facilities, and shelters in local communities while their immigration statuses are being processed.⁷ Indonesian NGOs are involved in these NGO networks, but they were not the driving forces behind the campaigns.

There is no single legal definition of what determines ATD. While some scholars understand ATD to be a range of policies and practices employed by sovereign states to better manage immigration falling short of incarceration,⁸ Sampson et al. have suggested a number of minimum standards, including respect for fundamental rights, meeting basic needs, legal status and documentation, legal advice and interpretation, fair and timely case resolution, and regular review of placement decisions, which must be met in order qualify as ATD.⁹ This article presents ATD as the physical and spatial lodging of asylum seekers and refugees outside prison-like IDCs. Although seen as improvements over closed institutions,

ATD also need further review before wide-scale adoption; however, the little critical research into ATD that has been conducted thus far has been confined to countries of the Global North.¹⁰

Three years after the launch of the “Beyond Detention” strategy, the article explores living conditions in Indonesian ATD in order to document what the gradual shift from IDCs to ATD has brought for those affected by it. While recent migration scholarship has produced a large critical body of literature on detention,¹¹ with considerable attention also dedicated to Indonesian IDCs,¹² this article questions their “alternative” dimension based on my encounters with a specific empirical reality in the field. This shift of attention from IDCs to ATD is significant in light of the shifting ratio of detained and undetained asylum seekers and refugees in Indonesia.¹³

The main argument put forward here is that ATD in Indonesia can be conceptualized as another form of containment, albeit with greater mobility. From this perspective, ATD mask a larger problem, one that might even be more complex than the release from IDCs, which is the lack of local integration for the asylum seekers and refugees currently in Indonesia. Local integration constitutes a durable solution, next to resettlement or voluntary repatriation. In analyzing my findings I have opted to apply the concept of *carceral mobility*, which I borrow from Moran, Piacentini, and Pallot.¹⁴ Moran, Piacentini, and Pallot provide a useful starting point through challenging the widespread assumption of “mobility as an expression of power,” and that “mobility is connected with autonomy ... and, ultimately, ‘freedom.’”¹⁵ Their study on contemporary prisoner transport in the Russian Federation highlights in particular the punitive control and the carceral practices inherent in (coerced) mobility of prisoners.

Seeking to further explore carceral aspects of mobility, I pay attention to asylum seekers’ and refugees’ limited attainment of legal rights as well as their insufficient economic and social integration that, if it was granted, would allow for a standard of living similar to that of the local population and wider social and cultural acceptance. I demonstrate that despite greater physical mobility, asylum seekers and refugees in ATD lack the freedom to live a self-determined life because there is an absence of crucial rights that could otherwise enhance their economic and social mobility. On the basis of my analysis, the carceral mobility is characterized by an absence of rights insofar as those residing in ATD are prohibited from taking up work and have difficulty accessing education, therefore fostering dependency on aid and services. Despite high levels of control and surveillance, in the form of curfews, limited visiting rights, restricted radius of mobility, and regular police checks, I found a lack of physical safety for the ATD residents, as they fear attacks

and encroachments by locals. ATD sustain zones of containment with semi-permeable boundaries that on the one hand provide little safety to asylum seekers and refugees, but on the other hand prevent meaningful integration.

In writing this article I pursue four goals. First, the empirical insights into temporary accommodation outside IDCs help produce a more holistic picture of the day-to-day reality faced by asylum seekers and refugees stuck in Indonesia.¹⁶ Second, I contribute to the overall debate on ATD beyond the Indonesian context, particularly in regard to individual freedom, mobility, the mechanisms of care, rights, and protection, and issues of personal safety, health, and well-being of asylum seekers and refugees in protracted transit situations. Third, I document the persistent indecision of the Indonesian government on its approach to detention and ATD. I argue that the Indonesian government has repeatedly opted for inconsistent and ad hoc approaches: it vacillates amongst a permissive *laissez-faire* attitude that allowed thousands of asylum seekers to pass through Indonesia freely; a hasty and heavy-handed use of incarceration in an overcrowded IDC system in keeping with the interests of Australian government funders, and a pragmatic shift to ATD. Fourth, I explore issues of personal safety and well-being of asylum seekers in Indonesian ATD and their effect on desired onward journeys. Here I argue that while the shift from IDCs to ATD is deemed more humane, it sustains the prevention of onward movement while mitigating against effective and long-term integration of asylum seekers and refugees into Indonesian society.

This article is informed by long-term fieldwork in Indonesia between 2010 and 2016, a period that saw abrupt changes and gradual shifts in the Indonesian asylum-seeker regime. During many short trips (usually one month long) and a longer stint (eight months), I have (re)visited six IDCs (Kalideres, Pontianak, Tanjung Pinang, Kupang, Semarang, and Makassar), four refugee camps (Aceh), three NGO shelters for underage asylum-seekers, a private and a state-owned orphanage (both in Jakarta), more than a dozen community shelters (Makassar, Medan, Yogyakarta, and Jakarta), and many self-funded lodgings, such as shared apartments and doss-houses (Jakarta and Puncak).¹⁷ As there is no coherent policy for accommodating transiting asylum seekers and refugees in Indonesia, it was important to gain an overview of the variety of housing options, in regard to configuration, capacity, regulations or provisions. With no “typical” ATD in place, I have decided to compare two sites: community shelters in Makassar and makeshift camps in Aceh. Given that asylum seekers and refugees based in Jakarta and Puncak have received the bulk of attention by scholars and journalists, it is important to provide some snapshots on residency areas usually considered peripheries within the Indonesian archipelago. While the first site is considered a “best practice

example” by the Indonesian government and therefore gives an impression of ATD at their best, the other is an ad hoc example, so provides a useful comparison of how contingency affects ATD. Both sites depict difficulties relevant to other ATD. Only two cases can be examined (largely because of word limitations) to provide a more detailed sense of material conditions and everyday routines in those sites. The broader claims about ATD, however, draw on the wider ethnographic research within and amongst residents of the full suite of ATD operating in Indonesia.

The ATD in Makassar came into existence in 2011, when IOM started using two hotels for housing asylum seekers and refugees who could not be placed in the local IDC. From then on, the number of ATD grew steadily; in June 2013 there were already 10 ATD facilities in use and 12 in January 2015.¹⁸ In April 2016, 2,036 asylum seekers and refugees were living in Makassar, of which 1,165 were under IOM care. While most of them lived in one of the 14 ATD in the city and its outskirts, 196 under IOM care were still held in an IDC in Makassar.¹⁹ Unlike in other cities, no women and children were detained in the IDC in Makassar.²⁰ In general, Makassar enjoyed a fairly high reputation amongst asylum seekers who decided to self-report to the migration authorities there,²¹ regardless of repeated public statements by the Makassar immigration authorities that they did not want to receive any more asylum seekers and refugees in either the IDC or the ATD. Despite these challenges, the ATD in Makassar is seen as a success by the central government, because in February 2016, the governor of South Sulawesi received an award from the Indonesian minister of law and human rights for superior efforts of the Makassar immigration authorities in “supervising foreigners.”²²

The refugee camps in Aceh, in contrast, result from ad hoc emergency responses and were—as makeshift solutions—extended over time, making the camps in Aceh ATD by chance. Generally speaking, Indonesia had not seen any refugee camps since the Indochinese refugees were housed on the island of Galang in the late 1970s until the mid-1990s, so the Aceh camps were a novelty.²³ In May 2015, 1,807 asylum seekers of the persecuted Rohingya ethnic and religious minority from Myanmar became stranded in Aceh, Sumatra’s northernmost province.²⁴ There are no IDCs in Aceh to accommodate them, and IDCs in other provinces were already overcrowded. Even though in previous years other Rohingya had come to Indonesia and faced the usual detention procedures, this new group was handled differently.²⁵ The Indonesian government issued an unprecedented ultimatum that it would tolerate the Rohingya’s presence only on the condition that the UNHCR arrange resettlement or repatriation within one year.²⁶ Since resettlement has been minimal so far, Indonesia has yet to find a solution

for the remaining Rohingya beyond the one-year deadline that ended in May 2016. Local governments in Aceh were explicitly prohibited from using local budgets to cater for the Rohingya (apart from initial emergency efforts);²⁷ however, the IOM and some 20 Indonesian NGOs were permitted to establish and administer camps for the Rohingya in Aceh. Conditions in the camps varied but were below the standards for sanitation, hygiene, and safety in other ATD. As the camps were intended for short-term use only, the building materials were generally of low quality. Compared to the community shelters in Makassar, which were deemed exemplary, the makeshift camps in Aceh ranked at the lower end of the ATD spectrum.

During fieldwork I spoke to more than 90 asylum seekers and refugees (mostly men) during their detention, but usually after their release from an IDC, and in some cases before their “voluntary” surrender to an IDC. The research was complemented by recurrent interviews with representatives from the UNHCR and IOM, Indonesian and non-Indonesians members of NGOs (e.g., SUAKA, Jesuit Refugee Service, Church World Service, Aksi Cepat Tanggap), and with many low- to mid-level Indonesian migration and police officers in charge of handling asylum seekers and refugees. I observed a number of focus group discussions and coordination meetings involving high-level representatives from the special ministerial task force for handling people smuggling, asylum seekers and refugees (Desk Penangan Penyelundupan Manusia, Pengungsi dan Pencari Suaka, P2MP2S). I formally interviewed representatives of central and local government on their tasks in handling asylum seekers and refugees. I conducted all interviews in Indonesian or English. Interpreters were not used at any point. I complement the observations from the field with Indonesian media reports, which are often overlooked in research that focuses on Indonesia.

Asylum Seekers in Indonesia: From Transit to Protracted Stay

Indonesia's growing interest in policing irregular migration is not mirrored by an interest in refugee protection. Indonesia remains reluctant to sign the 1951 Refugee Convention, largely because of the obligation entailed to provide for the permanent integration into Indonesia of recognized refugees. Defending this position, Indonesian government representatives often claim that Indonesia already complies “with the principle and spirit of the 1951 Convention.”²⁸ Although this claim is questionable, Indonesia has allowed the UNHCR to process asylum-seeker claims on its territory and the IOM to provide a wide range of services to asylum seekers and refugees.²⁹

The asylum-seeker and refugee population in Indonesia is small, especially by comparison with that of with its

neighbours.³⁰ At the end of March 2016, 7,381 asylum seekers and 6,467 refugees were registered with the UNHCR in Jakarta. Of these 13,848 people, 10,253 were male and 3,595 were female; 3,552 were under 18, including 643 unaccompanied or separated children.³¹ UNHCR statistics reveal that almost a third of the current population of asylum seekers and refugees (4,270 persons, including 3,182 asylum seekers and 1,088 refugees, of whom 845 were female and 846 were children, with 138 being unaccompanied and separated children) were detained in IDCs and temporary quarantine facilities under immigration supervision. Indonesia has 13 permanent IDCs and 20 temporary detention facilities in 12 provinces, with a combined capacity for 3,000 people. Because of overcrowding in IDCs and unwillingness to build additional centres, Indonesia has opted for ATD. IOM statistics in April 2016 indicate that 4,132 asylum seekers and refugees (47 per cent of all those under its care) were hosted in ATD. In 2016, there were 42 community shelters and housing facilities located in six Indonesian provinces, often in or near the cities that have IDCs, such as Jakarta, Medan, Surabaya, and Makassar. Indonesian authorities estimated that in October 2015 at least 5,000 asylum seekers and refugees were renting private accommodation in Puncak and Jakarta.³² While precise numbers vary according to different agencies and authorities, most asylum seekers and refugees are now living outside IDCs, either in ATD or in independent accommodation.

The reasons many asylum seekers and refugees still remain in IDCs, despite the UNHCR's “Beyond Detention” strategy, are to be found not only in the insufficient numbers of ATD in Indonesia, but also in the large number of people who surrender themselves to IDCs.³³ Between 2014 and 2015, nearly 4,000 asylum seekers and refugees reported themselves to immigration authorities, seeking to be detained because they could no longer afford to support themselves independently outside the detention system.³⁴ This development does not necessarily undermine the UNHCR “Beyond Detention” strategy; rather it is a perverse component of it. In order to be placed in an ATD, asylum seekers and refugees must be registered by Indonesian immigration authorities, and the most efficient way to register is to be placed in temporary immigration detention, as I explain later in more detail.

While between 2014 and 2016 fewer people arrived in Indonesia than in 2010–13, more and more asylum seekers and refugees are staying in Indonesia for longer periods of time. The reasons are twofold. First, opportunities for onward movement (refugee resettlement to third countries) have decreased since Australia cut its resettlement quota from Indonesia dramatically in November 2014, and no other potential resettlement countries have stepped in to compensate. Second, irregular onward migration to Australia also decreased after Australia adopted more restrictive

policies in September 2013.³⁵ Australia closed all options for asylum seekers arriving by boat to be processed in and resettled to Australia. In some cases, those asylum seekers are forcibly returned to Indonesia (or Vietnam and Sri Lanka in the case of nationals of those countries subjected to “enhanced screening” and found not to have valid protection claims). Others are directed to offshore detention centres in Nauru and Manus Island (Papua New Guinea). Although these policies deny asylum seekers access to Australia, they have not stemmed the flow of asylum seekers within the wider Asia-Pacific region. The many conflicts in Asia, North Africa, and the Middle East still force many people to leave their homelands in search of safer places to live. Persecuted and forcibly displaced people continue to arrive in countries such as Indonesia and Malaysia, many seeking transit to potential resettlement countries. As a result, Indonesia has become a reluctant host to asylum seekers and refugees whose “transit” through Indonesia is likely to entail a prolonged and potentially indefinite stay.³⁶

In 2011, before the number of asylum seekers crossing from Indonesia to Australia peaked, Patrialis Akbar, Indonesian minister for law and human rights, stated that existing IDCs were sufficient to meet demand.³⁷ At that time, a number of state-owned and state-operated IDCs around Indonesia (such as those in Tanjung Pinang and Semarang) had been refurbished and extended with the help of Australian funding. Even though the number of registered asylum seekers and refugees has increased since then, Indonesia has given no indication that it will build additional permanent IDCs, relying instead on temporary detention facilities and ATD. The reasons are complex, entailing, first of all, domestic administrative and fiscal hurdles for the establishment of new IDCs, as asylum seekers’ issues are currently not a high priority issue and more importantly, Indonesian–Australian unsteady relations over security and migration issues.³⁸ Extending IDC with or without Australian funding would be seen as too much a favour for Australia. However, Indonesia’s reluctance to enlarge its IDC system predated the UNHCR’s global “Beyond Detention” strategy. Out of pragmatic necessity, Indonesia had already made use of IOM-administered and Australian funded ATD for more than a decade.³⁹ By its own account, “for the past 13 years, IOM Indonesia has been at the forefront in supporting the Indonesian Government’s continuing efforts to promote alternatives to detention for refugees and smuggled migrants.”⁴⁰ Although ATD emerged as a temporary “solution,” they are increasingly becoming permanent sites of accommodation for asylum seekers and refugees awaiting resettlement.

One of the more perverse bureaucratic features of the ad hoc arrangements applying to asylum seekers and refugees is that the only pathway into an IOM-managed ATD is via

temporary detention. Some Indonesian migration officials earn extra money from asylum seekers, by making them pay to be detained in (and released from) an IDC or simply stealing from their belongings.⁴¹ There is no official short-cut to direct placement in one of the IOM’s community shelters or, in turn, to receipt of IOM “care” in those shelters, which may include for instance, limited cash payments, access to recreational activities and psycho-social treatments. Upon their release from an IDC, asylum seekers and refugees have no choice as to which ATD they are placed in. Also, they must sign a declaration of compliance, which includes restrictions on mobility and housing, prohibitions on visiting airport and seaports, biweekly reporting requirements, requests to comply with Indonesian law and display “cooperative behaviour in the neighbourhood.”⁴² Although at first glance these rules appear straightforward and reasonable, at least to those fluent in English, they leave open a number of questions, such as how big the specific designated area is or what “cooperative behaviour” means in practice. Leaving certain rules rather vague provides authorities with more discretionary power. High levels of discretion, if not arbitrary implementation of rules, by immigration officials and other authorities evoke hyper-cautiousness and sometimes fear among the ATD residents. Compliance with the many regulations is enhanced by the mere risk of readmission into an IDC. This prospect hangs over the ATD enrollees like the sword of Damocles, and therefore the carceral mobility, as manifested in ATD, is rooted in the punitive quality of the IDC.

While many ATD have been enlarged in the initial phase of the “Beyond Detention” strategy, the implementation of consistent regulations for ATD throughout the country is yet to be achieved, until which time claims of unfairness and arbitrariness will likely persist among asylum seekers and refugees. On the visits to several ATD facilities, I found that conditions and rules varied widely, as did levels of freedom enjoyed. For example, in some ATD residents received monthly cash stipends of US\$100, in others they did not. Those who did not receive cash to buy their own food were provided with catered meals, not very different from IDCs, which proved to be a source of ongoing frustration. Not only was the selection of those meals limited, but also the quality was poor. Without the right to decide for themselves what to eat and when over a protracted period of time, ATD residents are denied the very basic dignities of life and are subjected to other people’s taste, routine, and priorities. Not only do food provisions cause another loss of control of one’s life, but food provisions foster dependency. Therefore they are a tool for monitoring and disciplining ATD residents, as absentees are left out from the distribution and are eventually deregistered from the ATD. The synergies between providing food assistance and monitoring asylum seekers are well-known

and also applied in other countries.⁴³ I will now flesh out the living conditions in two ATD: the community shelters in Makassar and makeshift camps in Aceh.

Makassar: IOM-Funded Community Housing

While in Makassar in May 2015, I visited two centrally located ATD. The tall new buildings were distinct from other housing on the street. One building accommodated single males, and another was for families. In each case, either two single people or one family shared one room, but children over eight years old were supposed to have their own room. Each room consisted of two single beds or one double bed, a bathroom, and a small, carpeted, sitting area. Each room had air-conditioning, but no windows. Only some rooms had light through glass bricks. Power blackouts were frequent. One Indonesian security guard watched over the residents but did not object to my visit.

The rules for living in the facility were printed in English, Indonesian, Arabic, and Farsi, and pinned next to the main door.⁴⁴ Among them, driving vehicles, leaving Makassar, and receiving guests in one's room is prohibited, a curfew is imposed, and political involvement is forbidden. Not only does the list indicate how subjective the rules can be, as "strict sanctions" are not spelled out, it also unveils the selectivity of the Indonesians, for example featuring heightened agitation about "sexual misconduct" and other moral evils, such as gambling and night clubbing. The juxtaposition of "mak[ing] a scene" and "to be involved in political activities," which could theoretically also cover protests against the UNHCR or the IOM, is comprehensible only when taking into account the common complaints from local host communities, which are usually coloured by moral panic and racist undertones. Although I could discover whether any ATD residents had been returned to the IDC in Makassar, the possibility was expressed in informal chats. Escapes from the ATD take place from time to time, but usually in small numbers.⁴⁵

The greatest challenges, according to ATD residents, are the daily boredom and the uncertainty of whether and when they will be resettled. Women talked about tensions between individuals and families, and between parents and their children resulting from their ongoing frustration. Fights broke out occasionally among ATD residents.⁴⁶ To pass the time, some men played football in the park or went to a gym. Some had organized their own English lessons. In interviews I found that most ATD residents kept the time they spent outside the facilities to a minimum and tried to avoid contact with the local community. According to them, the locals, who are Sunni Muslims, did not like the fact that they are Shia. ATD residents were told to not practise their faith publicly. Many of them had heard about anti-Shia incidents elsewhere in Indonesia.⁴⁷

In order to improve relations between the locals and the ATD residents and minimize tension, the local government in Makassar, in cooperation with the IOM and UNHCR, organized some information sessions (*sosialisasi*).⁴⁸ While asylum seekers and refugees were told not to do "anything stupid, not to make noise in the streets at night and not to party when others are in the local mosque," members of the local community were reminded to not "allow their daughters to dress up and keep a close eye on them" to prevent intimate friendships (*pacaran*).⁴⁹ Furthermore, the local government initiated "cleaning Sundays," in which locals and ATD inhabitants came together to clean the streets and sewage canals in their neighbourhood, after which they were provided with snacks and drinks. Members of the local administration hoped such orchestrated encounters would promote better relations and mutual responsibility for the area.⁵⁰ Although meant to be a win-win for locals and refugees, the ATD residents felt this activity was another imposition on their lives. In order to avoid suspicions of being lazy, ungrateful refugees and to be perceived as good, compliant refugees they had to do "voluntary" work, which was represented as a reciprocal exchange, but it was in fact free labour for the local government that did not incur any costs for hosting the asylum seekers and refugees. In the words of an ATD resident who participated in those "cleaning Sundays" semi-compliantly, "It's not the Indonesian community that is providing for us here, it's the UN and IOM; if I do something for the local community I expect something in return."⁵¹ Although the local initiators were enthusiastic about the outcomes of these "cleaning Sundays," they ceased soon after my departure.⁵²

While IOM public relations materials emphasize the leisure and learning activities made available to ATD residents,⁵³ such activities are relatively modest, and daily life appeared dreary. So far, only 22 children were allowed to attend a primary school in Makassar.⁵⁴ The residents in the Makassar ATD could not cook for themselves but received catered meals three times a day. When I visited I saw many Styrofoam food containers unopened in the garbage bins. The people in this ATD did not receive a cash allowance, relying instead on monthly deliveries of toiletries, tea, sugar, coffee, clothes, and so on. Most had no money for phone credit and internet access (crucial for staying in touch with families abroad), and resorted to selling some of their aid provisions to local Indonesians at less than market value.

Makeshift Camps in Aceh

I visited the four camps in Aceh twice, in November 2015 and in April 2016. By that time only 281 Rohingya, including 48 minors, remained there.⁵⁵ From the initial number of 1,807 Rohingya, the UNHCR deemed only some 1,000 people eligible for temporary protection in Aceh. By September 2015,

at least 642 Bangladeshi nationals who had initially claimed they were Rohingya had been “voluntarily” repatriated to Bangladesh.⁵⁶ While in November 2015 some Rohingya still lived in tents, by April 2016 everybody was housed in barracks, some of them now in fact empty. According to press reports, most Rohingya absconded from the camps in order to reach Malaysia.⁵⁷ Despite the shrinking numbers of Rohingya in Aceh, a new, more robust camp was opened in Langsa in April 2016, with room for 1,500 people, exceeding the number of remaining Rohingya.⁵⁸

The main service provider for the camps was the IOM, responsible for the supply of drinking water, sanitation, food, and health care.⁵⁹ Unlike other ATD, the camps in Aceh saw a great involvement of NGOs. Even though most other asylum seekers and refugees in Indonesia (Afghans, Pakistanis, and Somalis) are Muslim too, the plight of the Rohingya spurred an unprecedented sense of Muslim solidarity amongst Indonesians. Many Indonesians gave their *zakat* (compulsory tax for Muslims) to Muslim NGOs involved in helping the Rohingya.⁶⁰ Individuals also donated food and clothes or became volunteers. Aid and services delivered by NGOs included literacy programs, religious instruction, and skills training. In the camp in North Aceh, residents were provided with daily meals cooked by the villagers specifically employed for this task. Out of frustration, residents resorted to cooking secretly on open fires inside the wooden barracks. In all camps, Rohingya sold their donated mattresses, milk powder, shampoo, or soap to raise funds.⁶¹

Local authorities in North Aceh complained about NGO interference that not only undermined security arrangements but also was in conflict with rights provision.⁶² For example, an NGO arranged marriages between the Rohingya, including of underage girls, as they considered it inappropriate for unmarried men and women to live in the same camp.⁶³ In a stand-off between that NGO and the local government, the state-employed guards quit their services for a period of time, resulting in break-ins into the depots where IOM and UNHCR stored aid provisions, and Rohingya absconded at NIGHT.⁶⁴ More severely, in September 2015, four women alleged being raped during their arrest by locals following their attempted escape.⁶⁵ The news caused panic and 200 residents stormed out of the camp, although most returned later.⁶⁶ Amnesty International reported abuse and intimidation by local security staff, lack of protection from smugglers, as well as theft and beating of Rohingya by local gangs entering the camps.⁶⁷

Members of NGOs and the local and central government have recognized the risk of tension between the Rohingya in the camps and the surrounding local population. Acehnese villagers, many of them very poor and with limited understanding of how the asylum seekers are handled, saw Rohingya

being provided with goods and services that they themselves often yearn for.⁶⁸ To reduce resentment, a number of information sessions were conducted. For example, in radio programs locals could voice their complaints and receive proper information from a community councillor.⁶⁹ In response to the extended stay of the remaining Rohingya in Aceh, local governments had to offer small compromises on basic education and work. In March 2016, six Rohingya children were granted access to the local primary school in Langsa.⁷⁰ Some new approaches, including refugees and local residents jointly raising livestock, are beginning to be implemented in the camp in North Aceh; it is too early to comment on the success of those non-remunerated employment schemes.

Released from IDC, but Still Contained

Living in a community shelter in Makassar and even in a makeshift camp in Aceh offers better living conditions than in prison-like IDCs. Instead of being confined in a small space, ADT residents have more freedom of movement, at least within a predetermined radius. Despite their greater mobility, they still face limitations, marginalization, and rights deprivation. Their placement in an ATD is still driven by containment and social segregation, thereby preventing any form of temporary or permanent integration. Again and again, the Indonesian government has made it clear that the only durable solutions for asylum seekers and refugees coming to Indonesia are repatriation and resettlement, but not local integration. Thus the Indonesian ministry keeps urging the UNHCR to “act faster” on registering and assessing asylum claims, and finding a permanent solution for recognized refugees anywhere else but Indonesia.⁷¹ By stressing that Indonesia with its population of more than 250 million is still a poor country that can hardly provide sufficient services for its citizens, subsequent Indonesian governments have rejected responsibility to provide permanent protection for asylum seekers and refugees.⁷² Indonesian refugee rights activists, however, object to this argument. In their view the root problem “is not that Indonesia is a poor country,” but rather insufficient awareness, lack of political will, and absence of a proper legal framework.⁷³ Nonetheless, the establishment of ATD serves the Indonesian government well, not only because it is even cheaper than the immigration detention system, but its more humane setting also saves the government from criticism for maltreatment of detained asylum seekers and refugees. On the basis of visits of several ATD, however, I have encountered deficiencies, such as absence of basic rights, segregation, and lack of choice for self-determined living, that support the notion of carceral mobility, which I had conceptualized earlier as an alternative form of containment, albeit one with greater physical mobility.

First, although asylum seekers and refugees in ATD in Indonesia are subject to Indonesian law, they are often prevented from exercising their rights. They face insufficient legal protection, as they tend to avoid state authorities, whom they view as predatory. The absence of basic rights, such as education and work, mean that ATD are not yet a panacea for asylum seekers and refugees in Indonesia. As I have shown for the ATD in Aceh and Makassar, most asylum seeker and refugee children are still not allowed to attend local schools and must rely on the rudimentary and sporadic provision of language and literacy classes offered by IOM or NGOs. Moreover, the prohibition of work and the resulting inability to earn money legally controls not only the socio-economic mobility of asylum seekers and refugees in ATD, but in fact prevents any form of integration within the wider Indonesian society. Both in Aceh and Makassar local governments have experimented with forms of unremunerated work. In Makassar the women from the ATD were asked to sew traditional costumes and bags to exhibit at a local handicraft fair, but they were barred from selling their products.⁷⁴ In Aceh, stock-breeding is currently tested. Although central government officials argue vehemently against proper working rights and thus temporary integration of refugees in Indonesia, such pragmatic employment options appear more practicable than the isolation of asylum seekers and refugees in ATD, where they depend on aid and services provided by IOM and NGOs.

Second, similar to IDCs, ATD support their residents' social isolation and segregation from the surrounding Indonesian communities, as they tend to be located on the outskirts of cities, in separate *kampungs*, or, if located more centrally, they are walled off.⁷⁵ Minimal public attention is supposed to stem xenophobic backlashes. Negative public perceptions and repeated public complaints about ATD in general or allegations of the cultural or sexual misbehaviour of individual asylum seekers and refugees have in some cases resulted in the permanent closure of shelters. As already noted, the provision of aid and services engenders negative perception and social jealousy among local Indonesian populations, as summarized by one Acehnese: "They [the Rohingya] want eat, just eat ...! They want sleep, just sleep ...! Everything is prepared for them ...! No need to work ...!"⁷⁶ However, it seems that the segregation from public spheres is not only a strategy chosen by the IOM and the local authorities to decrease tensions, but it is partly also self-imposed by asylum seekers and refugees for safety. Particularly the events in Aceh showed the inability or unwillingness of Indonesian guards to protect vulnerable asylum seekers and refugees from (sexual) violence and theft. An Afghan refugee in Makassar who had been beaten up summarized the problem: "I can't do anything about this [Indonesians beating up foreigners]

because I enter[ed] Indonesia illegally. And when they beat us up, I can't fight back."⁷⁷ Any involvement in brawls and other disturbances increases the risk of being returned to an IDC. Thus, many other precautionary steps adopted by ATD residents attest to their self-imposed invisibility, such as not practising their religion openly. As the snapshot from Makassar showed, Shia are particularly aware of the anti-Shia sentiment and attacks.⁷⁸ From this perspective, living in an Indonesian ATD bears a resemblance to what Brendese described as "*vida encerrada*,"⁷⁹ not so much as in the necessary clandestine nature of their existence as migrants who crossed the border illegally, but rather in the restrictions they impose upon themselves to avoid being conspicuous among potentially hostile hosts.

Third, while ATD residents enjoy greater physical mobility than their IDC-imprisoned counterparts, they too are subject to restricted freedom of movement. Any violation of the "declaration of compliance," a document every released asylum seeker and refugee must sign, risks return to an IDC. ATD residents are closely monitored by immigration authorities, to whom they must report frequently to continue receiving aid and services. Reporting obligations require them to stay within a certain radius of their assigned location. Although many Rohingya in Aceh left clandestinely, only a few absconded from the ATD in Makassar.⁸⁰ Without money they cannot go anywhere else in Indonesia or leave Indonesia by irregular means, so their (onward) mobility is circumvented tremendously. These limitations and dependencies make their mobility carceral. In fact, it appears that the newly gained freedoms of living in ATD are, in fact, paradoxical: in IDCs, entry is open to anybody who is arrested or surrenders, but the exit is blocked; in ATD it is the other way round, with the entry blocked to those who have not been referred to the ATD by immigration authorities, but the exit open, at least in theory. Those who leave the ATD have nowhere to go within Indonesia and risk destitution, exploitation, and re-arrest and re-detention. Their carceral mobility means that although they are no longer incarcerated, they are stuck in a carceral archipelago.⁸¹

Conclusion: Deterrence and Containment Continue

This article has questioned whether ATD in Indonesia offer a proper alternative to detention or whether they are simply arrangements for alternative detention in the sense of containment. During fieldwork and interviews with current ATD residents in two ATD sites, I was interested in the lived experiences of asylum seekers and refugees, including aspects of their freedom; physical, social, and economic mobility; mechanisms for their care and aid provision; political, cultural, and religious rights to lead an active and

self-determined life; and matters of personal safety and well-being.

The snapshots from the field have indicated that as a result of administrative discretion, inconsistency, general vulnerability, indignity, and lack of control over life, ATD in Indonesia render residents insecure and immobile and deny them rights. Post-detention life in an ATD does not alleviate the uncertainty of waiting, and the stress of a potential return to an IDC should not be underestimated. As in IDCs, asylum seekers and refugees in ATD are deprived of basic rights, such as access to education and work, and their freedom of religion is limited, especially for Shia. Whereas asylum seekers in Europe are immobilized by being labelled as criminal border crossers and are, therefore, deprived of political rights during their journeys,⁸² asylum seekers and refugees in Indonesia are more likely to become contained through their dependency on aid and services.

Although ATD are generally perceived as benign places, in fact the embodiment of more humane migration management, which makes them an alternative to IDC, they are not a comprehensive alternative to the more holistic detention systems in place in Indonesia that seek to deter self-organized onward movements. The more humane accommodation in ATD does not annul the overall “containment”—as resettlement options from Indonesia have been decreased and self-organized onward migration to Australia has been ruled out—nor “stuckedness,” which persists as there is no avenue for local integration. The indefinite nature of their stasis in transit in Indonesia, whether in ATDs or ATD, is perceived by these transiting asylum seekers as punitive and becomes in itself a powerful deterrent for potential future arrivals.⁸³ The carceral mobility inherent in ATD is not only an unintended impact of poor and inadequate asylum regulation in Indonesia, but also another means of deterrence, which prevents or limits unwanted cross-border movement into Australia. With these three deficiencies—absence of basic rights, segregation, and lack of proper choices for self-determined living—ATD in Indonesia remain an effective tool of current containment and deterrence policies.

NOTES

- 1 Under Indonesian law (no. 6/2011), foreigners without valid passports and visa, including asylum seekers and refugees, can be placed in immigration detention to prevent unauthorized entry, stay, or exit and to effect removal for rejected asylum seekers. Although the law does not name asylum seekers and refugees explicitly, I choose this terminology here in this article over the more general term *migrant*, not least as the population concerned has already registered, or is in the process of registering their claims for international protection with the UNHCR in Jakarta.
- 2 Human Rights Watch, *Barely Surviving: Detention, Abuse and Neglect of Migrant Children in Indonesia* (New York: HRW, 2013), 82–5.
- 3 Amy Nethery, Brynna Rafferty-Brown, and Savitri Taylor, “Exporting Detention: Australian-Funded Immigration Detention in Indonesia,” *Journal of Refugee Studies* 26 (2013): 88–109; Amy Nethery and Carly Gordon, “Australia-Indonesia Cooperation on Asylum-Seekers: A Case of ‘Incentivised Policy Transfer,’” *Australian Journal of International Affairs* 68 (2014): 177–93.
- 4 UNHCR Indonesia, “National Action Plan, Indonesia,” November 2015, <http://www.unhcr.org/5666a2ea9.pdf>.
- 5 Although the UNHCR strategy is a global initiative, Indonesia was one of twelve initial countries for which a national action plan was prepared for the adoption of the guiding objectives of the Beyond Detention agenda; the others were Canada, Hungary, Israel, Lithuania, Malaysia, Malta, Mexico, Thailand, the UK, the US, and Zambia. See Alice Edwards, “From Routine to Exceptional: Introduction to UNHCR’s Global Strategy—Beyond Detention 2014–2019: Supporting Governments to End the Detention of Asylum-Seekers,” *Refugee Survey Quarterly* 35 (2016): 128–33.
- 6 Cathryn Costello and Esra Kaytaz, *Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva*, Legal and Protection Policy Research Series (Geneva: UNHCR Division of International Protection, 2013); Alice Szczepanikova, “Between Control and Assistance: The Problem of European Accommodation Centres for Asylum Seekers,” *International Migration* 51, no. 4 (2013): 130–43.
- 7 Alexander Nicholas, “Protecting Refugees: Alternatives to a Policy of Mandatory Detention,” *Australian Journal of Human Rights* 8 (2002): 69–81; Alice Edwards, *Back to Basics: The Right to Liberty and Security of Person and “Alternatives to Detention” of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants* (Geneva: UNHCR Division of International Protection, 2011); Edwards, “From Routine to Exceptional”; Robin Sampson and Glen Mitchell, “Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales,” *Journal on Migration and Human Security* 1 (2013): 97–121; Catherine Marshall, Suma Pillai, and Louise Stack, “Community Detention in Australia: A More Humane Way Forward,” *Forced Migration Review* 44 (2013): 55–7; Costello and Kaytaz, *Building Empirical Research*.
- 8 Alice Bloomfield, “Alternatives to Detention at a Crossroads: Humanisation or Criminalisation?” *Refugee Survey Quarterly* 35 (2016): 31.
- 9 Robyn Sampson, Vivienne Chew, Grant Mitchell, and Lucy Bowring, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*, rev. ed. (Melbourne: International Detention Coalition, 2015), vi.
- 10 Bloomfield, “Alternatives to Detention,” 29–46; Julia Morris, “Power, Capital, and Immigration Detention Rights: Making Networked Markets in Global Detention Governance

- at UNHCR,” *Global Networks* early view (2016); Philippe de Bruycker and Evangelia Tsourdi, “The Challenge of Asylum Detention to Refugee Protection,” *Refugee Survey Quarterly* 35 (2016): 1–6. While potential destination countries in the Global North have for many years opted to detain asylum seekers and undocumented migrants in IDCs as a means of curtailing unwanted flows—see, for example, Alexander Betts, *Global Migration Governance* (Oxford: Oxford University Press, 2011); and Dominique Moran, Nick Gill, and Deirdre Conlon, eds., *Carceral Spaces: Mobility and Agency in Imprisonment and Migrant Detention* (Aldershot: Ashgate, 2013)—countries of the Global South (e.g., Turkey, Jordan, Kenya), which face much larger populations of asylum seekers, refugees, and undocumented migrants lacked the financial means to establish and operate effective IDC systems. Rather, they tolerated asylum seekers and refugees organizing their own living in urban settings or allowed aid organizations to manage large camps.
- 11 For example, Moran, Gill and Conlon, *Carceral Spaces*; Rich Furman, Douglas Epps, and Greg Lamphear, eds., *Detaining the Immigrant Other: Global and Transnational Issues* (New York: Oxford University Press, 2016); Amy Nethery and Stephanie Silverman, eds., *Immigration Detention: The Migration of a Policy and Its Human Impact* (London: Routledge, 2015); Dominique Moran, *Carceral Geography: Spaces and Practices of Incarceration* (Aldershot: Ashgate, 2015).
 - 12 Jessie Taylor, *Behind Australian Doors: Examining the Conditions of Detention of Asylum Seekers in Indonesia*, Asylum Seekers in Indonesia: Project, Findings & Recommendations, 2009, <http://www.safecom.org.au/pdfs/behind-australian-doors-examining-the-conditions.pdf>; Nethery, Rafferty-Brown and Taylor, “Exporting Detention”; Amy Nethery, Brynna Rafferty-Brown, and Savitri Taylor, “At the Discretion of Management: Immigration Detention in Indonesia,” in Nethery and Silverman, *Immigration Detention*, 114–24; Antje Missbach, “Detaining Asylum Seekers and Refugees in Indonesia,” in Furman, Epps, and Lamphear, *Detaining the Immigrant Other*, 95–104.
 - 13 Based on IOM statistics, the ratio between the people detained in IDCs and those in ATD started shifting in early 2012. Whereas until 2011, the majority of asylum seekers and refugees under IOM care used to be detained, the number of those in ATD increased in relative and absolute numbers.
 - 14 Dominique Moran, Laura Piacentini, and Judith Pallot, “Disciplined Mobility and Carceral Geography: Prisoner Transport in Russia,” *Transactions of the Institute of British Geographers* 37 (2012): 446–60.
 - 15 *Ibid.*, 446, 447.
 - 16 Savitri Taylor and Brynna Rafferty-Brown, “Waiting for Life to Begin: The Plight of Asylum Seekers Caught by Australia’s Indonesia Solution,” *International Journal of Refugee Law* 22, no. 4 (2010): 558–92; Ishan Ashutosh and Alison Mountz, “Migration Management for the Benefit of Whom? Interrogating the Work of the International Organization for Migration,” *Citizenship Studies* 15 (2011): 21–38; Nethery, Rafferty-Brown, and Taylor, “Exporting Detention”; Nethery, Rafferty-Brown, and Taylor, “At the Discretion of Management”; Antje Missbach, *Troubled Transit: Asylum Seekers Stuck in Indonesia* (Singapore: ISEAS, 2015); Anne McNevin, Antje Missbach, and Deddy Mulyana, “The Rationalities of Migration Management: Control and Subversion in an Indonesia-Based Counter-Smuggling Campaign,” *International Political Sociology* 10, no. 3 (2016): 223–40.
 - 17 While Jakarta is the obvious choice for many new asylum seekers, because of the UNHCR’s presence there, accommodation and transportation in this megacity (covering 740.3 km²) is relatively expensive. Nearby Puncak, a cluster of smaller villages about 60 km from Jakarta, offers cheaper living and a more comfortable, cooler climate (see Missbach, *Troubled Transit*).
 - 18 See IOM, *Irregular Migrants Statistics*, December 2011, March 2012, and January 2015.
 - 19 UNHCR, *Monthly Update*; IOM, *Migrant Statistics under the IOM Indonesia Programme as at 30 April 2016*.
 - 20 KOMNAS HAM, *Temuan Hasil Pemantauan KOMNAS HAM: Pemantauan Situasi di 7 Rumah Detensi Imigrasi dan 1 Kantor Imigrasi* (Jakarta, 2015).
 - 21 Interview with Steve Hamilton, deputy head of Mission, IOM Indonesia, 29 April 2015, Jakarta.
 - 22 “Gubernur Sulsel Raih Penghargaan dari Kemenkumham,” *Antara*, 16 February 2016, <http://makassar.antaranews.com/berita/72100/gubernur-sulsel-raih-penghargaan-dari-kemenkumham>.
 - 23 Missbach, *Troubled Transit*.
 - 24 Initially the Indonesian navy prevented one boat from landing and, after providing some fuel and food, turned it away from Indonesian waters. However, against official orders, Acehese fishermen rescued the Rohingya, took them ashore, and provided the emaciated passengers, many of whom had been at sea for months, with food and clothing. Amnesty International, *Deadly Journeys: The Refugee and Trafficking Crisis in Southeast Asia* (London: AI, 2015).
 - 25 Yayasan Geutanyoe, *Hidup Dalam Penantian: Setahun Pengungsi Rohingya di Aceh* (Langsa: Yayasan Geutanyoe, 2016).
 - 26 Ministerial Meeting on Irregular Movement of People in Southeast Asia, “Joint Statement,” Governments of Indonesia, Malaysia, and Thailand, 20 May 2015.
 - 27 Yayasan Geutanyoe, *Hidup Dalam Penantian*, 12.
 - 28 Krisna Wicaksono and Mitra Angelia: “Ini Alasan RI Belum Ikut Konvensi PBB Soal Pengungsi,” *Viva*, 22 May 2015, <http://dunia.news.viva.co.id/news/read/629261-ini-alasan-ri-belum-ikut-konvensi-pbb-soal-pengungsi>.
 - 29 Missbach, *Troubled Transit*.
 - 30 At the end of 2014, there were 270,621 asylum seekers, refugees, and stateless people in Malaysia and 644,761 in Thailand. See UNHCR, *World at War: Global Trends—Forced*

- Displacement in 2014* (Geneva: UNHCR, 2015), <http://www.unhcr.org/statistics/country/556725e69/unhcr-global-trends-2014.html>.
- 31 UNHCR, *Monthly Update*, Jakarta, March 2016.
- 32 Yurod Saleh, "Permasalahan dan Solusi Penempatan dan Pengawasan Imigran Illegal," PowerPoint presentation, focus group discussion, Penempatan dan Pengawasan Imigran Illegal, Jakarta, 26 November 2015.
- 33 Antje Missbach, "From Darfur to Cipayung: Refugees Are Left Stranded," *Conversation*, 6 April 2014, <https://theconversation.com/from-darfur-to-cipayung-refugees-are-left-stranded-25034>; UNHCR Indonesia, *National Action Plan*.
- 34 UNHCR, *Monthly Update*.
- 35 Janet Phillips, *Boat Arrivals and Boat "Turnbacks" in Australia since 1976: A Quick Guide to the Statistics* (Canberra: Parliamentary Library, 2015), http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/BoatTurnbacks.
- 36 From an empirical view, it is hard to provide exact figures for the average time in waiting experienced by asylum seekers and refugees in Indonesia. The data collected by the IOM, for example, differentiates only between less than one year, more than two to three years, and more than four years. From encounters during fieldwork, some refugees, however, have been living in Indonesia closer to ten years.
- 37 "Rumah Detensi Imigrasi Dianggap Tidak Perlu Ditambah," 7 March 2011, <http://pencarisuakaindonesia.blogspot.com.au/2011/03/rumah-detensi-imigrasi-dianggap-tidak.html>.
- 38 Ken Ward, *Condemned to Crisis?* (Sydney: Lowy Institute Papers, 2015).
- 39 Ophelia Field and Alice Edwards, *Alternatives to Detention of Asylum Seekers and Refugees*, Legal and Protection Policy Research Series (Geneva: UNHCR Division of International Protection, 2006).
- 40 IOM Indonesia, *Alternatives to Detention 4* (September 2014): 4, https://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Indonesia_Alternatives-to-detention-September-2014.pdf.
- 41 Interview with young Afghani refugee, who had his bags searched by Indonesian officials, was kicked by them, and had to pay US\$180 to be placed in an ATD eventually (10 May 2015, Makassar).
- 42 The declaration supplied to its signatories in English reads:
1. Refugees should stay within specific area designated by Directorate General of Immigration unless given written permission to transfer or temporarily leave for reasons related to the processing of their resettlement.
 2. Refugees are not allowed to be in an airport or seaport unless accompanied by Immigration officials.
 3. Refugees are not allowed to have guests stay inside the accommodation provided.
 4. Refugees must fully comply with Indonesian Laws, including regulations related to employment, business activities, use of motor vehicles and cooperative behaviour in the neighbourhood.
5. Refugees must report to Immigration every 2 weeks for purposes of registering their presence.
- 43 Szczepanikova, "Between Control and Assistance," 138.
- 44 The English version stated:
- Asylum seekers and refugees are not allowed to drive any vehicles.
- Asylum seekers and refugees are not allowed to receive guests inside the accommodation room and commit sexual misconduct anywhere.
- Asylum seekers and refugees are not allowed to consume any substance (alcohol and or narcotics), whether legal or not, that may lead to social unrest or conflict within the accommodation and community at large, gambling and going to the night club.
- Asylum seekers and refugees have to be in accommodation the latest at 10:00 PM.
- Asylum seekers and refugees are not allowed to make a scene, fighting and or do violence anywhere.
- Asylum seekers and refugees are not allowed to leave Makassar city without the permission of Immigration Office Makassar.
- Asylum seekers and refugees are not allowed to be involved in political activities or other mass organisation.
- Any violation of the above, Asylum seekers and refugees will be subject to strict sanctions** [bold in original].
- 45 In July 2014, 20 refugees, all of them from Myanmar, escaped from the community shelters in Makassar. See IOM, *Irregular Migrants Statistics*, July 2014. The ethnic dimension of escaping is obvious, as it is much easier for Myanmarese than for Afghans to blend in among the Indonesian population.
- 46 "Makassar Hentikan Penerimaan Imigran Pencari Suaka," *Kompas*, 16 May 2016, <http://regional.kompas.com/read/2016/05/16/10004021/Makassar.Hentikan.Penerimaan.Imigran.Pencari.Suaka>.
- 47 One of the worst attacks on Shia asylum seekers in an ATD was in Yogyakarta in October 2015. Guards at the centre could not protect the asylum seekers adequately from the mob and, after a night of fear, they were evacuated and taken to the IDC in Semarang, which was deemed safer. See "Anti-Shiite Mob Storms Yogyakarta Shelter for Asylum Seekers," *Jakarta Globe*, 20 October 2015. In Stabat, near Medan, a shelter for unaccompanied minors had to be closed after villagers' allegations of Shia proselytization.
- 48 "Pemkot Makassar Gelar Sosialisasi Terkait Keberadaan Imigran," *Antara*, 2 April 2015, <http://www.antarasulsel.com/berita/63675/pemkot-makassar-gelar-sosialisasi-terkait-keberadaan-imigran>.
- 49 Informal chats with asylum seekers and refugees and villagers, 10 May 2015, Makassar.
- 50 Interview with Kaharuddin Bakti, Subdistrict head, 11 May 2015, Makassar.
- 51 Interview with Afghan refugee, 10 May 2015, Makassar.

- 52 Follow-up SMS message from an asylum seeker I had interviewed during the May 2015 visit.
- 53 IOM Indonesia, *Alternatives to Detention*, 4.
- 54 “Potret Pengungsi Asing di Kota Angin Mamiri,” webpage of the Indonesian vice president (who hails from Makassar), 16 November 2015, <http://www.wapresri.go.id/potret-pengungsi-asing-di-kota-angin-mamiri/>.
- 55 IOM, *Migrant Statistics under the IOM Indonesia Programme as at 30 April 2016*.
- 56 IOM Thailand, *Bay of Bengal and Andaman Sea Crisis* (Bangkok, 2015), https://www.iom.int/sites/default/files/situation_reports/file/IOM-Andaman-Sea-Crisis-Situation-Report-September-2015-Highlights.pdf.
- 57 Jonathan Vit, “Rohingya Refugees Vanish from Indonesia,” IRIN, 14 December 2015, [http://aceh.tribunnews.com/2016/03/20/pengungsi-rohingya-direlokasi](http://www.irinnews.org/report/102293/rohingya-refugees-vanish-indonesia; Yayasan Geutanyoe, <i>Hidup Dalam Penantian</i>.</p>
<p>58 “Pengungsi Rohingya Direlokasi,” <i>Tribunnews</i>, 20 March 2016, <a href=). The local government in Langsa offered the new camp for other local governments in Aceh to use, but the offer was not taken up, presumably because the presence of the Rohingya had attracted substantial NGO services, so that the other local governments were uneasy to let go of “their” refugees, as that would have limited the spillover effect from the NGOs’ services. Many NGOs, however, are on their way out of the camps, as fundraising had declined.
- 59 IOM Thailand, *Bay of Bengal and Andaman Sea Crisis*.
- 60 For example, with the help of volunteer workers and donations from all over Indonesia, Aksi Cepat Tanggap (action for swift response, ACT) erected the barracks for the camp in Blang Adoe.
- 61 “Topang keluarga, pengungsi Rohingya berdagang keliling,” BBC Indonesia, 20 May 2016, http://www.bbc.com/indonesia/berita_indonesia/2016/05/160517_indonesia_rohingya_jualan.
- 62 See presentation given by Suriyatno, deputy head of the task force for the handling of refugees in Langsa, at South East Asia Conference on Rohingya: “Humanitarian Diplomacy as a Possible Solution,” Bogor, 18–19 May 2016.
- 63 Amiruddin Abdullah Reubee, “18 Pasangan Pengungsi Rohingya Minta Menikah,” MetroTV, 4 August 2015, [http://megapolitan.kompas.com/read/2015/08/30/16305311/Warga.Rohingya.Ikut.Nikah.Massal.di.Aceh](http://news.metrotvnews.com/read/2015/08/04/418232/18-pasangan-pengungsi-rohingya-minta-menikah; “Warga Rohingya Ikut Nikah Massal di Aceh,” Kompas, 30 August 2015, <a href=).
- 64 Authors’ observation in Blang Adoe, 18 November 2015.
- 65 Amnesty International, *Deadly Journeys*.
- 66 The rape allegations could not be backed up by medical checks. The police investigation was put on hold when the four women disappeared from Aceh (authors’ interview with Teuku Mansur, head of social affairs, 17 November 2015, Lhokseumawe).
- 67 Amnesty International, *Deadly Journeys*.
- 68 KOMNAS HAM, *Laporan Pemenuhan Hak Asasi Manusia Terhadap Penanganan Pengungsi Rohingya di Indonesia* (Jakarta, 2016).
- 69 For example, the Indonesian foundation Society for Health Education and Environment and Peace (Sheep) engaged in programs to enhance mutual understanding between Rohingya and Acehese villagers. Presentation by Yulia Rina Wijaya, “Building Peaceful Coexistence between Rohingya Refugees and Buffer Communities in Langsa City and East Aceh,” South East Asia Conference, “Rohingya: Humanitarian Diplomacy as a Possible Solution,” Bogor, 18–19 May 2016.
- 70 Asrul, “Bocah Rohingya di Langsa Mulai Bersekolah,” *Aceh Journal National Network*, 29 March 2016, <http://www.ajnn.net/news/bocah-rohingya-di-langsa-mulai-bersekolah/index.html>.
- 71 Indonesian Foreign Ministry, “Indonesia Minta UNHCR Percepat Penanganan Pengungsi dan Pencari Suaka,” 22 March 2016, <http://kemlu.go.id/id/berita/Pages/Indonesia-Minta-UNHCR-untuk-Percepat-Penanganan-Pengungsi-dan-Pencari-Suaka.aspx>.
- 72 Interview with Ibrahim Nur, deputy director of humanitarian affairs at the Ministry of Foreign Affairs, 4 April 2012, Jakarta.
- 73 Presentation by Febi Yonesta, co-founder of the Indonesian refugee advocacy organization Suaka, “Advocating Rohingya Refugee Rights in Indonesia,” South East Asia Conference, “Rohingya: Humanitarian Diplomacy as a Possible Solution,” Bogor, 18–19 May 2016.
- 74 “Sosialisasi Keberadaan Imigran,” Antara, 2 April 2015, <http://www.antaraneews.com/foto/81675/sosialisasi-keberadaan-imigran>.
- 75 See also Raimund Pehm, “Provisorien als Dauereinrichtung: Zur Wahl Organisierter Unterkünfte für Asylsuchende durch die Öffentliche Hand,” *Österreichische Zeitschrift für Soziologie* 31 (2006): 66–74.
- 76 Statement by an Acehese man who participated in a radio program organized by a community councillor, presented by Yulia Rina Wijaya, “Building Peaceful Coexistence between Rohingya Refugees and Buffer Communities.”
- 77 Interview with Afghan refugee, 10 May 2015, Makassar.
- 78 Chiara Formichi, “Violence, Sectarianism, and the Politics of Religion: Articulations of Anti-Shi’a Discourses in Indonesia,” *Indonesia* 98 (2014): 1–28.
- 79 P.J. Brendese, “Double Crossed by the Crossing: On the Spacio-Temporal Borders of Immigration,” *Contemporary Political Theory* 12 (2013): 230–40.
- 80 IOM, *Migrant Statistics under the IOM Indonesia Programme as at 31 January 2016*.
- 81 The term *carceral archipelago* was coined by Michel Foucault, in *Surveiller et Punir* (Paris: Gallimard, 1975), when he was writing about the prison and surveillance systems and about technologies controlling and disciplining members of modern societies. Although Foucault did not have

Indonesia in mind, the metaphor of prison islands seems a good fit here, given Indonesia's geography.

- 82 Annastiina Kallius, Daniel Monterescu, and Prem Kumar Rajaram, "Immobilising Mobility: Border Ethnography, Illiberal Democracy, and the Politics of the 'Refugee Crisis' in Hungary," *American Ethnologist* 43 (2016): 3.
- 83 Anne McNevin and Antje Missbach, "Luxury Limbo: Temporal Techniques of Border Control and the Humani-

tarianisation of Waiting," *International Journal of Migration and Border Studies*, forthcoming.

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Navigating Precarious Terrains: Reconceptualizing Refugee-Youth Settlement

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Abstract

Settlement is widely understood as the final stage of the refugee journey: a durable solution to forced displacement and a stable environment in which former refugees can rebuild their lives. However, settlement is shaped by rapidly changing socio-political forces producing contingent, unpredictable, and even hostile environments. This article draws upon Vigh's concept of social navigation to reconceptualize settlement as a continuation of a fraught journey in which refugee settlers must continually seek new strategies to pursue viable futures. We illustrate with an in-depth case study of the settlement journey of one refugee-background young man over his first eight years in Melbourne, Australia.

Résumé

L'établissement est presque toujours comprise comme l'étape finale du voyage d'un réfugié, soit une solution pérenne à un déplacement forcé et un environnement stable dans lequel des ex-réfugiés peuvent reconstruire leur vie. Elle est cependant déterminée par des forces sociopolitiques rapidement évolutives pouvant générer des environnements contingents, imprévisibles, voire hostiles. Cet article s'inspire du concept de navigation sociale de Vigh pour reconceptualiser l'établissement comme la continuation d'un voyage semé d'embûches, au cours duquel le réfugié colon doit continuellement être à la recherche de nouvelles stratégies pour établir un avenir pérenne. Nous illustrons cette perspective par l'étude approfondie des efforts d'établissement d'un homme jeune originairement réfugié, au cours de ses huit premières années à Melbourne, Australie.

Introduction¹

When we first met Abraham he was seventeen years old. He had recently been resettled in Melbourne, Australia via the Humanitarian Program, having fled Ethiopia as a refugee. As part of his involvement in Good Starts, a longitudinal study of the settlement of refugee-background young people,² we asked Abraham to draw his self-portrait. He depicted himself as a young man with a huge head and a big smile, standing shirtless and alone on a small boat, adrift on open water. Two thought bubbles read, “One day I will be a man. That day is far for me!!!!” and “I am very happy! But I have a lot to cope with!!!” There is a paddle in the boat, but it is lying unused at the bow (see figure 1).

Eight years later, Abraham still has his drawing. When we visit him for an interview he brings it out, and while discussing the challenges he faced in his first years of settlement, he explains, “So that was my stress drawing, that big-head man picture, because I'm happy—see the smiley face—and also there is a lot of shit—that's why my head is so big. And I'm on the water. Am I sinking or am I survive? Because I don't know shit about Australia.”

Abraham's drawing powerfully evokes the experiences of many young people with refugee backgrounds as they embark on the settlement journey in Australia.³ Having arrived in Australia on permanent humanitarian visas, many find their horizons have opened up. With access to citizenship, education, health care, financial support, and much else, there is the possibility of pursuing a wide range of opportunities and aspirations. Yet in pursuing these possibilities they are faced with navigating multiple challenges posed by an unfamiliar, dynamic settlement terrain.

Abraham's drawing is also an apt illustration of the concept of social navigation, on which this article draws in order

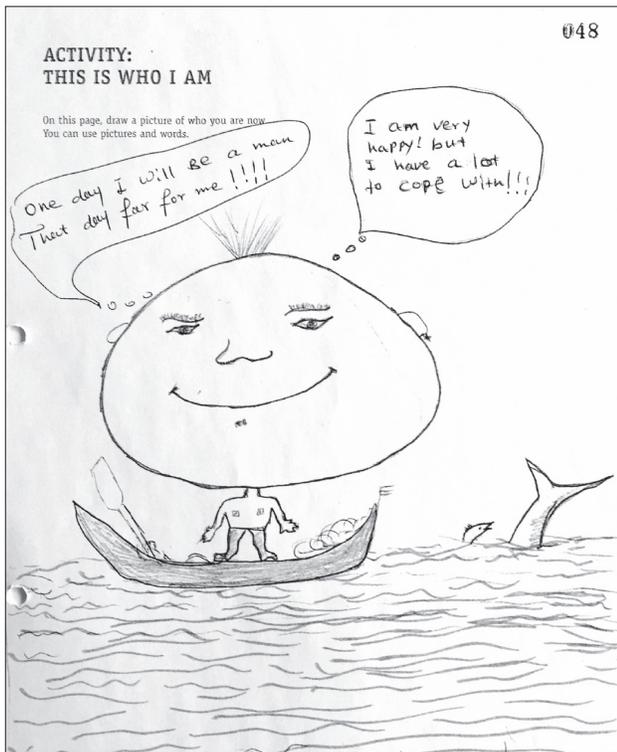


Figure 1: "This is who I am."

to reconceptualize settlement and how it is experienced among refugee-background youth in Australia. The concept of social navigation, as developed by Henrik Vigh,⁴ emerges out of his ethnographic study of youth and soldiering in Guinea-Bissau, in which he explores the praxis of urban young men as they pursue social possibilities in a dynamic environment of conflict and poverty. Vigh advances the concept to capture "how people move and manage within situations of social flux and change."⁵ In drawing on the metaphor of navigation as a process by which individuals move in and are moved by an ever-changing and often unpredictable environment, social navigation is highly relevant for considering refugee settlement; a context that is fluid and shaped by dynamic socio-political forces that in turn affect settlers' possibilities. Applying a social navigation lens to refugee youth settlement enables us to consider how these young people "simultaneously negotiate the immediate and the imagined,"⁶ addressing short-term needs and desires while also seeking to position themselves favourably in the pursuit of longer-term aspirations. In these ways, the concept of social navigation offers an alternative way to frame settlement: not as the endpoint of the refugee journey, but as ongoing negotiation of unstable, multiscalar socio-political terrains in the pursuit of viable futures.

We begin this article with a critical discussion of conventional understandings of refugee settlement. We then consider the ways in which Vigh's concept of social navigation offers a powerful approach for reconceptualizing refugee settlement, and more specifically, refugee-youth settlement. In the second section of this article we illustrate our argument through an in-depth case study of one refugee-background young man, Matet,⁷ over the first eight years of his settlement experience in Melbourne, Australia. Matet is a participant in the Good Starts Study for Refugee Youth: a longitudinal study of 120 refugee-background young people over their first eight to nine years of settlement.⁸ An in-depth account of Matet's settlement journey provides a rich context for considering the power of applying a social navigation lens to contemporary refugee settlement. Through this case study, we demonstrate the interplay of diverse structural and agentive factors, and short- and long-term objectives and aspirations, in mediating the social possibilities of refugee-background youth in settlement contexts. We conclude by arguing for a more critically engaged approach to refugee youth settlement: one that explicitly takes into account the precarity of this "durable" solution to forced displacement—a solution that is rapidly becoming less durable within the context of mass forced displacement and closing national borders, and where the conventional refugee regime is increasingly under attack.⁹

Refugee Settlement

Settlement is conventionally understood as the final stage of the refugee journey: a process through which people with refugee backgrounds are integrated into, and gain the skills and knowledge to participate in, the country in which they are resettled.¹⁰ In Australia, the humanitarian settlement program is oriented to both short- and long-term objectives, addressing immediate needs while building humanitarian entrants' capacity for independence in the future.¹¹ The parameters of settlement—both duration and objectives—are defined through government policy and associated service provision, with a focus on support over the first five years of settlement and on measurable outcomes, including learning English, participating in education, obtaining employment, and acquiring citizenship.¹² Youth-focused settlement organizations highlight the distinct needs and experiences of this group during their teen and early adult years, including in education and employment, identity and belonging, and family relationships and intergenerational conflict.¹³

As Gifford and Kenny note, however, "What settlement is, how it is measured, experienced and achieved remains contentious,"¹⁴ and it is often differently conceptualized by governments and settlers.¹⁵ Conventional approaches that focus

on measurable outcomes that can be addressed through specific interventions risk overlooking many important aspects of settlement. These include features that extend beyond short-term objectives—such as people’s aspirations; factors that transcend the national sphere—such as transnational engagements; and issues that exist beyond direct service provision and policy—such as social connections, discrimination, and exclusion.¹⁶ Further, such outcome-focused definitions often fail to acknowledge the diversity among settlers, that “migrants’ integration efforts, including their interaction with measures set out by integration policies, do not necessarily have a normative dimension.”¹⁷

The United Nations High Commissioner for Refugees (UNHCR)—using the terminology of integration¹⁸—views refugee settlement as “a dynamic two-way process that places demands on both the refugee and the receiving community.”¹⁹ Valtonen suggests, however, that “refugee individuals and communities, as settlement actors, are the ones who are primarily enjoined to work toward bringing about specific conditions to facilitate their own integration.”²⁰ This reflects a tendency to envisage settlement as a unidirectional journey through static terrain, failing to acknowledge the changing social and political conditions into which refugees settle and the frequent non-linearity of their journeys. This limited conceptualization of settlement is given further credence by the dominance of cross-sectional “snapshot” studies that, in focusing on a moment in time, veil the dynamism of settlement processes and contexts.²¹ It is also reinforced by the tendency for policy to shape research agendas, encouraging attention to structural aspects of settlement and inhibiting critical engagement with government settlement policy,²² and by the overwhelming focus on people with refugee backgrounds as research subjects and settlement actors, with scant attention to other actors such as service providers, host societies, and diasporic communities.²³ Indeed, in the Australian context, Neumann et al. argue that settlement research has increasingly narrowed in focus such that the field has not progressed significantly “towards a more informed and conceptually more sophisticated understanding of the settlement process.”²⁴

Settlement as Social Navigation

Applying the concept of social navigation to the experiences of refugee youth in Australia provides insight into the changeable and often precarious nature of settlement in volatile local, national, and global socio-political environments. The premise of navigating these changing environments explicitly recognizes the dynamism of both the settlement journey and the social forces that shape it. It attends to refugee settlers as agents who not only move *within* their social environments, but are also shaped *by* the ways in which

social environments move them, revealing their actions as “motion within motion.”²⁵ Indeed, the power of social navigation as Vigh conceives it lies in its ability to capture in rich detail the ways in which his young male informants imagine their futures within a world that offers little but chronic violence and suffering—a world where their horizons are limited and often unpredictable. We draw on Vigh’s concept of social navigation within contexts of precariousness because, while not as violent as the Guinea-Bissauan context of Vigh’s research, young refugee settlers are making their present and future lives in a world that is changing and unpredictable, and where settlement in a country such as Australia does not necessarily deliver the promise of a safe and secure future. Instead, settlement is more accurately described as a process of navigating challenges and opportunities in an effort to move toward viable futures.

This approach to settlement moves beyond a narrow focus on policies and services facilitating integration, to one that makes visible diverse ways of navigating unstable, multi-faceted, and precarious settlement terrains. Social navigation offers a powerful alternative to conventional linear conceptualizations of refugee settlement, highlighting temporal dimensions, via the dual focus on the “immediate” (the realities of the present and proximate needs) and the “imagined” (aspirations and visions of the future). It draws attention to the Australian settlement environment as not necessarily stable, safe, or supportive; indeed, we argue that settlement is often precarious and fraught with risk. Social navigation allows us to understand settlement as a process by which people develop (or fail to develop) the skills and knowledge to successfully navigate their new host environment in their project of attaining viable futures. The concept of social navigation is a powerful way of understanding how refugee young people *move* through settlement—a terrain that is also in motion—as agents in making their lives and their futures, providing a powerful metaphor for describing the lived experiences of settlement in Australia.

We are not the first to draw attention to the merits of social navigation as a conceptual lens for rethinking refugee settlement. Denov and Bryan used the concept of social navigation in their study of settlement of separated children in Canada.²⁶ They did so in order to draw attention to the agency of young people in the settlement process, and to frame discussion of the strategies their participants adopted in discrete settlement terrains, including in response to discrimination and loss. In this article, however, we provide a more nuanced and multi-faceted application of social navigation, considering its overall value for reconceptualizing refugee settlement. In doing so, we highlight the settlement process as one of uncertainty, unpredictability, and adversity and refugee youth settlers as individuals drawing on their

resourcefulness in not only surviving in the present, but pursuing their imagined futures within this difficult context.

Cohort and Context

While the social flux in the lives of Vigh's Guinean interlocutors was profound, he stresses the wider applicability of the concept of social navigation: "We all navigate, but the intensity and visibility of our navigational efforts depend on the speed and/or opacity of social change and our ability to control oncoming movement. In other words, we all constantly struggle to gain the element of control that will allow for escape or positive engagement."²⁷

The dynamism of the refugee settlement context is not nearly as acute as in Guinea-Bissau. However, as with Vigh's interlocutors, young people with refugee backgrounds struggle for control over social environments and individual trajectories, exacerbated in their case by its unfamiliar and often conflicting elements.

The variables that mediate an individual's ability to navigate are multiple and "situationally defined."²⁸ Refugee background is only one variable. Other intersecting variables include age, gender, race/ethnicity, education, and family and community relations.²⁹ Social navigation therefore takes us beyond "refugee issues" to a more holistic and nuanced account of settlers within their socio-cultural histories and the terrain they navigate.³⁰ Importantly, it emphasizes the dynamism of a terrain that is unpredictable and uncontrollable. In this way social navigation, as Vigh demonstrates, is particularly useful for analyzing the journeys of young people, who are in the process of "becoming" in a dynamic and often precarious socio-political landscape.³¹

Moving through a Moving Environment

The metaphor of the journey is often applied to refugee settlement, and refugee settlers are generally understood to be moving along a trajectory toward being "settled" or "integrated," however this may be understood. In contrast, the shifting terrain that is traversed during this journey is less frequently acknowledged, giving the impression that people with refugee backgrounds are settling into a stable social and political environment to which they must adapt.

Yet the settlement environment is always in flux—on the "micro, meso [and] macro level"³²—with changes to policy, service provision, host society reception, ideas of citizenship and belonging, homeland and ethnic community politics, and much else.³³ Moreover, the pace and nature of change across the settlement terrain are highly uneven, such that settlers "may have stability in some areas of [their] lives and rapid change and uncertainty in others."³⁴ In Australia, this moving environment include changes to family reunion, citizenship laws, and public and political attitudes to refugees

and asylum seekers. This instability can have profound effects on the trajectory of settlers, disrupting notions of a linear path to becoming "settled" in a stable environment. A social navigation approach explicitly acknowledges contexts where the socio-political environment is fraught with unpredictability and risk. Thus, applying a social navigation lens to refugee settlement reframes this process as one that involves "detours, unwilling displacement, losing [one's] way and ... redrawing trajectories and tactics,"³⁵ and reframes settlers as individuals developing and applying their skills and knowledge to navigating a dynamic and precarious settlement context.

The Interface between Agency and Social Forces

Within research, policy, and practice there are conflicting perspectives on refugee agency. In the context of displacement, refugees are frequently constructed as passive victims, such that acts of agency—including resisting or expressing ingratitude for aid, or actively pursuing asylum in Western nations—are frequently met with suspicion and hostility.³⁶ Yet in the settlement context, there remains a tendency to view those with refugee backgrounds from a deficit perspective, and at the same time, where refugees are expected to be the primary agents of their own settlement.³⁷ Focusing on "the interface between agency and social forces,"³⁸ a social navigation approach recognizes people with refugee backgrounds as active agents, while acknowledging the forces that mediate their social possibilities.

Social navigation can also take us beyond a context framed by formal settlement services and policies to capture the multiple forces that shape the broader terrain and trajectories of settlers.³⁹ These may include local, national, diasporic, and transnational communities and politics. Consideration of these often-conflicting social forces is important for recognizing how refugee-background agents navigate them as they pursue their own settlement aspirations, and how these aspirations are shaped by—or in resistance to—the social forces at work within the wider world.

The Socially Immediate and the Socially Imagined

Refugee settlement involves both short- and long-term processes and goals. At times these immediate and longer-term pursuits are aligned. For example, acquiring safe housing provides a secure base from which to pursue education and employment into the future. Yet the short- and the long-term can also be in tension, particularly when time and resources are diverted from preparing for the future in order to address urgent needs. For example, refugee background youth often forego their longer-term education goals to earn money to support family in crisis overseas. As Vigh notes, "When the short term is unpredictable, less importance is

given to the long term and there is a general feeling of a loss of agency.”⁴⁰ This is a common experience for those from refugee backgrounds.⁴¹

Again, social navigation provides a conceptual framework for considering the immediate and the imagined within a dynamic settlement terrain, “encompass[ing] both the assessment of the dangers and possibilities of one’s present position as well as the process of plotting and attempting to actualise routes into an uncertain and changeable future.”⁴² Importantly, it facilitates consideration of settlers’ aspirations and how these mediate, and are mediated by, present circumstances.

Navigation Knowledge and Skills

For refugees, settlement requires new navigation skills, not only because the host environment is unfamiliar and often unstable, but also because the specific settlement tasks are new. For example, the school environment frequently differs from that in previous countries of residence and can present particular challenges for those who have limited or disrupted previous schooling. Vigh states, “A skilled navigator, social or otherwise, is able to adjust his [or her] knowledge of map, position and plot to a multiplicity of experienced and anticipated influences and forces.”⁴³ However, if individuals do not or cannot acquire the requisite skills to successfully navigate the new settlement terrain, they risk venturing into troubled waters or being blown off course. Alternatively, if they fail to gain power over their own movement, they risk remaining dependent on others to set and maintain their trajectory. The result in both cases may be understood as a failure to settle well—or not to settle at all. A social navigation approach thus draws attention to settlement—both as a *terrain* to be navigated and as a *process* of acquiring and applying skills and knowledge—in the pursuit of viable futures.

Social Navigation in Action

The Good Starts Study

Good Starts for Refugee Youth is a study of the settlement and well-being of refugee-background youth in Melbourne, Australia. In contrast to the majority of research on refugee settlement, which is cross-sectional or conducted at one point in time and ethno- or issue-specific, Good Starts is a longitudinal study of multiple aspects of settlement among an ethnically diverse cohort. The study was informed theoretically and methodologically by medical anthropology and social epidemiology and thus strived to gather qualitative and quantitative information from a cohort of newly arrived young people over time. This was important, as few longitudinal studies of migration and none of refugee settlement had used mixed methods to measure settlement outcomes and the predictors *and* at the same time, elicit in-depth qualitative data on the experiences of settlement over time.⁴⁴

Beginning in 2004, 120 refugee youth aged between 11 and 19 years were recruited through English Language Schools, in which most newly arrived youth spend between six and twelve months during their first year in Australia. None of the participants arrived in Australia as unaccompanied minors, although few arrived with all of their immediate family members. Participants came from twelve different countries in Africa, the Middle East, and Europe, and were broadly representative of the population of young refugees arriving in Australia at that time.⁴⁵

Participants were followed annually across their first four years of settlement. A combination of qualitative and quantitative methods was used to explore participants’ settlement journeys, with a particular focus on family and social support, education, health and well-being, and life in Australia. A fifth follow-up was conducted in 2012–13, when participants were between eight and nine years post-arrival. Fifty-one of the original 120 Good Starts participants were able to be contacted and interviewed for this follow-up, providing insights into longer-term settlement experiences and outcomes.⁴⁶ Ethical clearance was given by the Human Ethics Committee of La Trobe University, the Institutional Ethics Committee of the Victorian Foundation for Survivors of Torture and Trauma (a study partner), and the Victorian Department of Education, Employment and Training.⁴⁷

The longitudinal nature of the study, as well as its focus on multiple aspects of settlement, enables a dynamic understanding of refugee settlement. While we have reported extensively on the experiences of the cohort as a *whole*,⁴⁸ a deeper exploration of the lived experience of one individual through an in-depth case study⁴⁹ offers a rich picture of settlement over time and facilitates insights into the conceptual value of social navigation for understanding refugee youth settlement. From among the 51 young adults who participated in the final wave of data collection, we have selected the story of one young man whose experiences broadly reflect the terrains navigated by members of this cohort. In attending to this particular case, the aim is not to “search for generality” but, as in case study research generally, “to try to capture the essence of the particular in a way we all recognise” through which “we come to understand the universal.”⁵⁰ At the eight-/nine-year follow up there was a range of settlement trajectories among participants, and for only a few could their settlement could be considered a sound success or failure. Although every individual story is unique, the common thread is a settlement journey full of unexpected turns, financial challenges, ongoing family fortunes and misfortunes in Australia and overseas, births of children and marriages, engagement with education and employment, return visits to regions of origin, and loss of loved ones still living in countries with civil unrest, violence, and hardship.

We thus offer the story of a young Sudan-born⁵¹ Dinka man named Matet. The narrative is drawn from data collected across the duration of Matet's participation in the Good Starts Study, including field notes, written and visual activities including photo stories,⁵² short qualitative interviews over the follow-up period, and an in-depth qualitative interview conducted in the fifth follow-up, eight or nine years post arrival. While recognizing that this account, like all biographies, is constructed—first by Matet and then by the authors of this article⁵³—we focus on the important insights it provides into the complex interactions between agency and multiscale social forces in the individual lives of refugee-background young people as they navigate the dynamic settlement terrain in pursuit of viable futures.

Matet's Settlement Journey

Matet describes himself as a young Dinka man. In early adolescence he fled his native Sudan to Egypt with his mother and three younger siblings. After almost two years, when Matet was 16 years old, they were accepted for resettlement in Australia, sponsored by his uncle, already in Australia, through the Special Humanitarian Program.⁵⁴ Matet's father, a pastor, remained in Sudan. During his first years in Australia, Matet worried about being without his father, but he was supported by his school, church, friends, and ethnic community. He excelled at basketball and was captain of his school team. He aspired to complete university and become an engineer and to remain in Melbourne, buy a house, and have a family.

While things were going well in Matet's everyday life during this early period, his Sudanese community experienced traumatic events that altered their sense of security in Australia and Sudan—events that also had an unsettling impact on Matet. In July 2005, John Garang, Sudan's recently appointed vice president and leader of the Sudan People's Liberation Army—and a relative of Matet's—died in a helicopter crash. His death triggered riots and provoked fears for the fate of the fragile peace agreement between North and South Sudan and, across the Sudanese diaspora, fear for the safety of family members in Sudan. Two years later, a young man of Sudanese background, Liep Gony—a friend of Matet's—was murdered in a Melbourne suburb by non-Sudanese assailants. The media focused overwhelmingly, and negatively, on Sudanese Australians. A subsequent announcement by the immigration minister that Australia would cut resettlement from Africa, partly in response to the perceived failure of Sudanese people to settle successfully in Australia, provoked further negative attention on people with Sudanese backgrounds and undermined their sense of belonging in Australia.⁵⁵ Each of these deaths unsettled the security of Sudanese Australians, causing anxiety in the

community and threatening the safety of people in Sudan and Australia. For Matet, these were also felt personally as the loss of loved ones.

Matet's life changed more dramatically several years into settlement when his mother bought a house in a relatively affordable suburb on the other side of the city, and he had to relocate with his family. Matet wanted to stay in his neighbourhood and school, but felt he had to go: "I told her that I didn't want to, but there's no one I can stay here with, so I have to go with my family no matter what. And plus I'm the oldest and I can't leave them behind, let them go by themselves. So I have to leave the school and go with them."

Rather than completing the final year of his education at a new school, he put aside the advice of his teachers and left school to take up apprenticeship training in carpentry through a local TAFE.⁵⁶ "I did listen to them," Matet says of his teachers, "but when I got there I just had a feeling that I don't wanna go to any school." Already forced to move to a new suburb, the thought of starting a new school was too much for Matet. He enjoyed his new apprenticeship, however, and reoriented his aspirations toward becoming a carpenter.

Matet's new neighbourhood was in transition. Traditionally a socio-economically disadvantaged area, it was rapidly urbanizing and culturally diversifying. The negative reception among some sections of the wider Australian community to people of Sudanese background that came to the fore in the aftermath of Gony's death became a problem for Matet and his family in their new suburb, as "suddenly it started being [a] bad racist place." Raw eggs were thrown at their house, the windows were smashed, and Matet's younger siblings had objects thrown at them on their walk to school. The attacks on Matet's family culminated in his being hit—he believes intentionally—by a neighbour's car. Despite the presence of a witness, the police did not pursue the matter, eroding Matet's confidence in them and in the justice system more broadly. Moreover, his leg was badly injured in the incident, leading him to drop out of his apprenticeship course. Soon after, out of fear, he moved from home, leaving his family and relocating to a regional town more than two hours away where he had other relatives. He resumed his apprenticeship studies there and also began playing basketball again with fellow students.

Things remained calm for awhile, but then Matet's long-term Nuer girlfriend, Nyabol, became pregnant. This caused significant tensions in both families as a result of the historical and ongoing conflicts between Dinka and Nuer people in their homeland. Matet and Nyabol defied their parents, and she moved in with him: "Well, just what I told my family is: 'I love her so I don't care what happened back then. You guys have gotta forget about it. Whatever happened back then happened, so let's just forget about it.'"

Gradually, following the birth of their child, the families grew more accepting. However, a second child a few years later put financial strain on the couple and Matet had to give up his studies to seek paid work. The socio-economically disadvantaged regional town where he lived could not provide apprenticeship opportunities and, without a car or driver's licence, he was unable to travel. Instead, on the advice of the local government-contracted job-seeking centre, he undertook a hospitality certificate and accepted a job at a large Melbourne business, making the long commute by train.

Having continued in this way for several years, Matet, Nyabol, and their children finally saved enough money to rent a unit in a suburb close to where Matet's family originally settled, and they returned to Melbourne. Matet is still working as a kitchen hand but maintains his goal to become a carpenter. He has begun applying for jobs so he can finish his apprenticeship, but has had only one unsuccessful interview. Money is tight. Nyabol is not working, and they are saving for marriage⁵⁷ and also sending money to support relatives in Sudan. Overall, though, Matet describes himself as happy. He explains that family is the most important thing in his life, that he is in a loving and supportive relationship, his children are thriving, and relatives are constantly visiting. He has recently become friends with neighbours through the local church.

Nonetheless, beyond his home, church, local family, and friends, social forces continue to exert pressure on Matet, impeding his journey toward his own settlement horizons. Following the recent death of Matet's uncle, his father has asked him to return to South Sudan and take over his uncle's farming business. Matet has refused, unwilling to leave his own young family and to risk the continued dangers in the recently formed nation of South Sudan. At the same time, the death of a Melbourne-based relative has also caused disquiet. A young man fell to his death in a high-rise building, and Matet and others suspect it was at the hands of police with whom the deceased had dealings on the evening he died. For Matet, this suspicion is informed by his earlier experiences with police and by many other stories circulating in Melbourne's Sudanese communities. This perception of discrimination and persecution of Sudanese Australians troubles him deeply.

Despite these challenges, Matet remains hopeful. He describes his aspirations to have more children, visit Sudan, finish his apprenticeship, and work as a carpenter. He articulates clearly how his settlement journey has opened up opportunities to learn important skills and acquire the resources for navigating towards his imagined future: "Cause like with my high school and my studies I did make a decision that I regret ... I learned through that if I want to make a decision I'll have to make it wisely, choose wisely, and that's how I'm going through it. A lot of the time, if I want to make a

decision I will think about it and then, if it's really hard, I will ask my partner to help me with it."

Eight years after arriving in Australia, Matet remains confident in his ability to navigate what lies ahead.

Matet's Journey as Social Navigation

Matet's personal journey tells a more general story about the dynamic forces that mediate the settlement of people with refugee backgrounds. It also demonstrates the agency of settlers in navigating this terrain—with varying degrees of success—and how, through the settlement process, skills, knowledge, and resources can be acquired to support the navigation of immediate circumstances in pursuit of social possibilities and viable futures.

Throughout his journey, Matet moves through a moving environment, with micro, meso, and macro social forces fluctuating across time and context, influencing his non-linear settlement trajectory. Importantly, settlement is not the safe, predictable, and welcoming experience of starting a "new" life in Australia as commonly portrayed. On the contrary, although opportunities for secure housing, education, and employment are on offer, violence, racism, discrimination, family separation, and conflict in Australia and overseas continue to affect Matet's ability to take advantage of them. While Matet's participation in education and training is initially fostered by a supportive community, it is derailed several times by forces outside his control, including his mother's move to a new suburb in pursuit of affordable housing, discrimination by residents of that suburb who see Sudanese newcomers as a threat, and growing financial responsibility for a young family. Matet's sense of belonging in Australia has shifted dramatically from locating him at the centre of his school as captain of the basketball team to rendering him fearful for his safety in a local and national social environment that has become increasingly hostile toward people of Sudanese background, and refugee-background settlers more generally. The fragility of Sudanese belonging in Australia is a constant in Matet's life as he lives with the suspicious death of his relative. Despite these disruptions to his settlement journey, Matet narrates these challenges as always tempered by a loving and supportive family in the present and aspirations for a positive future.

While Matet is not entirely at the mercy of these social forces, he cannot always successfully navigate around and through them. However, he exhibits varying capacities to proactively or reactively respond to the social forces that act upon him. He articulates clearly what he has learnt in hindsight and how he will apply these lessons to pursuing his imagined future.

Matet's journey reveals how the project of settlement does not rest entirely with the settler. Myriad social forces

shape settlement horizons locally, nationally, and transnationally. People's capacity to respond to these forces is situational, dependent on the knowledge, skills, and resources they can draw on to support their navigation of precarious settlement terrains. Capacities shift across time and are affected by life events such as starting a family. In this regard, Matet expresses his increasing confidence in resisting negative social forces, including cultural and familial pressures on his choice of a non-co-ethnic partner and his father's demands for him to return to South Sudan to take on family responsibilities. Matet becomes an increasingly proactive and skilled navigator of his settlement landscape, electing to return to Melbourne and to pursue his aspiration to become a carpenter.

Through all of these shifts—in social forces, agency, and trajectory—Matet's simultaneous negotiation of his immediate circumstances and imagined future is evident. Newly arrived in Australia, Matet aspired to attend university and have a house and a family within ten years of settling. While a combination of social forces and personal decisions steered him away from a university education, he recalibrated his education plans toward an apprenticeship and career in carpentry. He continues to pursue this possibility, though immediate needs and circumstances frequently compete for his attention and impede his progress. At the same time, however, his most constant future aspiration—to have a family—has long provided fixed coordinates to guide his journey, and it remains his motivation.

Through his settlement journey, Matet has gained skills, knowledge, and resources that support his navigation. These include decision-making skills learned through perceived errors of judgment, increasing his confidence in setting his own trajectory, and the constancy of family—both as a responsibility and as a support. Yet while Matet is confident in his ability to steer his everyday life, he continues to feel the impact of broader forces of discrimination and social exclusion in Australia and ongoing violence and conflict in his home country. This exposes the limits of agency in the settlement process and highlights the critical role of sociopolitical forces in shaping the experiences and trajectories of refugee-background youth.

Navigating Contemporary Settlement

While refugee settlement has never been the linear journey through stable terrain that it is often represented to be, it is becoming increasingly complex and precarious. Settlement—already a rare occurrence for less than 1 per cent of the world's refugee population—is becoming less accessible and less permanent. Pathways to citizenship are progressively limited in some nations—such as the UK, where refugee status is now reviewed after five years,⁵⁸ and for some

groups—such as onshore humanitarian arrivals in Australia (without a valid visa), who no longer have access to permanent humanitarian visas and thus will never be granted settlement in Australia, regardless of their refugee status determination.⁵⁹ Further, the permanence of residency and citizenship for those born outside their country of residence is under greater threat, with many nation-states now seeking and invoking powers to revoke permanent residency and citizenship under certain conditions.⁶⁰ These policy changes are occurring in a climate of global securitization as a key response to forced migration. This is further exacerbated by a political discourse that frequently conflates refugees with Islamic extremism, which can influence local reception of refugee settlers and mediate feelings and relations of (non-) belonging.⁶¹

Within settlement countries, migration and refugee settlement policies are also often in flux, with significant implications for settlers. In Australia, for example, the past decade has seen an extension of the duration of residency required prior to obtaining citizenship, increasing barriers to family reunion, and—reflecting trends in Europe and North America—a focus on settling refugees in regional areas outside traditional metropolitan settlement centres.⁶²

Refugee settlers are also affected by broader national and global economic shifts that increase precarity, such as the decline of manufacturing sectors in many advanced economies—a traditional source of income for refugee settlers; increased workforce casualization and exploitation of refugee background employees—eroding financial security; and emphasis on further education—a challenge to those whose first language is other than English.⁶³ These barriers to financial security are further compounded by decreasing housing affordability in many major cities in settlement countries.⁶⁴

Beyond the country of settlement, people with refugee backgrounds are also negotiating a dynamic transnational sphere, including rapidly transforming homeland and diasporic politics and shifting relations, locations, and situations of friends and family. While this has always been the case for refugee settlers to some extent, the growing sophistication of, and access to, information and communication technologies and the increasing affordability of air travel has embedded these transnational forces into daily life in ways that were unimaginable during the last century.⁶⁵

All of these factors contribute to an emerging state of what Vigh terms “chronic crisis”⁶⁶ for many refugee settlers, who are attempting to “make lives in fragmented and volatile worlds.”⁶⁷ In this unstable terrain of settlement, refugee settlers, regardless of personal agency, face uncertain possibilities, impeding their ability to confidently chart pathways to viable futures. Our longitudinal Good Starts Study reveals the particular impacts on young people who aspire to bright

futures and the new social possibilities that settlement offers. While this sense of crisis has arguably increased significantly in recent years, we can already see its traces in Matet's account of settlement: in his family's pursuit of affordable housing, in the pressure to fulfil transnational familial obligations, and in his ongoing experience of anti-Sudanese/refugee sentiment in the Australian community. While Matet's story captures his own unique experiences, his uneven navigation of diverse settlement landscapes, including education, racism, family, and homeland, resonates with the experiences of Good Starts participants more generally.

In this article we have drawn on the concept of social navigation to reveal these challenges through a holistic account of refugee settlement. This concept is important because it engages explicitly with the dynamism of the settlement terrain, attending to the multiscale social forces that mediate settlement, as well as the capacities of settlers to proactively and reactively engage with them. It renders visible the continual interplay of the short- and long-term objectives and aspirations of settlers as they move through settlement terrains over time. It additionally highlights the importance of settlement as a journey through which people with refugee backgrounds acquire knowledge, skills, and resources to support independent and confident navigation of future possibilities. Importantly, it disrupts the notion of settlement as a linear, finite journey that can be undertaken by all settlers. A social navigation perspective challenges the increasing emphasis on settlement as integration into an implicitly stable socio-national context, framing it instead as a process whereby people with refugee backgrounds navigate shifting social possibilities in pursuit of viable futures. Importantly, it destabilizes conceptualizations of settlement as a safe and secure durable solution and instead reveals the inherent and growing precariousness of the refugee settlement regime.

It is critical that we develop new ways of thinking that challenge the long-held perception of settlement as the endpoint of forced migration. As BenEzer and Zetter note, for refugees, "the journey often does not end with the physical arrival at the destination, and sometimes it does not end at all. It is contingent on many circumstances."⁶⁸ A social navigation approach, as we demonstrate, captures this in all of its complexity.

NOTES

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Refugees, Higher Education, and Informational Barriers

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MULUGETA ABAI, AND KWAME MCKENZIE

Abstract

The purpose of the qualitative study was to explore the experiences, needs, barriers, and expectations of survivors of torture and/or war, interested in entering post-secondary education in Canada. We conducted 38 interviews with participants from the Canadian Centre for Victims of Torture (CCVT), 10 interviews with CCVT staff, and 1 focus group with 3 participants, which followed a semi-structured interview guide, and were analyzed using a constant comparative method. Survivors of torture and/or war report experiencing informational barriers to navigating educational pathways, accessing professional supports, evaluating credentials, financing education, navigating immigration systems, using online resources, delaying their educational progress, and contributing to mental health distress.

Résumé

L'objectif de cette étude qualitative était d'étudier les expériences, les besoins, les obstacles et les attentes de survivants à la torture et/ou à la guerre souhaitant faire des études postsecondaires au Canada. Nous avons réalisé 38 entretiens avec des participants provenant du Centre Canadien pour Victimes de la Torture (CCVT) et 10 entretiens avec des membres du personnel de ce centre; nous avons également travaillé avec un groupe cible de trois participants qui ont suivi les consignes d'un guide d'entretien semi-structuré et ont été évalués à l'aide d'une méthode comparative constante. Les survivants à la torture et/ou à la guerre ont fait état d'obstacles à type de manque d'information sur l'orientation

dans les filières d'études, l'accès à des soutiens professionnels, l'évaluation des diplômes, le financement des études, l'orientation dans les systèmes d'immigration et l'utilisation des ressources en ligne, l'ensemble de ces insuffisances retardant leur progression sur le plan des études et contribuant à des difficultés de santé mentale.

Background

Refugees experience lower rates of access to post-secondary education in Canada, in comparison to other newcomers.¹ Research demonstrates that refugee youth struggle during secondary school,² while older refugees are more likely to drop out of secondary and post-secondary education than Canadian-born students, or students who immigrate to Canada as children.³ This lack of access to higher education contributes to limited social and economic mobility, or downward occupational mobility, leaving many refugees experiencing unemployment, underemployment, and lower incomes, in comparison to other newcomers.⁴ This is problematic, as the experience of living in poverty can negatively contribute to refugees' mental health outcomes and lead to social exclusion, further limiting successful settlement in their host country.⁵

Refugees are an integral part of the social fabric of Canadian life, and investing in efforts to increase their educational attainment benefits the wider Canadian society, as educated populations are better able to contribute to the social and economic growth of a country.⁶ Attaining higher education plays a pivotal role in the integration and inclusion of refugees into Canadian society, as it can have "wide ramifications for individual refugees, the refugee community, and the

general common good,⁷⁷ and can result in expanded concrete skills, increased empowerment, increased confidence, and community building.⁸

Refugees and Barriers to Post-secondary Education

Although refugees may have high educational aspirations, many experience barriers in accessing post-secondary education.⁹ Although immigrants also experience settlement barriers, refugees' complex pre-migration, migration, and post-migration experiences present unique challenges. While immigrants decide to migrate for economic or familial reasons, refugees are forced to flee their countries of origin out of humanitarian concerns, leaving behind their homes, possessions, family, and friends.¹⁰ Immigrants are generally able to prepare for their migration, research educational or employment trajectories, and have financial and familial resources to rely on.¹¹ Alternatively, refugees are generally not able to make preparations, often have little to no familial or social support, and may not receive adequate resettlement information about Canadian society after arrival.¹² This lack of preparation and support can make refugees vulnerable to informational barriers. Indeed, refugees describe having limited access to accurate and reliable information and guidance on navigating the educational system.¹³ Refugees also report receiving unclear and conflicting information, which reduces their access and results in disappointment and anger.¹⁴ In addition, as the result of Canada's policies and requirements for economic immigrants, many arrive with English/French fluency and significant educational attainment.¹⁵ Alternatively, refugees may experience a lack of English/French fluency and difficulty navigating the Internet, making it challenging to access information required for educational and career decisions.¹⁶ Lack of English fluency also influences success, as research based in Alberta demonstrates that despite English language learners' motivations, they are less prepared for the literacy demands of first-year university, graduate from university with lower GPAs, and take more semesters to complete their studies than native English speakers.¹⁷ Finally, although immigrants and refugees may both experience difficulties accrediting their previous education experiences, refugees express struggles in accessing educational and identification documents from their countries of origin, which are required for post-secondary education applications.¹⁸

The mental health of refugees also affects access to information. Unlike most newcomers, refugees' pre-migration and migration experiences may have included detention, torture, war, the disappearance and murder of family and friends, living in refugee camps, exploitation, and a lack of food, medicine, or housing.¹⁹ Refugees may also experience post-migration traumas in Canada, which immigrants are

less likely to face, such as immigration detention, a lack of family reunification, and uncertainty about their immigration status.²⁰ Given these stressors, refugees may experience vulnerable mental health and cognitive concerns that affect their learning, including insomnia, flashbacks, and problems with memory, concentration, and processing information.²¹ Refugees who are survivors of torture may experience mental health concerns, such as post-traumatic stress disorder, anxiety, and depression.²² In addition, the experience of torture can degrade survivors' self-esteem and sense of agency and control, which could affect the ability to overcome educational barriers.²³

Study Objective

Scant research has examined the experiences of survivors of torture and/or war in accessing post-secondary education. This article stems from a larger community-based participatory research project conducted through a unique partnership between George Brown College (GBC), a socially inclusive post-secondary institution, the Centre for Addiction and Mental Health (CAMH), a world-leading research organization, and the Canadian Centre for Victims of Torture (CCVT), a community organization working to enhance the settlement and integration of survivors in Toronto, Canada. The project's objective was to identify how post-secondary institutions can support community groups in advancing the educational goals and social inclusion of survivors of torture and/or war. To meet this aim, this project consisted of three phases: (1) exploration of the experiences, needs, barriers, and expectations of survivors of torture and/or war, (2) development of innovative programming intended to address the higher education needs and goals of survivors, and (3) pilot implementation of an educational program, offered to survivors through GBC, designed to facilitate refugees' entry into the Canadian post-secondary education environment. More specifically, this article seeks to examine the initial results from the first phase of the project conducted in fall 2015, concerning the ways in which informational barriers affect refugees' access to Canadian post-secondary education.

Methods

Study Design and Sample

This study was a community-based participatory action research partnership between GBC, CAMH, and CCVT and consisted of three distinct phases spread over two years. Community-based participatory research (CBPR) was the chosen method, as it is a framework that focuses on supporting community partners in conducting research that is meaningful to them, so that the research is driven by and mobilized back into the community.²⁴ Although the project consists of three phases, this article will focus on the first

phase: a qualitative exploration of the experiences, needs, barriers, and expectations of CCVT clients, who are survivors of torture and/or war, regarding pursuing post-secondary education in Canada.

All study processes and materials received institutional research ethics approval. Past and current CCVT clients were recruited for participation in the study, through flyers in CCVT's offices and shared spaces, and via CCVT staff during in-person visits, support groups, word-of-mouth, and e-mail distribution. CCVT staff were also invited to participate in the study. The majority of the recruitment was conducted within CCVT, because the centre is the only agency in Toronto that specializes in providing trauma-informed mental health and settlement support to survivors of torture and/or war. However, flyers were shared with other refugee-serving agencies via e-mail and word-of-mouth, and some participants, who were also survivors, were recruited in this manner.

Participants had the option of participating in a one-on-one semi-structured interview, or a focus group, in English or French. All interviews were conducted in English, except for one conducted in French and translated into English. A focus group was held for three Tamil-speaking participants, and translated into English. Participants were provided with a 25-dollar honorarium. Since survivors of torture and/or war often have concerns about confidentiality and experience mistrust of systems, due to past experiences of state violence, efforts were made to enhance participants' sense of privacy and security. Participants were not requested to disclose detailed demographic information for this phase of the research. Efforts were made to attract representation from many refugee groups, as CCVT service providers advertised to linguistic communities they served (Amharic, Arabic, Dari, Farsi, French, Somali, Spanish, Tamil, and Tigrinya).

Consistent with a grounded theory approach, an interview guide was developed by a research steering committee, consisting of representatives from GBC, CAMH, CCVT, and three CCVT clients, and was refined as data collection proceeded, to reflect findings and explore emerging themes. Research assistants were recruited from the GBC student body, trained on conducting qualitative interviews and focus groups, and on cultural sensitivity and lay knowledge pertinent to the participant population. The interview guide consisted of questions intended to identify the unique needs of survivors of torture and/or war in accessing higher education, their experiences with services and systems in the process of accessing higher education, the gaps in addressing their needs and supporting their goals, the type of support they would benefit from to attain post-secondary education, their perspectives on the meaning of education, and beliefs or expectations regarding the opportunities afforded by educational attainment.

Data Analysis

Data collection continued until theoretical saturation was reached.²⁵ The interviews were digitally recorded and transcribed verbatim. A constant comparative method was used, as data were analyzed simultaneously with data collection, through constant comparison of emerging and existing findings.²⁶ Research assistants and the research steering committee met to discuss emerging ideas and interpretations of interviews conducted to that point. Subsequent interviews were informed by these meetings, as the group identified areas that required greater exploration, and attempted to bridge gaps in the data.

When transcriptions were completed, data analysis continued as the research steering committee and research assistants conducted open coding of the same sample of interview transcripts, to identify emerging properties and dimensions in the data, and create an initial codebook. Codes were added and defined until the codebook was finalized and then provided to the research assistants to code all the transcripts. Axial coding was then conducted, allowing for themes and connections to be made, and to identify specific codes related to the informational barriers that participants experienced, such as barriers to accessing professional supports and to navigating educational pathways. Once core themes and concepts were identified, selective coding further explained participants' experiences in encountering barriers, the impact of these barriers, and participants' support needs.²⁷ Throughout the data analysis, analytic memos were also used to record ideas and reflections that arose from the transcripts, and these ideas were discussed within the research committee team meetings, enabling members to provide feedback about the connections between various informational barriers and participants' support needs, ensuring investigator triangulation.²⁸

Results

Thirty-eight survivors of torture and/or war and 10 CCVT service providers participated in semi-structured one-on-one interviews, and 3 Tamil-speaking survivors of torture and/or war participated in a focus group, bringing the total number of participants to 51. All were over 18 years of age. Detailed demographic information of participants was not collected, to enhance participants' sense of security. Nevertheless, participants represented various categories such as age groups, genders, sexual orientations, languages, length of time in Canada, and countries of origin as participants were from Central and South America, Africa, the Middle East, and Asia. CCVT service providers also represented various communities, as many were fluent in languages specific to refugee communities (Amharic, Arabic, Dari, Farsi, French, Somali, Spanish, Tamil, and Tigrinya). Out of the 41 client

participants, 18 were men and 23 were women. The majority of participants were under the age of 40. Some did speak English or French upon arrival to Canada, others had lower English levels and were upgrading their language skills via LINC classes or adult high school courses, while 3 participants required interpretation to participate in the research study. Participants who spoke English were at Canadian Language Benchmark Levels 5, 6, or 7. The majority of participants had been in Canada for one to five years, and a smaller group had been in the country for less than one year.

All participants involved in the study had completed secondary school, either in their country of origin or in Canada. Many had also completed or started post-secondary programs in their country of origin. Of those that had completed degrees, participants had diverse educational backgrounds (examples include nursing, engineering, business, etc.), and many had been employed in those fields in their country of origin. Some had experienced gaps in their primary, secondary, or post-secondary education, due to war/torture or fear of persecution and being forced to flee their country of origin as a result. After arriving in Canada, some had their education interrupted as they encountered challenges in regularizing their status, or in assessing their credentials. These gaps ranged from several months to several years. The participants in the study also had diverse educational goals in Canada, some of whom wanted to attain degrees to continue in their field in Canada, others wanted to attain degrees in different educational disciplines that they had studied in their country of origin, while some sought to pursue technical/diploma training.

Our analysis identified various themes in the types of informational barriers that survivors of torture and/or war experience when trying to access post-secondary education, the impact of these barriers, and the types of supports that may be needed to mitigate some of these barriers.

Informational Barriers

Navigating Educational Pathways

Many participants reported that they lack information about how to navigate educational pathways. This included a lack of information on what types of secondary school and/or post-secondary education programs are available to them and for what purpose, what requirements they must meet in order to pursue post-secondary education, how to apply to post-secondary education, which institutions are better suited to their needs, the differences between private and public post-secondary institutions, what educational options they have to continue in the professional careers they had in their country of origin, and how future employment might be linked to their educational choices. Both CCVT staff and participants also described how clients may have difficulty

with navigating the form-filling required to apply to post-secondary education programs. One participant shared the challenge of trying to start pursuing education in Canada: “You don’t know where to begin. As we say, we face a lot of challenges. We don’t know who to approach for the first time.”

This was also evident during interviews, as many participants asked the research assistants for educational advice. This pointed to an interest and enthusiasm for education, while also suggesting that participants had minimal access to formal supports to help them make decisions about their education.

Access to Professional Support

Some participants explained that they had accessed helpful professional support, from both social service and education service providers, which guided them in the appropriate direction. For example, some participants explained that their shelter or settlement workers referred them to college upgrading programs or adult secondary schools; that they met with secondary school guidance counsellors or academic advisors at post-secondary institutions who informed them of program options, that they attended education fairs, or took tours of post-secondary campuses.

However, many other participants reported that they received unreliable, unhelpful, or inaccurate guidance, from social service, education, and government institutions. They sometimes met with providers at secondary and post-secondary institutions with little knowledge, who were not able to give advice on courses that participants should pursue. As one participant described it, “So, I talked to a counsellor [at adult secondary school], I don’t know whether she was a counsellor, but she was the one in charge of the registering, about the next courses which I will be taking for the next quad. So, she told me ‘I don’t think you need the diploma, I think you only need those credits,’ but she looked like she wasn’t sure.”

Another participant shared the experience of attaining limited support from the government income support office, about how to continue in a professional field:

Sometimes information available at [government social assistance services] is for basic jobs, and not for professionals needing education support. The people at the government, they don’t give that much information at all. The only thing they say is, “We can help you if you are unemployed, we can get you a course for one year, and you can do hair dressing or something like that.” It’s a survival job. But there is not any centre like that “ok, you people who come with this degree,” they check the degree, and then say, “ok, this is the field, these are the ways, the options. Which one do you want to do?”

Others described how they received misinformation from post-secondary institutions, how their immigration status affected their ability to study in Canada. Participants reported being commonly mistaken for international students by post-secondary institutions, despite having appropriate immigration paperwork (convention refugee or permanent resident status) demonstrating they were domestic students.

Reliance on Word-of-Mouth

Participants reported that it was common to attain information about accessing post-secondary education via word-of-mouth, through friends, family, and community members. They gathered advice on what types of upgrading and/or educational programs to pursue, the quality of educational institutions, evaluating international credentials, applying for study permits, and navigating the educational system. Some participants found this guidance useful in directing their decision-making.

Alternatively, other participants described how their reliance on word-of-mouth made them vulnerable to misinformation, and they had difficulty understanding what information was valid and what may be relevant for them on the basis of their own situations and immigration status. Many also felt confused by the differing word-of-mouth messages they received: “So I’ve had a challenge of ... been thinking a lot and people have been telling me, so I have a too many ideas in my head and don’t know exactly what to do, because I’ve been getting advice from different kinds of people—not really counsellors, just people who have been here, yeah, fellow [people of home country], yeah. And they have been advising, “Do this,” “Do that,” “Do that.”

Credential Evaluation

Some participants with professional qualifications in their country of origin described a lack of transparency about how their educational history and credentials would be assessed. Several participants also explained that they did not know how to have their prior educational credentials recognized, and whether this was necessary for them to do. This also left some participants with the impression of needing to start over from scratch: “But even if I had high school from back home, I’m told I’m required to do high school from here. I don’t know whether it’s true, but I just hear from, you know, people, friends who have come from the same place that I have come from. It’s like what we started from that side doesn’t count.”

Study Permits/Immigration

Several participants reported that they did not have access to information about the relationship between study permits and one’s immigration status. There was some confusion about what programs required study permits, as they are not required for English as a Second Language classes and youth secondary school, but are required for refugee claimants and convention refugees looking to attend adult secondary school or post-secondary education. As one participant described it, “The problem was I didn’t get the right information before going there [school], because if I knew that I needed a study permit I would have applied way before. But I didn’t know that I needed a study permit when I went to that school to apply. I was told I can’t start until I get a study permit. So I applied. I’m not sure I’ll get in this year because of when I applied. The study permit takes time.”

Another participant described how a peer wrongly believed she needed a study permit to access ESL: “She told me she is looking for school because of English. She looked stressed, and then I’m like, ‘Why don’t you go find one? There are many.’ And she said, ‘Because I don’t have a study permit.’ But I think here you can come to do that ESL without a study permit, but not everybody knows about such organizations. That’s the biggest problem.”

English and Computer Literacy

Some participants explained they could research information on educational supports, educational programming, and planning their education pathway as a result of their English language skills and computer literacy. One participant reported, “I can understand the language, so if I don’t understand something, I can still go online and start to read and help myself.”

For several others, a lack of English language and computer skills affected their ability to access information. Participants were dismayed when educational institutions repeatedly pointed them to their websites, after they approached schools for support, as participants found it challenging to navigate the wealth of information on these websites: “If there is something online and it’s posted there and you are asking about it, it seems that they will refer to you the website. So, everything is online here, and everything you have to search it by yourself, and it’s very detailed, so you are lost. I feel lost.”

Financial Aid

Participants described a general lack of understanding about what types of financial supports could be available to them if they were to attend post-secondary education. This included a lack of information about accessing government loans such

as OSAP, bursaries, and scholarships, and how these various supports function. One participant noted, “The other thing I want to know is if there are scholarships afforded. As an immigrant landed here, so I’m considered as domestic, not international student, so I want to know if I can have scholarships in the fields I’m applying, and even if I go to the website about scholarships, a lot of options, and I don’t know how to proceed.”

Impact of Informational Barriers

As the result of informational barriers and exposure to misinformation, participants reported being disappointed, confused, frustrated, and overwhelmed. They became mistrustful after trying to unsuccessfully access appropriate guidance. Participants often described experiencing a “waste of time” and thought that their educational process was stalled or frozen, because of not getting access to timely and reliable information. One participant explained how misinformation from a legal professional delayed attainment of a study permit, which affected the ability to start schooling in a timely fashion and created a sense of confusion and upset:

So, I couldn’t study for three months, I was waiting for the study permit. I didn’t know, because I asked a lawyer, and she said, “No you don’t need a study permit because you’re just doing high school. If you were going to university or something, you do. But because you’re doing high school, you don’t.” And she told me that in July. So, if she had told me the opposite, I could have applied for my study permit in July and have it for September. But because I trusted her very much, so I said, “OK.” Then in September when I went to high school, the director, he said, “No you can’t, you need a study permit.” So, I was like, “I know. But my lawyer told me I don’t need.” And he’s like, “You do.” And then I couldn’t start. So, it was like I was going from place to place, people telling me different things, and it was just chaos at some point.

Supports

Need for Individualized Assistance

Many participants expressed a desire to access a specific trusted support place or person, where they could receive individualized support, to mitigate the informational barriers they experienced in accessing and navigating the educational system. Participants wished they could speak one-on-one to a program administrator at a post-secondary institution, or at other institutions, to understand the prerequisites for programming, and to learn about different avenues for accessing post-secondary education while considering their unique educational history. As one participant described it, “I think I want to have a counsellor who can help me, and test me about where I should be placed. Because I might think I need university, or college, but maybe there is

another way that I could reach my goals that I’m not aware of. I’m not sure if it is possible to have education counsellors?”

Participants found it inappropriate to send all refugees to access information online. They suggested having easier access to school administrators to learn about options to students and to mitigate confusion when participants are left to find information on their own.

[I need to know] how to find out about different subjects, and sub-subjects. [I] need for universities to be more accessible with assistance and information. And which field shall I choose, because there are a lot of subspecialties and which is the right track for me. So, I need to communicate with people, with the faculty, with admission. I want them to, if there is an orientation session, let us be aware of them. Instead of “Just go online and read.” We need to feel the human flavour, the humanity. We have questions in our mind and we want answers instead of emails because I feel difficult with emails. Why don’t we have open doors between the faculty and the immigrant students, sessions to inform them about the subspecialties, about the programs in Canada, so that we can understand the system? Because it looks very complicated for me.

Participants also requested customized and tailored informational support to assist them with filling out school applications, accessing financial aid, obtaining study permits, and other settlement-related needs. They also described the usefulness of emotional support from a service provider, and a better understanding of the support services they could access while in school: “I want somebody to be with me, and ... you know? Keep pushing me, supporting me: ‘OK, there it is—this is the map. You can go to that place like this.’”

Peer Mentorship

Many participants described how having access to peer mentorship, from newcomers who had similar experiences and challenges, would be a useful source of information. They expected that they would benefit from hearing mentors share stories of how they decided which program to pursue and which institution to attend, how their field of study might enable their job search or security in the future, and their perceptions of what post-secondary education culture is like. Participants also noted that peer mentors could serve as a source of emotional support: “I need somebody like, we are sitting one-to-one, you know? If I face any difficulty in understanding, someone to help me, you know. In homework and this. I need this. ‘Cause alone, then I am lost. When I am with somebody, so, it makes me minimize my worries, you know? So, I can go [motions hands in the air, acting out mind drifting] less [referring to trauma, difficulty focusing, and memory loss].”

Discussion

The pervasive lack of access to accurate and reliable information experienced by refugees in Canada presents barriers to accessing post-secondary education, along with the social and economic advantages that such access affords. Our findings suggest that many survivors of torture and/or war face challenges in accessing appropriate professional supports and information to navigate educational pathways, and to make informed decisions about what type of post-secondary programs or career training to pursue. Given such lack of resources, refugees often rely on word-of-mouth information, which may not always be trustworthy. Their dilemma is further complicated by the fact that refugees have diverse and unique informational needs, as their immigration statuses, prior credentials and experiences, and specific financial situations all affect the type of information they require to pursue educational goals. Misinformation prolonged their ability to embark on an appropriate educational pathway, thus hindering their timely settlement. These obstacles are troubling, as survivors are often under profound internal and external pressures to secure appropriate employment, which will help them support themselves, and often family who have been left in precarious conditions in their country of origin or in other countries of displacement. These barriers also harm the mental health of survivors, as they often felt frustrated, overwhelmed, and confused by their inability to access appropriate information. This is problematic and concerning, as the mental health and well-being of survivors is already vulnerable, as the result of past trauma as well as the many other structural barriers experienced during resettlement in a new country.

Our findings highlight practical supports that can assist survivors in their educational process. Participants proposed the need for educational support that is tailored to their specific needs, to ensure they receive comprehensive and accurate information. Relying on online information was inadequate for them, because they reported the need in-person guidance from educational institutions or collaborating service providers/agencies to navigate complex intersecting systems, including education, immigration, financial aid, and credential evaluation institutions. These findings support previous research, which demonstrates that educational institutions should provide holistic and comprehensive support, with the input and collaboration of refugees, to respond to their needs and enable their success. For example, Woods has noted that educational institutions should play a role in addressing refugees' complex resettlement issues, to build a sense of community for this population of students.²⁹ Woods and Finn have also asserted that educational institutions should acknowledge the impact of past trauma on

learning and provide emotional and social support to this community, to heighten educational success.³⁰

Survivors also discussed the need to have a human connection during the information-seeking process, to feel supported, encouraged, and confident in their decision-making. They described the potential benefits of having access to peer mentors who were also refugees, who could assist them in navigating educational pathways, inform them of what to expect within post-secondary institutions, and provide tips, support, and inspiration. This is in line with research into how building comprehensive support networks with local staff, faculty, students, and peer mentors can facilitate the effective resettlement and education process for refugees.³¹ It may also be beneficial for refugees to have access to culturally specific peer mentorship, which provides them with information about what structures and behaviours to expect within classrooms.³² Furthermore, the potential benefits of peer mentorship for survivors of torture and/or war are supported by research that describes how access to social supports from other refugees can provide insight about how to cope with problems and how to seek formal supports from organizations and government.³³

Strengths and Limitations

Limitations of the study include the possibility of response bias and sampling bias. Although all participants were assured of their confidentiality, many survivors live with the psychological after-effects of state-sanctioned violence, which can include the distrust of state or state-related systems. Accordingly, some participants may not have felt comfortable sharing their personal experiences and challenges. Also, even though the research assistants were not associated with CCVT participants may have responded more positively about their experiences accessing post-secondary education because the interviews were located at CCVT, a settlement agency that provides them with support. Conversely, given the participants' sense of trust and comfort with CCVT, it is also possible that participants felt more comfortable sharing their actual experiences. In addition, because the participants involved in the study were survivors who are or have previously been clients of refugee-serving agencies, the sample involved in the study may have been biased in two ways. The sample have missed the survivor population that is not accessing services, and who may face even greater marginalization or barriers to settlement. These may be newcomer survivors in the community who are unaware of services, or who may experience other challenges that limit their involvement, such as family or financial responsibilities, severe mistrust of service providers, or reluctance to "out" themselves as survivors. Alternatively, this study may have oversampled survivors who are experiencing very complex challenges,

such that they are seeking out services. The participants in the study may then reflect a highly marginalized group of survivors, and other survivors in the community may have the capacity to address barriers to post-secondary education on their own, through appropriate formal networks or other effective methods. Another limitation is that the study did not collect detailed demographic information, which could have also elucidated the findings.

Despite these limitations, the findings of this study are supported by and build on prior research with various refugee communities, concerning challenges they experience in accessing post-secondary education. To our knowledge, this is also the first study of its kind in Canada to partner a post-secondary institution, a mental health and research hospital, and a refugee-serving community organization, and to explore the experiences of refugees in accessing education, collaborating with the study population to create innovative programming that can help bridge the gaps to education that are experienced. These findings of this article have already had practical implications, as they have been integrated into the educational programming created during the second phase of the research project.

Conclusion

This study expands on previous explorations of the barriers experienced by refugees who try to access higher education and highlights the urgent need for educational institutions and collaborating service providers/agencies to improve access to appropriate supports that mitigate these barriers. The study's findings point to potential areas for improvement across educational institutions, as refugees suggested that access to individualized and holistic supports, and to peer mentorship, could alleviate many of these informational barriers. As examples, educational institutions can enhance their ability to provide individualized support to prospective refugee students by ensuring that their recruitment, entry advisement and registration staff are well trained, knowledgeable, and sensitive to the reality of refugees and their educational resettlement process. Educational institutions can also explore how to improve culturally sensitive and trauma-informed holistic supports to refugee students. This can be accomplished through partnerships between appropriate agencies to provide settlement and mental-health-related services on campus. Drawing on the successes of other mentorship programming within post-secondary institutions, schools could also implement peer mentorship for prospective or new post-secondary refugee students, to enhance their sense of belonging and increase their social support network. Finally, educational institutions can take up the findings in this study to evaluate and modify their policies, procedures, and programs to explore

how to enhance their own outreach to refugee communities and how to improve the academic success and experiences of their refugee students.

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Volunteering to Support Refugees: A Question of One's Scope of Justice

ELISABETH KALS AND ISABEL THERESIA STRUBEL¹

Abstract

Who volunteers on behalf of refugees, on the basis of what motives? Questionnaire data (N = 271) reveal that people who volunteer, and those who do not, share differentiated perceptions of fairness about refugee aid. However, volunteers have a broader and more inclusive scope of justice than a matched group of non-volunteers. The scope of justice proves to be a powerful construct when explaining the willingness to volunteer beyond group membership (volunteers vs. non-volunteers) and the functional approach. Perceptions of fairness, especially the scope of justice, should therefore be considered in order to understand differences in reactions towards refugees if moral exclusion is to be avoided.

Résumé

Qui fait volontairement du bénévolat en faveur des réfugiés et pour quels types de motifs ? Les résultats d'un questionnaire (N = 271) mettent en évidence que les bénévoles et les non-bénévoles ont des perceptions différentes de ce qui est équitable en matière d'aide aux réfugiés. Cependant, les bénévoles ont une vision plus large et plus inclusive de la justice que les non-bénévoles d'un groupe apparié. La portée de la justice démontre ainsi qu'elle constitue un puissant construit quand on cherche à expliquer le désir d'être bénévole, au-delà de l'appartenance à un groupe (bénévoles par rapport à non-bénévoles) et d'une démarche fonctionnelle. Les perceptions d'équité, la portée de la justice en particulier, devraient ainsi être envisagées pour comprendre les différences de réactions envers les réfugiés, si le facteur « exclusion morale » doit être écarté.

Introduction

There is a worldwide movement of refugees. The German Federal Foreign Office estimates that 65 million are displaced persons.² People from Syria and other regions such as northern Africa, Afghanistan, and Iraq are trying to emigrate, due as the result of migration movements in Africa, the Syrian crisis and their affected neighbours, and the terror organization “Islamic State.” Approximately 4.2 million Syrians have become displaced since the civil war began in 2011.³ In 2015 the number of refugees worldwide exceeded all annual figures since the end of the Second World War, half of these refugees being minors needing special protection. The main causes of the exodus are violent conflicts, eroding state structures, insufficient economic prospects, and high population growth combined with a lack of resources.⁴

Germany, where the research for this article was conducted, has decided to host a relatively high number of refugees in relation to its size.⁵ However, for many years it was not considered a “classical immigration country” and it was only in 2005 that the German government formally recognized Germany as such.⁶ Postwar migration in Germany started in the 1950s. Since then 4.5 million of German heritage (“ethnic German resettlers”) have migrated to Germany from the former “Eastern bloc,” often fleeing discrimination or persecution.⁷ From 1955 on, labour migration to West Germany was actively planned for “guest workers.”⁸ In the late 1980s and the early 1990s a high number sought asylum in Germany, mainly as a result of the Balkan war, leading to an all-time record migration level in 1992, when the number of immigrants reached 440,000.⁹ Attitudes toward and acceptance of refugees arriving in the current wave differ from the first two historical migration waves, since the exodus is unplanned,

partly uncontrolled, and based mainly on international laws and a sense of moral obligation. The sheer numbers also differ from migration levels during the Balkan war. Analyses of numbers for the record year 2015 show that immigration to Germany peaked with more than one million refugees. In 2015 German Chancellor Angela Merkel opened Germany's frontiers to its eastern neighbours to avoid a human catastrophe. On a political level, the question of how to deal with the situation—triggered by the decision to provisionally open the borders—has led to a highly controversial political debate. This has triggered a wide range of reactions among the population: some vehemently oppose admitting the refugees and regard the influx as a threat, whereas others see it as a dual benefit—for the refugees as well as for the host country, its society and economy. In response, stricter laws such as the “Integration Act” entered into force in August 2016,¹⁰ and Germany boosted its efforts to support the key countries of origin and main transit states. For example, Germany became the third-largest unilateral donor of humanitarian support to Syria and its neighbouring countries, donating more than two billion euros.¹¹

The challenges posed by the large-scale immigration of refugees can be met more easily if the majority in the host country is willing to accept the refugees and is prepared to volunteer to assist with their integration. An increasing percentage of people are doing just that.¹² The Institute for Empirical Integration and Migration Research in Berlin reveals that the majority of organizations dealing with refugee aid reports an average increase of organized volunteers of 70 per cent.¹³ The German Institute for Economic Research states that for the majority of the German population the risks of hosting refugees outweigh the gains, yet four out of ten are generally willing to volunteer to support refugees.¹⁴ In May 2016 11.9 per cent of the German-speaking population over the age of 14 volunteered in some way to assist the refugees. Excluding the financial and material support given, still 8.7 per cent of the population purely volunteered,¹⁵ a significant increase in comparison to 2014. This leads to the psychological issues at the core of this article: What are the motives behind the willingness to volunteer?

The answer to this question is crucial, not only with regard to a scientific understanding of volunteering but also to political debates and decisions: volunteering processes are being analyzed in an unprecedented, historical era of fundamental change in the world that involves extraordinary challenges for Germany. Conducting research in such a context not only results in a better scientific understanding of volunteering but is also of considerable political significance, since direct recommendations can be put forward, enabling political institutions to deal more effectively with the

challenges and to motivate people to constructively support the immigrants.

It is assumed that attitudes toward fairness, in other words, one's scope of justice, can contribute to answering these questions. This newly introduced approach combines with the well-established functional approach to volunteering. Together they form the theoretical basis for the research study presented below.

Justice Research and the Scope of Justice

The terms *refugee* and *migrant* describe people who move from their home country to another. Refugees flee armed conflict or persecution and are protected under international law, whereas migrants move voluntarily to improve their lives.¹⁶ There are many reasons for legal migration and mobility, such as economic migration, reuniting families, and study and research opportunities, on the one hand, and the demand for international protection and asylum on a national and European level, on the other. Unaccompanied minors and other vulnerable groups also play a special role.¹⁷ In the UNHCR text, quoted above, as well as in the underlying study, the term *refugee* is used, since in the German political debate it is this term that is used primarily to define non-Western immigrants coming to Germany in the context of the above-mentioned migration movements. Moreover, it is impossible to make a clear distinction between *refugee* and *migrant* without knowing a person's individual situation.

It is assumed that a sense of justice plays a major role in justifying volunteering as well as the opposite: objections towards refugees. This moral dimension of the question of how a country and its people deal with refugees is also reflected in the public discussion. On the basis of an altruistic and universalistic moral theory,¹⁸ it is morally commendable that people in existential distress be helped by sharing goods, which is also in line with Kant's categorical imperative. However, whether the inhabitants of the accommodating countries share this opinion and are willing to accept and integrate the newly arrived seems to be a question of justice and especially of one's individual scope of justice.¹⁹ To what extent are refugees morally excluded or included and perceived as outside or inside the boundaries in which moral values, rules, and considerations of fairness apply? Integration and accompanying aid imply side effects, such as the sacrifice of time and effort, financial costs, political risks. These side effects need to be weighed and may lead to other forms of unfairness and inequality, such as the unequal distribution of financial and immaterial costs incurred in supporting refugees to the large extent currently experienced. Whether the integration of refugees is regarded as a dual benefit seems to depend on how the situation and the refugees are viewed.

Empirical literature reveals that competition for resources leads to negative attitudes toward refugees and immigration, such as in North America.²⁰ Above all, it is the zero-sum competition between groups that has such strong negative influences; the zero-sum competition can be situationally induced or result from a constant, unquestioning belief in zero-sum relations.

These selected examples of the current moral debate on the refugee movement already reflect the significance of the justice dimension. People tend to worry about justice when social conflict occurs, such as in allocation problems, triggering feelings of injustice.²¹ Numerous other normative justice questions could be raised in this discussion and could be debated from a theoretical perspective. Such normative perspectives are indeed taken into consideration here, but the current article is based on an empirical perspective, focusing upon individual judgments on justice and injustice with regard to the refugee movement and the willingness to volunteer to support refugees, regardless of the costs involved.

In Germany volunteering to assist refugees is of immense political importance, as a great number of refugees need to be integrated into society.²² The general population plays an important role, perhaps a key role, in enabling this task to be fulfilled. It is a question of being willing to welcome and integrate refugees²³ into the community, involving physical, social, and psychological integration.²⁴ Such help can consist of “one-off” support, such as the provision of equipment (clothing and other donations in kind) and financial aid, as well as regular time-consuming support, including language courses or helping refugees in their daily lives in the new country and culture. Language skills are key to integration and can best be learned by attending language courses, enhanced by everyday contact with local people.²⁵

Volunteering covers such practical material assistance, as well as immaterial support for refugees, and is defined as “voluntary, sustained, and ongoing helpfulness.”²⁶ It should be differentiated from spontaneous helping, whereby the helper is confronted with an unexpected call for help, yet it shares its altruistic motivations.²⁷

It has been empirically shown that the justice motive is relevant for social volunteering.²⁸ This should also apply to social volunteering for aiding and integrating refugees: what judgments are made, and what categories of fairness are applied to the refugees?

This can be reframed as a question of “scope of justice.” This concept was introduced by Opatow. On the basis of and inspired by Deutsch’s original contribution,²⁹ Opatow developed the idea that there are individual and situational differences in the extent to which justice is perceived to be relevant. The scope of justice is defined as the psychological fairness boundary, implying the application of moral values,

rules, and justice considerations to those individuals, groups of people, animal species, or other general entities seen within this boundary. Thus, the scope of justice is “the psychological boundary within which considerations of fairness govern our conduct.”³⁰ Entities that are perceived as inside the boundary are regarded as morally included, whereas those outside the boundary are morally excluded. Opatow conducted many exploratory studies in which she observed the effects of moral inclusion and exclusion³¹ and applied the concept to important action fields.³² Together with other authors who implemented the construct, which includes exclusion of Haitian refugees³³ and mass internment,³⁴ it was shown that entities that are excluded from the scope of justice are vulnerable to harmful treatment.³⁵ They are seen as “nonentities,”³⁶ expendable or undeserving, leading to social problems and conflicts.

There is a considerable literature on attitudes toward disadvantaged groups,³⁷ but only very few studies aim to apply the scope of justice to minorities: in the context of 9/11, Coryn and Borshuk³⁸ investigated to what extent Muslim U.S. Americans are considered to be within the scope of justice of non-Muslim U.S. citizens. The data show that only about one-third of the sample feels that the Muslim Americans are within their scope of justice. In line with this finding, Lima-Nunes, Pereira, and Correia³⁹ were able to show that the relationship between prejudice against immigrants in general and discrimination against them is mediated by a restricted view of the scope of justice.

Conceptualization of the Scope of Justice

The conceptualization of the scope of justice is sometimes regarded as a continuous and sometimes as a dichotomous construct.⁴⁰ As a dichotomous construct, entities would either be included or excluded from one’s scope of justice; as a continuous construct, the inclusion and exclusion criteria can be expanded, and the boundaries are relative. In our article we have opted for the continuous approach, as the belief that fairness considerations should be applied seems to depend on the extent to which this takes place in practice. This decision is also in line with empirical justice research that usually assesses justice judgments on a continuous scale, varying, for example, from strong agreement to strong disagreement.⁴¹

Moreover, in some empirical studies the scope of justice is constructed as a mediator variable, which mediates the impact of neediness and similarity on behavioural outcome variables, such as environmental protection.⁴² However, this mediating process has not been sufficiently investigated, and measurement of the construct needs clarification.⁴³

The core of the construct is the attitudinal belief that considerations of fairness are applied to other groups or entities.

It reflects to what extent refugees should be treated equally to the people of the host country and have equal legitimate claims. This seems to be one crux of the question regarding the degree to which refugees should be accepted and integrated, since there are limits to the material and non-material goods allocated. Gains by one group might be seen as losses for other groups.

In Opatow's quantitative empirical work⁴⁴ the behavioural implications of the justice boundaries comprise the willingness to make sacrifices to foster the other's well-being and to allocate resources to the other. Hafer and Olsen⁴⁵ argue in their analysis of empirical research on the scope of justice that its operationalization should not be confused with other constructs; in fact, the application of the fairness rules constituting the core construct does not necessarily lead to positive reactions toward a particular entity. Thus, this core construct is regarded as the "scope of justice." The willingness variables serve as the behavioural validation of this construct.

Functional Approach to Volunteering

The second theoretical approach is offered by research on volunteering, which has a long tradition,⁴⁶ especially in the context of social relationships.⁴⁷ The most prominent method used to explain current and potential volunteering is the functional approach by Clary et al.⁴⁸ Based on Katz,⁴⁹ the functional approach starts from the assumption that certain types of volunteering can fulfil different functions for the volunteer simultaneously. In this respect, the same attitudes can serve various functions for different people within the context of volunteering. In the light of the altruism-egoism discussion these functions can serve the interests of the community and those of the individual volunteer. Assuming that voluntary work can satisfy different motives simultaneously, the approach differentiates between six functions:⁵⁰

1. *Value function*, which represents an altruistic concern for others; by volunteering, people are able to express values related to altruistic and humanitarian concerns for others;
2. *Understanding function*, which comprises gaining new skills and knowledge through the volunteering experience as well as the opportunity to exercise knowledge, skills, and abilities;
3. *Social function*, which reflects motivations involving relationships with others and the normative influence of others, including opportunities to be with one's friends or commit to activities that are also seen as important by significant others;
4. *Career function*, which is concerned with career-related benefits, such as preparing for a new career or acquiring career-relevant skills;
5. *Protective function*, which means shielding the ego from negative emotions and experiences; volunteering may help to reduce guilt and to address one's own personal problems; and
6. *Enhancement function*, which involves a motivational process involving the growth and development of the self, including the growth of one's own self-esteem; in contrast to the protective function, this enhancement dimension involves an active positive ambition to develop one's ego.

These six functions have been validated in many studies by the original authors, as well as by the wide range of international literature referring to volunteering in various contexts⁵¹ and using different forms of conceptualization.⁵² The multiple specific motives defined above show that the simple differentiation of "egoistic" versus "altruistic" motives is outdated;⁵³ thus, the dichotomous approach should be replaced by the multiple motive approach.

Important empirical studies can also be found on refugees and volunteering, with some studies linking the question of immigration with justice.⁵⁴ The current wave, described in the introduction, is quite new, and although research is taking place, few studies have been published. Nevertheless, the broad relevance of the functional approach in the form of the Volunteer Functions Inventory means this approach can be applied to volunteering for refugees.

Integrative Approach and Hypotheses

Volunteering for refugees comprises two aspects: a general willingness to volunteer as well as actual volunteering on behalf of refugees in organizations ("volunteers"). The willingness to volunteer does not refer to individual behaviour but indicates a general willingness to volunteer in various ways (ranging from public political statements to private everyday help and support). These willingness criteria have proved to be valid proxies of current behaviour revealed in a longitudinal study, especially if situational and social conditions promote the behavioural transfer, as in the positive modelling of friends and significant others.⁵⁵ These criteria are assumed to be explained by the functional motives in the approach by Clary et al.⁵⁶ The scope of justice supplements these motives.

The willingness to make sacrifices to foster the other's well-being as well as the willingness to allocate resources constitute the behavioural dimensions of the scope of justice, which are used as further validation criteria.

We are mindful of the fact that originally Opatow formulated a moderation hypothesis on the effect of the scope of justice. However, in our approach, the scope of justice variable has a different status: Its direct explanatory power should be tested and weighted against the power of the functional variables of Clary et al.

Three hypotheses are derived:

1. Differentiated justice judgments concerning the scope of justice for refugees are made among the general population. The scope of justice intercorrelates with the two willingness variables as behavioural correlates.
2. The controversy results in significant differences between the volunteers and a matched sample of non-volunteers on the scope of justice and its two behavioural correlates.
3. The functions of the Volunteer Functions Inventory of Clary et al. can explain why people volunteer on behalf of refugees. The scope of justice defined by Opatow proves to be a powerful construct to explain the willingness to volunteer beyond group membership (volunteers vs. non-volunteers) as well as the functional approach.

Methodology: Sample

To test the hypotheses, an online survey was conducted with a convenience sample of the overall population as well as a criterion group of volunteers. The overall sample of $N = 271$ was recruited in two ways: by means of a snowball principle using social networks, so as to reach people with different opinions on the current migratory situation (non-volunteers $n_1 = 198$), as well as by contacting voluntary organizations supporting refugees that aim to recruit volunteers (volunteers $n_2 = 73$). With nine missing values, women (166) are overrepresented compared to men (96). The average age is 30.31 (ranging from 16 to 76, with a standard deviation of 12.31). The educational level is above average.

The average age of the volunteers (n_2) is 32.01, which is slightly higher than in the overall sample, and the percentage of women is significantly higher than men (52 women as opposed to 18 men). The educational level is even higher than in the overall sample.

In order to compare the group of volunteers and non-volunteers (H_2), a sample matched according to size, age, sex, and educational level was used ($n = 2 \times 73$).

Measurement Instruments

All variables were measured using several six-point answering scaled items (ranging from 1 = strong disagreement to 6 = strong agreement). Preventive measures were taken to avoid socially desirable answering behaviour, such as a guarantee of anonymity, and the content of the constructs and their item formulation were balanced, e.g., by integrating outrage about excessive refugee aid, appeals to honesty, and admissions about the scientific character of the study. Furthermore, the effect of socially desirable answering behaviour was

controlled by integrating the validated short scale of Kemper et al.⁵⁷ The six-item scale covers the exaggeration of positive and the understatement of negative qualities and also uses a six-point Likert type answering scale.

All scales were factor analyzed by principle axis analyses with subsequent varimax rotation. The factorial structures presented below are based upon the whole sample and were successfully cross-validated within the subsamples of volunteers and non-volunteers.

The Volunteer Functions Inventory (VFI) was measured using the German translation of the instrument by Oostlander et al.,⁵⁸ which was successfully applied in many studies by our research group. In the current study, we used a short version of the inventory. A four-factor solution was found with the aid of the protection and enhancement function, as well as values and understanding loading based on the same factor. This is in line with the factor structures reported by Clary et al., who present for their original six functions a five-, six-, and seven-factor solution, showing that items of various factors are loaded together on the same factor. This is especially the case for the protective and enhancement items. The four-factor solution leads to good reliability with Cronbach's alphas as an estimation index of intern consistency ranging from .83 (value and understanding function) to .89 (career function).

The scope of justice was measured according to three items with Cronbach's alpha of .90:

1. "Refugees should be treated as fairly as all other fellow citizens."
2. "The same justice standards should be applied to refugees as to all other citizens."
3. "Refugees have the same right to be treated fairly as all other citizens."

The behavioural correlates lead to Cronbach's alpha of .85 (willingness to make sacrifices; item example: "I am willing to make financial sacrifices for the well-being of refugees"), and .92 (willingness to allocate resources; item example "Our society must provide the necessary resources so that refugees can live here").

Eleven items measured the various aspects of the willingness to volunteer for refugees during the following year (item example: "In principle, I am willing to participate in actions in favour of refugees, by donating/collecting clothes or toys"). The items loaded on the same factor with a Cronbach's alpha of .93.

Items of the same factor were summarized, and a mean score of the corresponding items was computed. The following results are based on these newly computed complex variables.

Descriptive and Correlational Results of the Scope of Justice (Hypothesis 1)

The scope of justice as an overall variable leads to a high agreement score within the total sample (see table 1).

Although the willingness to make sacrifices for the sake of the refugees is also highly prevalent, the mean value of this variable is clearly lower. The mean value of the willingness to allocate resources lies between these two statistical values. The standard deviations of all three variables are quite high.

High correlations with the scope of justice can be found in the total sample as well as in the groups of volunteers and non-volunteers (see table 1). This is also true when the effects of socially desirable answering behaviour are partialled out.

Differences between Volunteers and Non-Volunteers in the Scope of Justice (Hypothesis 2)

As table 2 shows, volunteers and the matched group of non-volunteers differ in the scope of justice variable, as well as in the two willingness variables: volunteers include refugees significantly more into their scope of justice. The highest scores resulted from the willingness to make sacrifices for the well-being of the refugees. This is in line with the willingness to volunteer in favour of refugees (see table 2).

Explanation of the Willingness to Volunteer on Behalf of Refugees (Hypothesis 3)

Hierarchical regression analyses were conducted to explain the willingness to volunteer on behalf of refugees and to analyze the relative weighting of the scope of justice variable and the different functions of the VFI.

The first predictor block includes the group membership (volunteers vs. non-volunteers); the second the volunteer functions and the third the scope of justice. Together, these variables explain 57 per cent of the criterion variance with a 14 per cent incremental variance due to the scope of justice (see table 3a).

The value and understanding function becomes highly significant. If measures of socially desirable answering behaviour are integrated in the first predictor block, the equations remain stable (see table 3b).

In sum, the scope of justice plays a major role in the explanation for the willingness to volunteer on behalf of refugees.

Discussion

Beyond the applicability of the functional approach, the power of the scope of justice is confirmed: within the sample, fairness motives in refugee aid are frequently and differentially expressed. Nevertheless, there is a variation in the valuations, especially in the motive valuations. People who volunteer for refugee aid differ from a matched group of non-volunteers in their corresponding scope of justice. The question, to what

extent the same justice claims should be applied to refugees as to all other citizens, is a crucial distinction between the groups. In line with previous findings, the use of the Volunteer Function Inventory (VFI) for volunteers and non-volunteers could be validated for this field of volunteering. Scope of justice explains a significant part of the variance within the willingness to volunteer for the sake of the refugees, beyond the traditional functional motives and group membership.

The newly applied scope of justice construct has proved to be relevant for supporting refugees, confirming earlier results.⁵⁹ For a further peaceful development in the hosting country but also for international development and peace building, it is helpful to regard immigration as a non-threatening process with dual benefits, which has occurred repeatedly in history. Yet there are significant differences from earlier postwar immigration processes in Germany, as described above. However, it is important to know that 12 per cent of the German population is volunteering to assist refugees, which constitutes a significant segment of the population, even though roughly 88 per cent of the population is not yet volunteering.⁶⁰ The latter group also needs to be reached. Individual worries about zero-sum beliefs⁶¹ or national security interests,⁶² a constructive management process to deal with this political situation and the consequences for those affected, create a moral demand based on international law and civil rights.⁶³

Therefore a public political debate should be held on the philosophical and legal level of morality, but also on the level of individual perceptions of justice: obviously, people care about fairness and make differentiated judgments on the situation of refugees. Their individual scope of justice is related to their willingness to volunteer. Empirical literature gives guidance on how this scope of justice can be expanded and broadened. Perspective-taking seems to be one key approach to broadening the scope of justice and reaching moral inclusion, or rather, as Opatow says, "If a single cure for moral exclusion exists, it is probably a pluralistic perspective."⁶⁴ On an emotional level, such perspective taking evokes empathy as a powerful motivation for altruistic behaviour.⁶⁵ To overcome the specific difficulties of perspective-taking, which is the core of such pluralistic thinking and attitudes, the literature offers concrete support and techniques, which are embedded in the context of moral development.⁶⁶ In line with this development, the goal is to overcome stereotypes, distrust, hostility, and—the key construct—moral exclusion. Such a development can be viewed as a learning experience and calls for public debate but also necessitates cultivating dialogue, listening to personal narratives, as well as sharing mutual aims and projects.⁶⁷

Research aiming to overcome stereotypes and moral exclusion is also of great value when studying refugees. In

Table 1. Descriptive statistics and intercorrelations within the overall sample (total; $N = 271$), the volunteering subsample (vol; $n_1 = 73$), the non-volunteering subsample (non-vol; $n_2 = 198$), and the matched non-volunteering subsample (non-vol [m]; $n_3 = 73$)

Variable	Sample	<i>M</i>	<i>SD</i>	1	2	3
Scope of justice	Total	5.37	0.97	(.90)	.66**	.79**
	Vol	5.63	0.69	(.93)	.51**	.65**
	Non-vol	5.27	1.04	(.89)	.67**	.80**
	Non-vol (<i>m</i>)	5.30	1.07	(.88)	.73**	.87**
Willingness to make sacrifices	Total	4.37	1.21		(.85)	.80**
	Vol	5.00	0.76		(.66)	.63**
	Non-vol	4.13	1.26		(.85)	.82**
	Non-vol (<i>m</i>)	4.29	1.16		(.85)	.76**
Willingness to allocate resources	Total	4.98	1.14			(.92)
	Vol	5.36	0.74			(.85)
	Non-vol	4.84	1.23			(.92)
	Non-vol (<i>m</i>)	5.00	1.21			(.94)

Note. All variables range from 1 to 6 with a higher value indicating a stronger agreement.

* $p < .05$. ** $p < .01$.

Table 2. Mean differences between volunteers and non-volunteers ($n = 2 \times 73$)

Variable	Vol		Non-vol		<i>t</i>	<i>df</i>	<i>d</i>
	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>			
Scope of justice	5.63	0.69	5.30	1.07	2.23*	122.95	0.37
Willingness to make sacrifices	5.00	0.76	4.29	1.16	4.38**	124.11	0.72
Willingness to allocate resources	5.36	0.74	5.00	1.21	2.21*	119.41	0.36

Note: All variables range from 1 to 6, with a higher value indicating a stronger agreement.

* $p < .05$. ** $p < .01$ (unilateral testing, including the Bonferroni correction).

a longitudinal field study, for example, attitudes, including prejudice, negative emotions, and discriminatory intentions, were measured before and after the opening of a refugee centre in Germany.⁶⁸ Many living in the neighbourhood initially opposed the opening of the centre. However, it was shown that all kinds of contact (brief encounters, as well as personal or even extended contact) had positive effects on attitudes towards the refugee group. In line with the “mere exposure” hypothesis of Zajonc,⁶⁹ even “mere contact” decreased prejudices and discriminatory intentions over time.

Taking these empirical findings and the high inter-correlations between the scope of justice and a willingness to volunteer to support refugees into consideration, it is likely that they influence one another: on the one hand, a wide scope of justice positively influences the willingness to volunteer; on the other, actual volunteering might widen the scope of

justice. Explanatory and moderation variables, such as mere contact, positive experiences with refugees, and personally experienced similarities might account for these effects. These hypotheses will have to be tested.

In principle, conflicts of interests should not be seen as win-lose struggles, since zero-sum competition is counter-productive.⁷⁰ Instead, conflicts of interests should be seen as an opportunity for a win-win situation with dual benefits. This allows a variety of perspectives and mutual interests to become effective. Resources need to be divided fairly, and that can be done in the light of the knowledge that the existence and relevance of a universal justice motive is confirmed in practice.⁷¹ A mutual perspective, based on the understanding of each actor’s motives, and by questioning the inclusiveness of national identity helps to overcome narrow-mindedness⁷² and paves the way for mutual gains and profits.

Table 3a. Hierarchical multiple regression of willingness to volunteer on group membership (step 1) (volunteers coded as 1), volunteer functions (step 2), and scope of justice (step 3)

	Predictor	R ²	B	SE (B)	β	r
Step 1	Group membership	.13	0.95	.15	.37**	.37
	Constant		3.97	.08		
Step 2	Group membership		0.67	.13	.25**	.37
	Career function		-0.04	.05	-.04	.06
	Value and understanding function		0.66	.06	.55**	.58
	Social function		0.09	.05	.10	.37
	Protective and enhancement function	.43	-0.12	.06	-.10	.10
	Constant		1.17	.26		
Step 3	Group membership		0.58	.11	.22**	.37
	Career function		0.02	.04	.02	.06
	Value and understanding function		0.40	.06	.34**	.58
	Social function		0.07	.04	.08	.37
	Protective and enhancement function		-0.08	.05	-.07	.10
	Scope of justice	.57	0.52	.06	.43**	.64
	Constant		-0.57	.30		

Note. $F_{total} = 59.81^{**}$. $df = 6/264$. All variables range from 1 to 6, with a higher value indicating a stronger agreement.

* $p < .05$. ** $p < .01$.

This is a well-known finding in the social conflict-solving context:⁷³ psychological mediation with the basic principle “to enlarge the cake.”⁷⁴ It is difficult to widen the scope of justice and to include refugees, but it is necessary, to avoid a possible “clash of civilizations.”⁷⁵

Since the aim is to promote integration and recruit greater numbers of volunteers, individual and controversial fairness judgments on the scope of justice should be taken seriously. Simple appeals to one’s scope of justice might not be successful, but in view of the complexity of the subject, a public discourse should be held on justice questions, based on empirical data. Such a discourse might help to direct and productively tap into the emotional power of the current debate. Self-reflection on one’s personal sense of fairness and judgment and behavioural attitudes seems to be necessary to overcome the political conflict caused by the refugee movement within the host country.

Moreover, the significance of the traditional functional variables includes recommendations for recruiting and keeping volunteers. These variables concern the value function (representing an altruistic concern for authors) and the understanding function (gaining new skills and knowledge and exercising them). Both variables are correlated very positively to volunteering and constitutes powerful motives.

The issue of moral values related to a basic concern for others (value function) should be addressed by encouraging the view that volunteering is a valuable way to gain and exercise new skills and knowledge (understanding function), such as by support of positive “testimonials.”

Before discussing the theoretical implications, limitations should be mentioned in the critique by Hafer and Olson⁷⁶ of this kind of research. They pointed out that the mediation process should be investigated further. For this purpose, further variables should be taken into account longitudinally, such as the previously discussed perception of similarity, leading to empathy, between local inhabitants and refugees. Furthermore, the scope of justice variable needs further validation. This includes data sources other than self-reporting, such as assessments by peers or family members or by observing people in their interaction with refugees. Also, the problem of a lack of awareness about personal justice judgments could be dealt with by including additional methodological approaches in the form of more subtle measures of exclusion, such as reaction time methodologies.⁷⁷ Moreover, the sample should be enlarged by including people who actively reject refugees. Together with a longitudinal design, these concerns would result in clear causal conclusions in the future. It would also be of great

Table 3b. Hierarchical multiple regression of willingness to volunteer on social desirability and group membership (step 1) (volunteers coded as 1), volunteer functions (step 2) and scope of justice (step 3)

	Predictor	R^2	B	$SE(B)$	β	r
Step 1	Understatement of negative qualities		-0.01	.09	-.01	.04
	Exaggeration of positive qualities		-0.12	.07	-.10	-.13
	Group membership	0.13	0.92	.15	.35**	.36
	Constant		4.31	.46		
Step 2	Understatement of negative qualities		0.00	.07	.00	.04
	Exaggeration of positive qualities		-0.04	.06	-.04	-.13
	Group membership		0.63	.13	.24**	.36
	Career function		-0.04	.05	-.05	.06
	Value and understanding function		0.64	.06	.55**	.59
	Social function		0.09	.05	.10	.37
	Protective and enhancement function	0.42	-0.10	.06	-.08	.11
	Constant		1.25	.47		
Step 3	Understatement of negative qualities		0.08	.06	.05	.04
	Exaggeration of positive qualities		0.00	.05	.00	-.13
	Group membership		0.55	.11	.21**	.36
	Career function		0.02	.05	.02	.06
	Value and understanding function		0.39	.06	.33**	.59
	Social function		0.07	.04	.08	.37
	Protective and enhancement function		-0.06	.05	-.06	.11
	Scope of justice	0.56	0.53	.06	.44**	.64
	Constant		-0.93	.47		

Note. $F_{total} = 44.15^{**}$. $df = 8/260$. All variables range from 1 to 6, with a higher value indicating a stronger agreement.

* $p < .05$. ** $p < .01$.

interest to find out whether the identity of refugees matters to volunteers. Have race, gender, national origin, or religion an influence on the scope of justice? These unanswered questions require further research.

Some of the criticism has already been rebutted by providing a clear definition and operationalization of the scope of justice construct, as well as taking alternative explanations into account and testing them explicitly. In addition, the social desirability bias issue has been addressed, but this does not fully solve the problems associated with self-reporting measures.

On a theoretical level, the results show that models of volunteering and justice research, with special focus on the scope of justice, can be fruitfully combined in the field of refugee aid. In this respect, the present study can be regarded as a pilot study aiming to apply existing constructs and research traditions on justice to the understanding of

reactions to the current refugee movement and its potential for conflict, in view of the highly controversial reactions of those who are confronted with the influx in the host countries. Further in-depth research is needed to validate the findings, because in modern democracies, political measures can be implemented only if the majority of voters accept these measures. The recent political debate, in Germany and in many other countries, has shown how difficult and controversial such a discussion can become among different political parties but even within a single party, such as the CDU conservative party within the German coalition government. The scope of justice argument may enable this debate to take a more constructive, rational direction. And beyond the German borders, it shows on a scientific and political level how much perception of justice matters. The current migration movement, often disparagingly called a "refugee crisis," is a worldwide challenge that can be resolved only by

constructive cooperation between countries, their political decision-makers, and the citizens they represent. Empirical research shows that the justice motive is a universal principle but that judgments passed on justice differ from one individual to the next.⁷⁸ Judgments on the scope of justice with regard to the inclusion of refugees are of great importance for each individual's decision to volunteer and to accept refugees. This article therefore calls for a further examination, and possibly measures that contribute to an individual extension of the scope of justice.

NOTES

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Coercive Transnational Governance and Its Impact on the Settlement Process of Eritrean Refugees in Canada

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Abstract

This article will examine the transnational practices of the Eritrean government, and their impact on the settlement of Eritrean refugees in Canada. The focus is on actions by the Eritrean regime that have a negative effect on refugees' capacities for successful integration, and undermine Canadian sovereignty. The concept of coercive transnational governance (CTG) is introduced, to highlight this neglected aspect of refugee resettlement, with illustrations from 11 interviews, including eight Eritrean refugees, one Eritrean community activist, and two Canadian law enforcement officers, about the impact of CTG on Eritrean refugees' lives.

Résumé

Cet article examine les pratiques transnationales du gouvernement d'Érythrée et leurs conséquences sur l'établissement de réfugiés érythréens au Canada. Il est centré sur les actions du régime érythréen qui ont des conséquences négatives sur les capacités des réfugiés à réussir leur intégration et affaiblissent la souveraineté canadienne. Pour souligner cette perspective négligée de la réinstallation des réfugiés, il introduit le concept de Gouvernance transnationale coercitive (GTC), qu'il illustre à l'aide de 11 entretiens, parmi lesquels huit entretiens avec des réfugiés érythréens, un entretien avec un activiste de la communauté érythréenne, et deux entretiens avec des agents canadiens chargés de l'application de la loi, et il envisage les répercussions de la GTC sur la vie des réfugiés érythréens.

Introduction

Canada has been a safe haven for thousands of refugees who have fled dictatorial regimes in their home countries. It is in the interest of the Canadian government to create a secure system to protect refugees and ensure that their integration process moves smoothly, and that they overcome their challenges. While language barriers, unemployment, and lack of recognition of international credentials are the most-discussed obstacles to refugees' integration, the security challenges facing refugees have not received the attention they deserve. Intimidation, threats, and surveillance of refugees are some of them.² They put the peace and mental stability of some refugees at risk and delay their integration. The case of Eritrean migrants is a good example. This focus on Canada is particularly important, given the official critical position of the Canadian government toward the current Eritrean government, expressed in its support for the United Nations Security Council sanctions toward Eritrea, and Resolution 2023 (2011), for Eritrea to “cease using threats of violence, fraud and other illicit means to collect taxes outside of Eritrea.”³ This affirmation to uphold international decrees also calls for attention to the conditions for refugees who have been granted asylum in Canada.

Eritreans have been dispersed from their home country as a result of colonial aggression from 1890 to 1991, and the struggle against Ethiopia from 1961 to 1991, which contributed to the emigration of more than half a million people.⁴ The resettlement of Eritreans in Canada started in the early 1980s⁵ and continued to grow after Eritrea became

independent. They, like many African immigrants, have experienced challenges during their settlement process, including discrimination in accessing employment, finding a place to live, and mastering the official languages.⁶ However, their settlement experience is unique because their challenges come not only from the host society but also from the government of their home country. Additionally, while the literature on Eritrean transnationalism is focused on the conditions in Eritrea itself,⁷ our research brings a missing element in addressing the conditions of settlement in countries of arrival.

Transnational Governance

The term *transnational governance* became prominent in the twentieth century before the world grasped the change as an alternative to *globalization*. According to Djelic and Sahlin-Andersson, the words do not convey the same meaning: *globalization* is used to describe the activities done across geographical borders, while *transnational governance* is an integral part of geopolitical administration and the practices of a number of global institutions.⁸ In sum, “Governance beyond the nation state means creating political order in the absence of a state with a legitimate monopoly over the use of force and the capacity to enforce the law and other rules authoritatively.”⁹ It includes the ways a government governs its citizens beyond the geographic boundaries of its jurisdiction. However, this should not imply the “disappearance of nation-states,”¹⁰ or the undermining of international institutions that govern their activities without the interference of the states,¹¹ though it can erode territorial boundaries and blur standard regulations.

With the expansion of transnationalism, a number of regulations emerged globally. Baldwin, Scott, and Hood categorize three types of regulations: authoritative rules, efforts to steer the economy, and means of social control.¹² Therefore transnational regulation as a concept is a form of “governance in the sense that it structures, guides and controls human and social activities and interactions beyond, across and within national territories.”¹³ Such practices are documented, e.g., for Haiti.¹⁴ Some authoritarian countries, usually with high emigration, apply a diverse range of mechanisms to engage their diasporas for financial extraction.¹⁵ In Eritrea, the government retaliates against the families of exiled members by forcing them to pay a fine or face time in prison, and uses its institutions abroad to maintain political control and governance through fear from a distance.¹⁶ Or as Hepner articulates it, the Eritrean government interferes aggressively in the life of the Eritrean diaspora to be in command of their transnational activities.¹⁷ While coercive practices are documented in other countries, and there has been scant media attention to the issue, ours is the first Canadian

study to rely on interviews of Eritrean refugees about their experiences of transnational governance.

In the era of transnationalism, Aihwa Ong articulates the capacity of the nation-state to control its citizens wherever they are by using law, economy, and social apparatuses.¹⁸ For instance, some countries sign bilateral tax agreements and they cooperate with each other in taxing their citizens who live abroad. Such agreements can prevent citizens from double taxation¹⁹ or eliminate tax competition.²⁰ This type of transnational governance is done with the common understanding of both parties, and it may not create discomfort for their citizens.

To build on these analyses, we are introducing the new concept of *coercive transnational governance* (CTG) to describe what is practised outside of bilateral or multinational agreements without the knowledge of any other governments. CTG is a form of governance used by dictatorial regimes to maintain political control and secure financial contributions by force from their citizens who settled in the Western world as refugees. Refugee-sending countries practise CTG to exploit the wealth and resources of their transnational citizens through force or providing mandatory incentives to obtain necessary documents and to ensure the safety of family members still living in or attempting to leave the sending country. CTG has exacerbated the settlement challenges of Eritrean-Canadians for over a decade.

Indeed, the literature describes how the Eritrean state uses its transnational institutions not to cultivate the socio-political activities of its people or to enable their influence in the foreign world, but to restrict their activities, control their influence, and make them obedient to the regime.²¹

The Eritrean regime suppresses basic human rights and liberties by restricting travel and prohibiting political opposition, independent media, faith groups, or community organizations inside its borders.²² Additionally, the Eritrean state controls the lives of its citizens outside the country by installing undercover representatives in every community event, gathering, or association,²³ creating a “climate of fear.”²⁴ Significantly, Eritrean embassy and consulate officials in European and North American countries collect an involuntary 2 per cent income tax from Eritreans who work abroad,²⁵ described as a “rehabilitation and recovery tax” (*mehwey gibri*).²⁶ Such payments also affect the Eritreans who work in Middle Eastern countries, as they are required to have a valid passport to get a work permit.²⁷ The Eritrean government takes advantage of the situation and dictates that they must not only pay the 2 per cent tax, but also donate money to the Hidri Trust Fund²⁸ (which is owned by the ruling party) in order to obtain a passport. Those people have no other option(s); their residency in countries like Saudi Arabia depends on having a work permit, but the

governments of Middle Eastern countries do not interfere in the business of the Eritrean government, even though they know how the Eritrean government exploits its citizens inside their countries.

That is not an issue in Canada, but still the only office that represents the Eritrean government in Canada, the Eritrean consulate, uses extortion, threats of violence, and other illegal means to collect the 2 per cent income taxes from Eritrean-Canadians. Most are forced to pay because the government will not honour their request for passports or any other vital documents that can assist them to obtain permanent resident status in Canada. Even those who do not request any documents and refuse to pay the 2 per cent income tax are intimidated by agents of the regime. These immigrants are warned to do it for the sake of their families in Eritrea.²⁹ Eritrean refugees who have not paid the tax have experienced obstacles in sponsoring their family members from their home country,³⁰ or in obtaining educational documentation.³¹ Hundreds of millions of dollars are extorted each year in this way and are estimated to amount to 30–35 per cent of the GDP of Eritrea.³²

Those who pay the tax violate international and Canadian laws that prohibit monetary assistance to support military activities.³³ In May 2013, following years of complaints from members of the Eritrean community, the consul general of Eritrea was expelled after he ignored Canada's warning to stop soliciting money from the Eritrean diaspora for military and other purposes.³⁴

Background to Eritrean Migrant and Refugee Flows

Eritrea was a colony of Italy, Britain, and Ethiopia from 1890 to 1991 and experienced large-scale emigration by opponents of colonial rule.³⁵ As a result, about one-fourth of Eritrea's six million people still live in exile. After Eritrea's independence in 1991, the number of people who fled the country increased in response to gross human rights violations, forced labour, brutal administration, and a system of "ruthless repression" and "pervasive state control."³⁶ During the 30-year revolutionary struggle of the Eritrean People's Liberation Front (EPLF) from 1961 to 1991, about one million people escaped and ended up in refugee camps or were prevented from returning home.³⁷

The Eritrean diaspora in Canada began in the late 1970s to early 1980s.³⁸ Wherever they settled, Eritrean refugees were organized and mobilized by the EPLF to play their part in the ongoing struggle for independence of their country. During those years the EPLF expanded its activities as a social and political organization among Eritreans abroad, organized the diasporas into chapters of the EPLF, and used its mass associations to channel and manage their support in the revolution.³⁹

Migration slowed after Eritrea became independent in 1991, but the eruption of border conflicts with Ethiopia from 1998 to 2000 and political instability throughout the country forced many citizens to flee. According to the 2013 report of UNHCR, about 4,000 Eritreans flee the country every month to escape merciless repression, persecution, and forced labour.

Eritrea is a leading producer of refugees.⁴⁰ There are no accurate data on Eritrean populations in host countries in North America and Europe,⁴¹ mostly because during registration they have been classified as "Ethiopians" instead of "Eritreans," since most of them left the country before Eritrea's independence in 1991.⁴² According to the 2011 Household Survey, 13,430 people reported Eritrean ancestry.⁴³ However, according to community leaders, about 30,000 Eritreans live in Canada, the majority of them in Ontario.

Research Design

Having identified and named the practice of coercive transnational governance (CTG), this article aims to investigate its impact on the settlement process of Eritreans in Canada. The goal was to conduct a pilot project, identifying themes for a future, larger-scale analysis. The project was unfunded, limiting the sample size and the generalizability of the data.

Using maximum variation sampling,⁴⁴ eight Eritrean refugees were recruited because they currently dealt or had dealt with the Eritrean consulate for services. Six of the refugee participants were men and two were women. Four participants were married and the rest were single during their encounter with the Eritrean consulate. There is variation in the types of services they requested. Additional recruits included one human rights activist who has been vocal about the issue for a number of years, and two law enforcement authorities were also recruited for the relevance of their work in deterring organized crime.

The recruitment poster for this research was circulated among the email group and Facebook page of the Eritrean community, and posters were distributed in Eritrean restaurants in Toronto. Moreover, a letter of invitation to participate in the study was sent via email to 95 members of the primary investigator's network. Participants' desire to share their personal experience was overwhelming. No coercion was used. Eleven participants agreed and gave their written consent for the interview and audio-recording, and the interviews were conducted accordingly.

This study posed semi-structured, open-ended questions about (1) challenges of Eritrean refugees in the settlement process; (2) activities of the Eritrean consulate within the expatriate community; and (3) access to local law enforcement authorities in response to CTG actions of the consulate. The eight Eritrean participants were asked about their

resettlement experiences; the role of the Eritrean consulate in Toronto in their lives; the services requested or acquired from the consulate; the harassment or intimidation they experienced; whether they reported to police about coercion of the consulate; and recommendations on how to address/solve this issue. The interview with the human rights activist focused on capturing his perspective on the obstacles facing Eritrean refugees during resettlement; the role of the Eritrean consulate in the life of Eritrean refugees; and whether the activist had attempted to disclose the problem and the challenges they face.

Since there is very little literature on the challenges of Eritrean refugees in Canada, and many of them do not share openly out of fear, a one-to-one interview with refugees is crucial to capturing the essence of their lived experiences. The participants were proficient in English, but the interviews were conducted in English or Tigrigna (whichever the participant chose). Most participants responded to the interview questions in writing, but follow-up questions were answered on the phone and audiotaped, with the participants' consent.⁴⁵ Each lasted 15 to 25 minutes and was conducted between August and October 2015. Those eight participants arrived in Canada from 1999 to 2008. Five had issues with Eritrean CTG in obtaining exit visas for their family to reunite with them; two refugees had problems in renewing their expired passports, while the rest had difficulties in acquiring educational documents from Eritrea. In reporting the results, pseudonyms are used, to protect the identity of participants.

The results were analyzed using thematic coding,⁴⁶ identifying commonalities, differences, and relationships between sets of concepts and ideas.⁴⁷ Specifically, themes were formulated with a "prior-research driven method"⁴⁸ arising from literature.

Research Findings

Given the small size of the sample, it was not possible to make conclusions about variation in responses in relation to their demographic differences such as gender, age, or length of stay in Canada.

The interviews show that the readiness of the receiving society to accept refugees is crucial in determining whether those refugees will "sink or swim."⁴⁹ If they encounter obstacles in the initial stages of their settlement, their integration could be hindered.⁵⁰ Many of the participants reported challenges with getting refugee status or finding employment. However, most participants described the actions of their own government as the biggest barrier in their lives, through denial of passport renewals, exit visas to family members, birth certificates or original education documents, and interference in local community life. In the interviews, CTG was clearly found to create obstacles to Eritrean integration.

They reported difficulties with their (1) finances and education, and (2) family reunification, while they also (3) lived in fear and isolation, and (4) had issues reporting CTG abuses to authorities.

Problems with Employment and Education

The community activist asserted that educational futures of refugees were seriously affected by inaccessibility to educational documents. Aida, a refugee woman who had arrived in Canada in 2004, told of how her plan to pursue higher education was delayed for about four years as a result of the obstacles of the Eritrean consulate in Toronto: "I was denied access to my own documents that I had worked hard for and earned."

Even with educational credentials, refugees have more difficulties accessing affordable places to live in and finding well-paying jobs. As a result, their income is low and their stress level is high. They struggle to make ends meet for themselves "while sending provision abroad to support family members who have been left behind."⁵¹ They are not only exposed to the common challenges of refugees in creating a secure income but are also forced to pay 2 per cent of their income to the Eritrean regime. This breaks the financial backbone of many refugees at the very beginning.

Samuel, who has been in Canada since 2007, was asked to pay 2 per cent of his income and other fees to get his educational documents from the University of Asmara. He said, "In general, I paid around \$1,000 for the 2 per cent tax. Moreover, I didn't have a stable job. As a newcomer, you don't have any savings. Yet, you have to cover the grocery, rent, and everything you need for the baby. It was not easy."

The activist provided an example of one refugee he assisted:

There was one Eritrean who came to Canada as a government-sponsored refugee from a prison in Egypt. This guy left his wife and three children behind. He was getting some support from the Canadian government ... At the time when he was trying to bring his children and his wife, he was asked to pay the 2 per cent tax. When the calculation of the 2 per cent tax came, even the time he had spent in Egypt was taken into consideration ... To me, it is nonsense.

The second thing is at that time he himself was dependent on the Canadian government. In other words, your money and my money as taxpayers were taken away by the consulate. That's what surprised me.

Russom, who claimed asylum in 2001 and has lived in Canada since then, described his struggle elegantly. What surprised him most about the behaviour of the Eritrean consulate was their lack of consideration for disabled people

and individuals who live on social welfare. The office forced *everyone* to pay, regardless of the individuals' situations. He stated, "I was helping myself because I didn't have anyone to cook and clean my house, everything. So my cost was doubled like everyone else. They didn't even consider my personal challenges as a disabled person. The consulate was looking after my money, not after me as a person or a citizen." He was charged \$5 a month for the two years (2001–3) when he was on social welfare and 2 per cent of his income for the few months that he had worked. "I know there are people who paid over \$5,000 or \$6,000 from their income. I was so lucky. My damage was not too much but still it was not legal."

The inability to pay the extorted fees also creates difficulties for mobility, further hindering people's capacity to conduct their regular lives. Feruz, who left Eritrea legally to reunite with her family in Canada in 2010, was denied renewal of her passport, simply because she rebuffed the 2 per cent tax: "So I applied to the Canadian government for a travel document. I explained to them that the Eritrean government refused to renew my passport unless I paid the 2 per cent tax on my income. Then they asked me to present a written legal document from the Eritrean government, saying that they had refused to renew my passport because of that. However, the Eritrean consulate didn't want to give me a written document, and the Canadian government didn't understand. It was very challenging.

This obstacles can be endured only by determined refugees who know how the system works—like Feruz—or refugees who are willing to pay the price. The lack of understanding by Canadian government departments of how the Eritrean regime mistreats refugees throws many newcomers into a suffocating situation. As a result, Eritrean refugees feel helpless and sometimes are forced to break Canadian law to fulfil requests by the Eritrean consulate to donate money for military activities, which is illegal under Canadian law (this payment would be in addition to the 2 per cent tax on income). This puts at stake the safety of refugees as well as the sovereignty of Canada. As long as the Canadian government's policy is not tailored to address the Eritrean refugees' issues separately, their misery will continue and Canadian law will be challenged.

Problems with Family Reunification

One major issue facing refugees is reuniting with family members they had to leave behind. This is seriously impaired by CTG. The activist disclosed that a refugee whom he was assisting was forced to pay \$10,000 to the Eritrean Consulate to secure an exit visa for his wife. "If that money were here, that person could have used that money to invest in building his skills or use it as a down payment for his home, which takes him away from being a burden to Canadian society. Or

the money can also be used for the Canadian community, for that matter. So, you see the impact is so great."

Most participants were separated from their loved ones for a number of years. For the sake of their families and their loved ones who lived in the grip of the Eritrean regime, three participants fulfilled the demands of the consulate. They paid 2 percent of their annual income and donated money to military defence to get exit visas for their family and secure their educational documents from Eritrea.

Some refugees get exit visas for their family after their payments to the Eritrean regime. However, many participants believe that that does not work for everyone. They do not receive any guarantee from the Eritrean regime. The interviewees spoke of the risks they were forced to take, to get their families out of Eritrea by human smugglers, a physically and psychologically stressful, expensive, and dangerous enterprise. Yohannes entered Canada in 2008 and claimed for refugee status inland. He said, "In the last eight years that I have stayed here, I have spent more money to pay for their escape than what I spent to feed them while they were in Eritrea. You are forced to spend your four-year income for such a purpose because there is no other choice. It drains you financially and leaves you without any money. I was forced to pay US\$20,000 to the smugglers."

The experience of Belay is similar. He came in 2006, leaving his family behind, and claimed refugee status when he entered Canada. He had just finished his graduate studies and began working on contract. Despite his dire financial situation, he had to do *anything* to reunite with his family before things got worse in Eritrea. He noted, "I didn't have enough money to meet all my financial needs. So, what I did, I had to ask my friends and relatives for credit because I can't finance it with my credit card. I have to have cash, so I have to rely on friends and relatives who wish to reunite me with my family." He reunited with his family after four years of separation. Still, he could have paid off his student debt and gotten better housing if he wasn't forced to spend it on getting his family to join him. The tremendous amount of money that refugees are forced to pay the Eritrean consulate or smugglers to unite with their family is a real drain on their resources. This money could have been used to ease their financial challenges instead.

In 2015, after the Eritrean consulate had refused to assist Yohannes unless he paid the 2 per cent tax on his income. He noted, "When I decided to bring my family out, I just took a 50 percent chance, either to smuggle them successfully or lose them. There are soldiers who patrol the border day and night. If the smugglers try to smuggle them out while the army is on duty, they can be killed. The other thing is the issue of smugglers. You have no idea whether they are independent or whether they work for the government. So they

can take your money and not bring your family or they can sell them to other smugglers. The risks are huge.”

Likewise, Belay spoke of the dangers that threatens his psychological state: “The whole process was psychologically traumatic both for my family and me. The effect has long-term consequences. I was in a constant state of psychological turmoil and stress, which lasted for a very long time. In fact, it can affect not just your health and psychological well-being, but also that of your family.”

The risks these refugees took to reunite with their family are enormous. They put the lives of their loved ones in great danger to secure their ultimate safety. There was no guarantee of finding a safe way to escape from Eritrea, but that was the only option they believed they had. In the process, they were prepared to suffer psychologically, become broke financially, and pay any price to bring their family and restart their life in Canada. Unfortunately, the path of restarting a new life is not easy for most, as a result of the psychological trauma they experience as a result of tackling such great odds.

Fear and Isolation

Participants expressed a number of fears: safety of family members in Eritrea; safety of their passage to Canada; and the threatening presence of CTG in their lives in Canada, through the acts of the consulate and suspected community collaborators.

All participants believe that any activity they engage in Canada can negatively affect the fate of their family. They do not feel free or secure to reject or criticize the demands of the Eritrean consulate in Toronto, despite the protection they are provided by the Canadian government. The words of Yohannes are typical and reflect the isolation that results from mutual suspicion generated by the fear: “The office asks every individual to pay the 2 per cent tax, donate money, and the worst thing is the fear they have instilled in many Eritreans who live here. This makes all Eritreans suspicious of one another.” Russom stated that the main targets of the consulate are refugees: “They were taking advantage of refugees, especially refugees because they know that we have left people we love behind ... I cannot oppose what the Consulate is doing.” As a result of this threat, many Eritrean refugees live in a state of fear for their family members who still live in Eritrea. Since those refugees do not know how the system can protect them, they censor their conversations and activities and restrain themselves from complaining to Canadian law enforcement agencies for fear of retaliation to their loved ones by the Eritrean government. Even though they live in a presumably free and democratic society, they do not feel liberated.

The fear and intimidation of the Eritrean regime are pervasive. Feruz immigrated to Canada in 2010 to join her family. She said, “They threaten the people not to express their voice against the Eritrean government and force them to pay 2 per cent of their income.”

Samuel, a refugee in Canada since 2007, consolidated Feruz’s points by sharing his own story in the second week of his arrival. He was invited to attend a meeting in the church and was disturbed by what he heard: “The guest speaker was ... the Eritrean consul. His speech gave me nightmares about the brutality of the Eritrean regime. It continues even here. When I left the meeting, I cried all the way home. What he was saying was that everyone has to be up-to-date in paying the 2 per cent tax, and every household has to pay \$500 to fund the Eritrean defence forces.” Samuel said that the Eritrean consulate interfered in the business of the community centre that provides settlement services to newcomers:

The concern I have with the consulate is that they mix their consular business with the community groups, which are supposed to be non-partisan and non-divisive, focusing on the settlement needs of newcomers. To Canadians, the Canadian government, and the media, these groups look like communities from outside, but they are politically polarized; they use different tactics in isolating people who speak up about what happened to them under the regime. The consulate also spreads rumours to scare and control others who might follow the same path. They use scare tactics to threaten to retaliate against family and refuse to provide services that are meant for all newcomers. Instead, they only assist those who are loyal to the regime.

Front and centre of those refugees’ fear is their loved ones. They do not want their family members to be punished by the Eritrean government for disobeying the Eritrean consulate in Canada. They do not want their issues to end up in the public domain so that the Eritrean regime could retaliate against their loved ones. Those refugees do not see a shield of Canadian police that can protect them from this coercive transnational governance.

Refugees’ fears were compounded by the resultant isolation. What prevents most Eritrean refugees from reporting their complaints to Canadian law enforcement agents is fear of repercussions. They are afraid to testify or act as witnesses for the police because of their loved ones who live in their country of origin. Refugees say that their family members can be tortured, arrested, or forced to pay hefty money as a reprisal. Meanwhile, Canadian law enforcement agents will always need the cooperation of the victims to push cases forward and resolve issues. Agents may guarantee the safety of refugees in their jurisdiction, but not their families who

live outside Canada. Participants in this research know this and that is why they do not come forward to seek help. So they will remain fearful and isolated victims of CTG until the Canadian law enforcement agents figure out how to handle it.

Problems with Reporting CTG to Authorities

There is great lack of trust in the way police work in less developed and post-authoritarian countries.⁵² Immigrants who came from those regions tend to distrust police after their previous bad experiences and may not initially approach police for help. However, this was not an issue for the participants in this research. Instead, five participants did not seek help or file complaints with Canadian law enforcement agents out of fear of retaliation on their loved ones by the Eritrean regime. Ghebru, who found his way to Canada via the United States to claim asylum in 2008 said, “I and many others prefer to keep quiet because, for any action that is taken by me or someone like me here, our parents will eventually pay the price. They will get detained and have to pay a hefty amount of money. This is practised widely in Eritrea and, unfortunately, for that reason, many who have loved ones in Eritrea prefer to keep silent.”

The police officers interviewed declared that matters can be handled confidentially, although one of them also noted that victims would need further assistance to push cases forward. He noted, “Your complaints are a confidential matter between you and the police. If you complain about someone who is intimidating you and harassing you, the police can go to them to hear that person’s side of their story too. We realize it is a difficult situation. The best thing to do in these circumstances is to take notes about what happened to you, why you think it happened, who did it, and present that to the police. You can go to any police station in Toronto.”

Belay noted that in addition to fear, lack of knowledge of the Canadian system could be an issue for some refugees, a sentiment that was echoed by the community activist: “The problem lies with the mentality of some of our people. So far, they haven’t been really liberated, partly because some of them do not know that the law exists to protect them.”

However, three refugees had taken their issues to the RCMP and police, but they were not always happy with the results. Russom reported his experiences to a police station, only to stop his case because he was told that they could do nothing because he had not been “forced to pay.” This suggests that the way the RCMP or police handle the complaints may discourage Eritrean refugees from coming forward. Neither officer interviewed could talk about specific issues and instead pointed to standard procedures. How informed are police about the transnational nature of community politics, harassment, intimidation, and the controversial fundraising activities? As the demography of the country changes rapidly

as well as the nature of crimes, law enforcement officers may have some catching up to do to deal with immigrants’ issues.

To simplify the way refugees report their concerns or file their complaints, it is crucial to have a specific unit or at least contact persons in the law enforcement agencies who understand the complexities of the refugees’ issues. Otherwise, refugees will keep suffering because law enforcement agents do not understand their issues. Most of all, the CTG will keep undermining Canadian law by imposing rules on citizens of Eritrean origin. Those refugees are forced to donate money for Eritrean military activities, despite the fact that it is illegal in Canada. The actions of the Eritrean regime violate international law, undermining Canadian sovereignty, and worst of all, committing crimes against helpless refugees. This cannot be resolved by the local law enforcement agents, but by addressing the issue on the higher level—senior officials of the Canadian government with senior officials of the Eritrean government.

Conclusion and Recommendations

Canada has become home for thousands of Eritrean refugees who were forced to leave their country of origin because of war, colonialism, and political instability. Eritrean refugees face obstacles during their settlement process in Canada, including the language barrier, financial challenges, discrimination, and lack of employment. However, to make matters worse, unlike other African immigrants, their journey to a new life in Canada is jeopardized because of the coercive transnational governance of their home country. This new term was coined to accurately describe a practice that has been identified by other researchers regarding Eritrean regime.

In addition to contributing to the terminology of the subject matter, this article also aims to illustrate the impact of CTG on refugees’ lives. Eleven people were recruited for this research, including eight Eritrean refugees who arrived in Canada in the last 20 years, one community activist, and two law enforcement officers.

The findings clearly confirm the issues raised regarding the role of the Eritrean regime in controlling the lives of its people in diaspora, while giving a voice to the refugees themselves about the impact of those acts. The Eritrean consulate in Toronto creates insurmountable hurdles for Eritrean refugees in the initial stages of their settlement by instilling fear, by dangling its consular services for a payment of 2 per cent income tax and drying up the financial resources of Eritrean refugees. The participants shared a rocky transition to a new life. Their personal lives are put on hold by withdrawal of documents that they could use to establish a better start or to enjoy mobility to tend to their affairs. Their family lives are on hold as well, with many risking the dangers of human smuggling when the

exit visas of spouses and children from Eritrea are refused. The monetary and psychological costs that arise from these stresses created by the Eritrean regime are enormous.

One major barrier that all participants experienced during their settlement process was fear instilled by the Eritrean consulate, which effectively silenced the refugees' critical voices, because the consulate interfered and spied upon their activities and punished family members of any exiled person who spoke against the Eritrean government. Despite the presumed protection granted by the Canadian government, participants lived in constant fear of the regime that was trying to govern them from afar. Fear for the lives of family members prevents refugees from contacting Canadian law enforcement bodies, and those who do are frustrated by the unhelpful responses that further discourage people from coming forward.

The findings reveal that the Eritrean consulate is the cause of the rough transition and integration process of Eritrean refugees in Canada. Our research demonstrates that the consulate uses the facade of a legal office to interfere in the settlement and integration process of refugees by applying coercive transnational governance and undermining Canadian law. This undermines Canadian sovereignty, as the consulate dictates the lives of Eritrean refugees who will become Canadian citizens. Since the notion of a sovereign state is the freedom from interference by foreign sources or powers, the coercive transnational practices of the Eritrean government and businesses pose a challenge to Canadian sovereignty, interfering with the lives on its soil, of a group of people who are either citizens or future citizens. The government of Canada respects Eritrean sovereignty while objecting to—but not interfering with—matters internal to Eritrea. This is an unbalanced relationship in which Canada's government has to take charge to re-establish its sovereignty by putting a stop to unacceptable and illegal acts that jeopardize its population.

Recommendations

Several major issues and associated recommendations result from this study to alleviate the challenges of Eritrean refugees and secure Canadian sovereignty. Although the sample of this study is small, the refugees' experiences analyzed here suggest specific issues and point to possible solutions:

1. The major issue is that Eritrean refugees face financial decimation and general hardship in their lives, due to the payments demanded by representatives of the Eritrean government in their countries of exile. As a solution, a specific unit or at least a contact person could be designated by the Canadian government that allows refugees to file their complaints easily whenever they are threatened, receive demands to pay money, or are ordered to become involved in activities against their

will by the government of their home country or its representatives.

2. A related issue is that Eritrean refugees feel threatened by their former country of origin, do not feel that they are protected by Canadian government officials, and do not know who to turn to when they have difficulties with the Eritrean government and its representatives. There are a number of areas where this issue needs to be addressed:
 - The primary area is the need for government action. The Canadian government must address the concerns of Canadian citizens of Eritrean origin with the Eritrean government on a higher level and end the practice of the regime that undermines Canadian sovereignty and threatens citizens' safety. These complaints and concerns should also be officially conveyed at the international level, to the United Nations High Commissioner for Refugees.
 - A related issue is the education of newcomers about their rights and duties in Canada, and how the law enforcement agents operate to protect them. A related point is that those who are victimized by CTG should be given specific protection, to encourage them to come forward to make complaints.
 - Similarly, community service agencies and law enforcement agents should be educated about the specific needs and complex challenges of the refugee populations they serve. In this area, they should be made aware of the oppressive practices of dictatorial regimes and their use of consulate offices or individuals.
3. A further area of concern is lack of knowledge about the specific coercive practices of oppressive regimes against their former citizens abroad. To this end, there is need to promote and fund research on coercive transnational governance and experiences of certain groups of nationalities. Our small-scale study highlights the need to listen to the experiences of refugees and to follow up with larger-scale studies to identify and address their challenges. It is only by expanding this knowledge base that governments, community organizations, and law enforcement agencies can be convinced of the needs of specific refugee populations. Further research is needed on Eritrean and other populations facing CTG, to establish the prevalence of these different practices, and their consequences on the populations, including impacts on individuals and families.

NOTES

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No One to Bear Witness: Country Information and LGBTQ Asylum Seekers

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Abstract

This article examines the use of country information in determining claims for refugee status based on sexual orientation or gender identity. Limitations to country information remove diverse individual experiences from the “historical record” and obstruct marginalized individuals’ ability to prove their claims for protection. Discrimination and marginalization may be echoed and perpetuated within country information itself, which privileges certain voices over others. MD (same-sex-oriented males: risk) India CG [2014], the United Kingdom’s current “country guidance” decision on claims for protection by same-sex oriented men from India, is examined in light of these themes.

Résumé

Cet article étudie l'utilisation de renseignements sur le pays d'origine afin de déterminer les demandes de statut de réfugié en lien avec l'orientation sexuelle et l'identité de genre. Les limites en matière de renseignements sur le pays d'origine effacent du registre historique diverses expériences individuelles et font obstruction à la capacité qu'ont des personnes marginalisées de justifier leur demande de protection. La discrimination et la marginalisation peuvent être répétées et prorogées par l'information même délivrée par les pays, qui privilégie certaines voix sur d'autres. À la lumière de ces thèmes de réflexion est étudié le document du Upper Tribunal (Royaume-Uni) MD (same-sex oriented males: risk) India CG [2014], qui établit les lignes directrices actuelles de pays en matière de décision concernant

les demandes de protection pour les hommes homosexuels provenant d'Inde.

Introduction

Country information is an essential part of refugee status determination (RSD). Information about countries from which asylum seekers have fled (“countries of origin”) can help to prove that claimed experiences of past persecution occurred and that asylum seekers would be at risk of harm in future.² However, country information must not be used uncritically. It can never provide an objective, exhaustive guide to events in a particular country, as if recounted by an omniscient narrator of events. All sources of country information are selective, edited accounts of particular circumstances, of varying focus and breadth. These accounts must be interpreted rather than merely taken at face value, having due regard to their biases, priorities, and intended usage.

The potential of country information to mislead, and the corresponding need for informed and close analysis, is particularly acute in assessing the claims of asylum seekers whose claims for protection are based on their real or perceived sexual orientation or gender identity (referred to in short as “LGBTQ asylum seekers”). Sexuality is fluid, intensely personal, and potentially experienced in highly variable ways from person to person and within each individual’s own lifetime.³ Country information can provide only limited corroboration for how individual sexual acts or identities will be experienced, valued, or treated, or for the potentially significant distinctions between sexual minority groups (and

how such groups are perceived by agents of persecution) in countries of origin.

This article examines the use of country information in assessing claims for protection based on sexual orientation or gender identity. In particular, this article discusses the extent to which country information may be distorted by “privilege” and insufficient regard to diverse, individual, and intersectional experiences of sexuality and gender, with the United Kingdom Upper Tribunal’s “country guidance” decision in *MD (same-sex-oriented males: risk) India CG* [2014]⁴ (“MD”) analyzed as a case study. This article draws upon the author’s experiences as a former researcher and solicitor with an Australian law firm with a significant practice in refugee law.

Country Information: History and Controversies

“Country information” is information about other nations used in RSD. It is not only used to examine conditions in countries of origin; it may extend, for example, to information about countries through which asylum seekers have travelled in order to reach the jurisdiction in which their claims for protection are assessed. Country information can include very general information, like information about the history, geography, or demographics of a particular nation or a particular region. It can also be very specific, like information about particular locations, events, or individuals. It can arise from any number of sources. Although reports from governments and NGOs have traditionally been used in RSD, increasingly widespread access to the Internet and social media has expanded the range of materials used to corroborate claims about country conditions (and claims for asylum in general),⁵ including blog posts and information provided via social media. It can be produced for a variety of purposes: to chronicle conditions in a particular country, to draw attention to particular situations or particular types of abuse, or to support claims for asylum, whether claims by particular groups from particular countries or individual claims.

The weight afforded to particular sources of country information will vary from source to source. Reports by well-established international NGOs like Human Rights Watch or Amnesty International, or the United States Department of State’s *Country Reports on Human Rights Practices*,⁶ may be afforded greater weight in decision-making because of the stature of the organizations that have produced them,⁷ even over specialist groups looking into particular types of abuse or speaking out on behalf of particular groups.⁸ This is problematic. This weighting reinforces a professionalized, expert-driven, and “technocratic” model of fact-finding in human rights advocacy in which elite (and/or Western) voices, concerns, and methods are privileged.⁹

Country information is essential in RSD because it provides necessary context for asylum seekers’ claims to fear

persecution if removed from the countries in which they have sought asylum. Country information cannot, however, resolve each and every case on its own; “individualized” assessment is key to the appropriate functioning of RSD.¹⁰ In particular, the “credibility” of asylum seekers’ claims about why they fear harm in their countries of origin must be examined; decision-makers must determine whether asylum seekers are telling the truth about who they are and why they are seeking asylum. Furthermore, country information cannot provide an exhaustive, comprehensive, and objective account of every instance of persecution in a particular nation, especially where such persecution is merely *feared* or prospective.

Like any other form of fact-finding or research in human rights advocacy, country information will inevitably be shaped by “politics, culture, judgment, power, and many other dimensions,” rather than a mere account of the “facts.”¹¹ Country information may exaggerate the scale or extent of particular abuses, in order to draw attention to a cause or puncture public complacency. Alternatively, NGOs operating in countries of origin may downplay some abuses, or present them in more careful and measured language, so as to emphasize positive trends, maintain good relationships with local governments, or cater to the prejudices of intended audiences (within the country of origin or elsewhere). These practices, even where they serve a political purpose or make sense in a context of partial improvement, may present an inadvertently rosy picture of conditions (and endanger claims for asylum) when viewed outside that context. A portrait of *improving* conditions may be interpreted as a portrait of *good* conditions, when nothing of the sort was intended.

Country information may also be produced by governments, such as the Immigration and Refugee Board of Canada (IRBC)’s National Documentation Packages¹² and research reports collating information in response to specific inquiries,¹³ or the Australian Department of Foreign Affairs and Trade (DFAT)’s reports from overseas embassies.¹⁴ This information may either replicate factors that distort NGO reporting (for example, where, as in IRBC reports, official reports rely upon collation of material produced in unofficial sources) or prove subject to governments’ desire to present other nations in a positive or negative light, depending on their alliances and political interests.¹⁵ Hence, both the *collation* and the *production* of information by countries of asylum may be problematic. Even government decisions on which forms of country information to prioritize, and which forms to downplay, may be subject to these same pressures. For example, Australia’s decision to dictate that RSD officials must take account of DFAT’s country information assessments, with no equivalent dictate to consider any other form of country information, was understood and reported as an effort to “toughen up the asylum seeker claims process.”¹⁶

Calls for caution in how country information is employed and interpreted are nothing new.¹⁷ Goodwin-Gill and McAdam, for example, have observed that although documentary evidence, including country information, “has a seductive air, often seeming sufficient to decide the case,” country information that is not related personally to the applicant “often gives only a general impression, more or less detailed, of what is going on.”¹⁸ This “seductive air” derives from the seeming certainty and clarity of country information, as compared to the perceived subjectivity or unreliability of witness testimony.¹⁹ Like other asserted “facts” in human rights advocacy, this appeal of country information derives from “the residual appeal of the notion that there are things that are ‘true,’ ‘evident,’ or ‘concrete’ when all else appears fickle, contestable and subjective.”²⁰ Where it is frequently perceived that “refugee claimants tell lies”²¹—a particularly common and pernicious view in the context of claims based on sexual orientation²²—and other forms of corroboration may be lacking, country information bears the sheen of perceived objectivity. This allows it to play a crucial role in the “surveillance of authenticity” that dominates contemporary RSD.²³ Nonetheless, as Macklin has written, country information “usually paint[s] a canvas with broad, crude brush strokes.”²⁴ To this end, the Hungarian Helsinki Committee have asserted that country of origin information “cannot reflect the entire reality in countries of origin,” that no source can be regarded as entirely objective, and that “COI is not a lie detector; it provides the wider context for the assessment of an asylum claim, yet it cannot tell whether the applicant is truthful, neither can it decide whether the claim is well-founded.”²⁵

There is another line of critique that stresses the uneasy historical antecedents of “country information.” The collection and collation of information was a crucial means to establish and maintain colonial control;²⁶ the contemporary practice of building “archives” of country information cataloguing human rights abuses, including abuses on account of sexual orientation or gender identity, have been questioned as the potential reiteration of “older colonial tropes” of the essentialized, intolerant, archaic “other” situated in contrast to the tolerant, accepting jurisdiction of refuge²⁷—jurisdictions that, in the context of claims on the basis of sexual orientation or gender identity, have disproportionately proven to be former colonial powers or settler colonies.²⁸

Issues have also raised with the use of country information in assessing claims for asylum based on sexual orientation or gender identity. The notorious use of tourist guides as evidence of the toleration of same-sex sexual conduct has drawn widespread condemnation.²⁹ Millbank has noted difficulties in drawing conclusions about “plausibility” of claims from country information,³⁰ including deeming

relationships to be implausible on the basis of endemic societal homophobia or criminalization—a form of reasoning under which “the claim of virtually every asylum seeker who has had, or attempted, a same-sex relationship in their country of origin is implausible because of the inherent risk it entailed.”³¹ LaViolette has examined the history of, and ongoing difficulties within, Canadian usage of country information regarding LGBTQ asylum seekers,³² while Rehaag has stressed the need to “disaggregate” the treatment of different groups within the sweeping category of “LGBTQ” in country information.³³ While building on these pioneering works, however, this article differs in several respects: its integration of practical insights from the author’s experiences as a legal practitioner in Australia, its focus on questions of “profile,” “privilege,” and intersectionality, and its integration of theoretical critique with close analysis of one particular decision (the Upper Tribunal’s decision in *MD*).

Despite this history of criticism and debate, the use of country information still remains problematic, even given improvements in this regard (in particular, in the documentation of abuses against sexual minorities) since the early 1990s.³⁴ As borne out by the author’s experiences in practice, decision-makers still assume that country information is exhaustive, accurate, and universal in its application in a way that is not matched by the actual sources available—or, of course, by any source that could ever possibly *become* available. As explained below, these practices are particularly damaging in the context of claims for asylum by LGBTQ people.

Suffering in Silence: Difficulties in Corroborating Diverse Experiences

“Low-Profile” or “Ordinary” Applicants

Very few applicants for asylum will be able to point to country information that is about them, personally, and that independently corroborates who they are, why they fear harm in their country of origin, and what will happen to them if they return.³⁵ In most cases, therefore, asylum seekers will be required to corroborate their claims for protection by reference to country information about how *similarly situated* people are treated in their countries of origin. Such information may be expressed in general terms—for example, the assertion that “Tamils throughout [Sri Lanka], but especially in the north and east, reported security forces regularly surveilled or harassed members of their community.”³⁶ It may also consist of references to the experiences of specific individuals other than the applicant whose claims are being considered—for example, the assertion that “an overseas travel ban on human rights activist Balendran Jeyakumari ... was imposed for an indefinite period.”³⁷

Even this information, however, may be of limited usefulness or applicability. Whereas country information generally

abounds with coverage of the treatment of “high-profile” victims (whether that profile predates their experiences of persecution or is a result of their unique experience of persecution), it is often less capable of providing a full account of the lives of “ordinary,” “low-profile” people, and of how they are likely to be regarded by potential agents of persecution. Although, for example, attacks on prominent LGBTQ individuals or attacks with unusually severe consequences or characteristics may receive media attention, not every act of homophobic violence will receive equivalent coverage—and still less in outlets to which RSD officials have access. This has implications beyond merely meaning that “ordinary” applicants cannot provide direct corroboration for claimed attacks; it can lead to the distorted impression that *only* high-profile individuals are at risk, or that the small sample of abuses that are publicised are, in fact, the only instances of such attacks.

This lack of evidence regarding the treatment of “ordinary” individuals may result from a focus upon high-profile incidents of violence, or “only the most egregious” situations,³⁸ rather than the broader effects of discrimination, ostracism, and social stigma—paralleling longstanding allegations that international NGOs unduly neglect deprivations of social and economic rights in their reportage.³⁹ This focus upon particular forms of abuse may also derive from the fact that such abuses can retain their shocking or shameful quality removed from context (because of the universal comprehensibility of physical harm), and hence remain recognizable to various imagined audiences of “country information”—such as readers of newspapers based in the West, privileged communities in countries of origin, or constituencies invested in the work of international NGOs.

The question of “privilege” under the Refugees Convention is not new. It has, for example, previously been considered in terms of the unique opportunities enjoyed by individuals able to reach countries of asylum, as opposed to equally deserving individuals “left behind” (popularized by the notion of “queue jumpers”);⁴⁰ in terms of gender, including “refugee law’s bias towards recognition of masculinised experiences”;⁴¹ or by reference to the disproportionate chances of success in RSD enjoyed by applicants with legal assistance.⁴² However, it is also possible to speak of the privileges enjoyed by certain applicants in RSD through the disproportionate representation of the experiences of similarly placed people in country information, and the corresponding disadvantages faced by other (often “ordinary”) applicants whose experiences do not receive the same coverage. Individuals who enjoy politically or personally privileged positions in countries of origin—whether in terms of gender, race, class, social standing, or otherwise—may enjoy greater opportunities to have their experiences reproduced in country

information. This inequality is compounded by difficulties faced by NGOs, particularly NGOs without international backing, in investigating and publishing information.⁴³ Beyond chronicling disadvantages, how these “privileged” individuals experience and express their sexual orientation or gender identity may differ from less-privileged individuals—contributing to what Juss terms “the conceptualisation today of refugee rights as bourgeoisie rights.”⁴⁴

These “privileges” enjoyed by some LGBTQ people are, of course, no answer to the disadvantages that these same “privileged” applicants will face on other fronts. Individuals may enjoy a privileged position in publicising their struggle and in representation in sources of country information, or other forms of privilege within their country of origin generally, while at the same time facing serious risks of persecution on account of their sexual orientation or gender identity. Not even the experiences of these individuals can be assumed to receive appropriate coverage, whether because state persecution of LGBTQ people may extend to the suppression of international or national groups that advocate for their cause⁴⁵ or even because of homophobia of domestic human rights bodies who would otherwise champion civil rights against the state.⁴⁶

Distortion in favour of particular incidents, particular individuals, or particular subgroups is not restricted solely to LGBTQ claimants. It is often difficult to establish an endemic pattern of abuses, or to assert the frequency with which abuses occur, on the basis of country information that attests to past examples of persecution, simply because the day-to-day experiences of “ordinary” individuals are difficult to deduce or infer from the unrepresentative sample of abuses that do receive reportage.⁴⁷ The unique experiences of high-profile individuals must be understood in terms of their specific circumstances—that is, whether they are more or less likely to suffer particular forms of abuse as a result of their personal profile and its sources. Those experiences may have limited use in assessing the experiences of other people who possess different levels of privilege or disadvantage.⁴⁸

Intersectional Claims

Asylum seekers may have multiple, overlapping claims for protection. These claims cannot be assessed in a vacuum; instead, the “potential cumulative effect” of an applicant’s claims and personal circumstances must be assessed.⁴⁹ Even if no single part of an asylum seeker’s profile would *of itself* be sufficient to attract adverse interest, individuals may be at risk of persecution because aspects of their profile may exacerbate the risks associated with other aspects. For example, lesbians, bisexual women, or trans women may face risks of persecution as a result of their gender identity or sexual orientation *and* because of discrimination against women in

general, while, in turn, facing greater risks than they would face on account of any single one of these characteristics. Millbank notes in this regard that claims for protection brought by lesbian asylum seekers in Canada and Australia disproportionately involve experiences of sexual assault, even beyond the high rates of sexual violence reported by LGBTQ claimants for asylum as a whole as part of their claims for protection.⁵⁰ These claims should not be viewed simply in terms of violence against women, or in terms of the accessibility of support services intended for women as a whole; the role of state and societal homophobia in prompting such attacks or restricting access to redress must be considered.⁵¹

The term *LGBTQ* needs dissection in this regard. Although this initialism is used as shorthand in this article, the term disguises the extraordinary diversity of human experiences of sexuality and gender by conflating the potentially very different experiences of different sexual minorities. Where, for example, country information documents the experiences of men who engage in same-sex sexual conduct, it should not be assumed to reflect the experiences of lesbians, bisexual people, or trans people. Where country information is produced by gay men—who may, by virtue of their gender, face reduced social barriers in telling and publicizing their stories than cis or trans women—it should not be assumed to be free from societal prejudices against lesbians, bisexual people, or trans women (potentially even exhibiting sexism and/or transphobia) or immune to, or even conscious of, the privileges enjoyed by gay men by virtue of their gender. More broadly, country information produced by one subset of the LGBTQ community may replicate or ignore that subgroup's privileges (social, economic, gendered, or otherwise).

Intersectional claims create difficulty in using country information. Sources assessing or documenting risks faced by LGBTQ people may be (understandably) written with regard to harm attributable explicitly to victims' sexual orientation or gender identity, without focusing on elevated risks faced by some individuals on account of different characteristics—carrying out, in the process, what Kimberlé Crenshaw terms the “elision of difference” in non-intersectional identity politics.⁵² Even where such accounts purport to merely document the experiences or cultural assumptions of particular groups, they may inappropriately conflate the experiences of various sexual minorities—for example, erasing the distinct experiences of lesbians through blanket references to “the non-gendered but male-centred category of ‘homosexual,’” or through the use of country information solely regarding the treatment of gay men to assess the claims of lesbian, bisexual, or trans asylum seekers.⁵³

Similarly, reports of racial or religious discrimination may focus upon those aspects without considering intersectional forms of harm for particular members of minority

communities, including LGBTQ people who are also members of racial or religious minorities. Various overlapping facets of identity shape individual experiences of “realisation or violation of human rights”;⁵⁴ reports purporting to document such violations should make clear (as far as possible) varied experiences of persecution or the extent to which persecution may result from an aggregate of different factors.⁵⁵ Accounts of the causes of particular human rights abuses must draw upon, not merely make “passing references” to,⁵⁶ the diverse experiences of differently placed individuals.

As noted above, country information may disproportionately represent the experiences of “privileged” individuals—whether because those individuals whose experiences are studied or who are able to attest to particular conditions speak the same language as interlocutors, because they are familiar with civil society or legal mechanisms to publicize particular abuses (or are themselves directly involved in producing country information), or because their experiences are seen as more relatable or of greater interest to intended audiences. Individuals who suffer from multiple intersecting forms of disadvantage face correspondingly greater barriers to having their stories heard and, in turn, to ensuring that their disadvantage is reflected in available sources of country information; they risk being diminished by the preference in human rights fact-finding for a “single story” in which diverse experiences are blurred or diminished.⁵⁷ This tendency may be compared to asylum advocates' presentation of “simplistic, even derogatory characterizations of asylum seekers' countries of origin, as areas of barbarism or lack of civility in order to present a clear-cut picture of persecution.”⁵⁸ Decision-makers, advocates, and governments alike have an interest in the preservation of neat, simple stories of who is at risk in other nations and who is not, from the point of view of researching claims, placing claims within a Convention framework and deciding claims. The experience of intersectional persecution, in which individuals' claims do not turn on singular characteristics capable of expression in template submissions or being dispensed with in template decisions, cuts against this interest. (The dangers of undue generalization or “simplicity” in this regard are evident in the case study of *MD*, considered below.)

“Discreet” or “Ashamed” Applicants

Not all asylum seekers have necessarily suffered persecution. Past harm is not a prerequisite for refugee status, which turns instead upon whether individuals have a “well-founded fear” of persecution if removed to their country of origin. Although RSD officials may grant greater credence to a fear of harm if that harm has, in fact, occurred in the past, a fear can be credible even if applicants have been lucky or cautious enough to ensure their own safety to date. In particular,

asylum seekers may have been able to escape harm in the past by concealing their identities, or those aspects of themselves that would otherwise have attracted persecution. They cannot, however, be expected or required to resume such secrecy if removed to their countries of origin, even if it has kept them safe to date.⁵⁹

LGBTQ asylum seekers may not have been open about their orientation or identity prior to leaving their country of origin. They may, for example, have concealed these aspects because of their own “feelings of shame and the consciousness of being the subject of disapproval or disgrace” as a result of prevailing societal homophobia,⁶⁰ including internalized homophobia.⁶¹ The fact that many LGBTQ people in nations with persecutory laws or societal customs do live “quietly” or “discreetly,” whether by choice or fear, makes it difficult to prove the risks that they would face if they *were* to be open about their sexual orientation or gender identity.

In examining country information about states where most LGBTQ people hide their identities, it can be difficult to determine the level of risk that individuals would face if they were to reveal their sexual orientation or gender identity. Where individuals in these circumstances do suffer harm, they may fail to report it, whether to state authorities or to NGOs, for fear of further discovery. It may not be clear if reported incidents of abuse represent isolated events unrepresentative of broader social attitudes or are, in fact, the inevitable or likely consequences for those few individuals whose sexuality is open or discovered. That is to say, one cannot necessarily extrapolate from circumstances of widespread repression and concealment what would happen to individuals who refuse to conceal their sexual orientation or gender identity, simply because these individuals are so rare and so exceptional. Silence in country information creates the illusion of safety.

To the extent that the experiences of some LGBTQ people in countries of origin are known, RSD officials must consider the extent whether such experiences are representative of the LGBTQ population as a whole (or, to be precise, of that particular subset to which an individual applicant belongs) and whether those experiences reflect the likely outcome of LGBTQ asylum seekers being open about their sexual orientation or gender identity upon return to their country of origin. In doing so, RSD officials must consider whether individuals who are able to openly profess their sexual orientation or gender identity in their country of origin, and whose experiences are known from country information, are exceptional in some respect—for example, whether they enjoy economic, social, or political capital that allow them to be open about their sexuality in a way that most individuals would not, and hence whether individuals who would otherwise be too discreet or ashamed to reveal their true

orientations or identities would face entirely different, and potentially far graver, circumstances upon their return. (This requires, again, distinctions to be drawn within the category of “LGBTQ.”)

Atypical Applicants

Individual experiences of sexuality and gender are uniquely personal.⁶² Even where asylum seekers’ understandings of their sexual orientation or gender identity are informed by culture, or by participation in a given subculture, everyone will understand and express their sexual orientation and/or gender identity in a manner informed by their own experiences and outlook. RSD officials must not assume that particular, culturally specific modes in which sexuality may be expressed or manifested will determine, or even influence, asylum seekers’ lived experiences—whether such modes are the product of RSD officials’ own cultures or are predominant in the countries from which asylum seekers have come.⁶³ RSD officials should not, for example, assume that individuals who fear harm because they have engaged in same-sex sexual conduct identify with any particular sexual minority or as possessing a given orientation or identity. This is because of the extent to which self-identification may be shaped by cultural context, including shame and stigma, and, more broadly, because individual narratives of “self” should not be assumed to be predictable or uniform in this manner.⁶⁴ The process of relating to another individual’s experiences of sexuality and culture, and in turn considering these experiences in terms of the criteria for refugee status, is one that requires “empathy and imagination.”⁶⁵

Whereas country information may be used to provide a general impression of the circumstances of a particular group in a particular nation, or to provide some basis for assessing whether claimed actions or events are plausible, it cannot substitute for individualized assessment. The fact that other individuals, even individuals from a similar personal or cultural background, acted or were treated in a particular manner does not mean that this would be precisely replicated in every subsequent circumstance. In particular, the fact that given actions—whether by the asylum seeker, the feared agents of persecution, or someone else entirely—are not “reasonable” does not mean that such actions are not “plausible.” Just as, for example, it may be plausible for politically committed individuals to act upon and express their political beliefs even where it is not in their interests to do so,⁶⁶ so too individual actions are not always purely the result of context (that is, what their cultural or historical background dictates) or a utilitarian calculus; people do not always act consistently or rationally.⁶⁷ Country information, in demonstrating how similarly placed individuals would act, cannot be used to discount claims that a person has acted

in an exceptional or atypical manner.⁶⁸ Unlikely events still happen.

This assumption of uniformity poses particular difficulties for LGBTQ asylum seekers who do not present in a manner that comports with the stereotypical assumptions of decision-makers of how LGBTQ people “ought” to act, whether in their own country or in the asylum seeker’s country of origin. Such determinations turn to a significant extent upon whether claimed behaviour fits within “expected norms.”⁶⁹ The entire spectrum of human sexual identity cannot be captured by stereotypical assumptions of this kind.

As Rehaag has documented,⁷⁰ bisexual asylum seekers face particular difficulty in this regard, whether because of the continued belief among decision-makers (or, indeed, among individual advocates) that “heteronormative gender roles and same-sex sexual desire are somehow mutually exclusive”⁷¹ or simply because decision-makers and advocates seek to fit individual sexual orientations or identities within settled, if unsatisfactory, dichotomies of “innate,” “immutable” personal characteristics⁷² for ease of explanation or disposition⁷³—contrary to lived experiences of fluid sexual identities.⁷⁴ These damaging assumptions stem from and perpetuate the “invisibility” of bisexual experiences.⁷⁵ As a result, bisexual asylum seekers may be disadvantaged through the preponderance of “expected gay narratives” in societies in which asylum is sought (even as a product of gay activism itself).⁷⁶ Women may similarly be disadvantaged because of the extent to which their sexual or gender identity self-formation may differ from that of men,⁷⁷ given the dominance of male voices and narratives in the countries in which asylum is sought (or even among drafters of country information).

These limits to country information must be borne in mind in its interpretation and use. The rejection of “stereotypy” and undue homogeneity in this regard is important in ensuring appropriate outcomes in RSD, in resisting a broader tendency towards “cultural arrogance,”⁷⁸ in rejecting one particular model of the “acceptable” LGBTQ refugee upon asylum seekers and in preventing a regime in which asylum seekers are forced to curtail individual self-expression or manifestations of identity inconsistent with “the refugee-granting nation’s image of the ideal refugee.”⁷⁹

Applicants Who Fear Harm from Inconsistently Applied Policies or Laws

In some cases, a nation’s criminal law may formally prohibit same-sex conduct or relationships while at the same time seldom leading to formal prosecutions. (India is one of these nations. How this situation has been viewed in practice in RSD is explored in the case study of *MD* considered below.) Prosecutions are not the only way in which such laws are

employed. Formal criminal prohibitions may be used to justify arrests, blackmail, or abusive behaviour by the state, or to legitimize discriminatory and oppressive behaviour by non-state actors (secure in the knowledge that the state will not intervene to protect sexual minorities). While country information may be able to document formal prosecutions and to record how frequently they occur, researchers face far greater obstacles to determining how often and on what scale these lower-level forms of abuse arising from prohibition occur. As LaViolette writes, “It is difficult to rebut the presumption of state protection when human rights documentation is unavailable or provides little information on attitudes and actual practice.”⁸⁰

Even where, for example, the state maintains a formal position of neutrality or tolerance, this may not be honoured in practice. State officials may continue to commit abuses against LGBTQ people in spite of nominal guarantees of human rights, whether because LGBTQ people are unable to access redress against blackmail or extortion or because the state is incapable of restraining its own agents from acting upon societal homophobia or transphobia. Alternatively, violence against LGBTQ people may be regional or localized, whether because of repressive laws at the subnational level or because government officials in some provinces or districts act differently from their counterparts elsewhere in the nation. State laws should not be used as “a proxy for the composite repression within the state,” whether such repression is exerted by state or non-state actors.⁸¹ The extent to which nominal laws are, in practice, modulated by other moral and social norms must be reflected in the production and use of country information.

Country information speaks in terms of probability, not certainty. It cannot speak of the precise outcomes of particular situations, or the precise treatment to which particular individuals would be subjected upon their return. It merely provides a basis for determining the likelihood of particular scenarios. This is particularly important in assessing the potential consequences of laws, policies, or state practices. Decision-makers cannot simply take the existence of a particular law, or the lawfulness of a given practice, to mean that that law will be applied uniformly in all circumstances. They must instead take into account factors such as corruption, scope for arbitrary or capricious behaviour by state officials, and (crucially for present purposes) the extent to which laws will be differently applied against LGBTQ people (or, alternatively, against different segments of the LGBTQ community)—including, for example, the use of laws that do not explicitly criminalize same-sex sexual conduct to prohibit such conduct in practice.⁸²

Denial of access to justice has lasting effects in this regard. The arbitrary and unpredictable enforcement of laws thrives

in an environment where marginalized communities (including LGBTQ people) are incapable of accessing the courts or enjoying legal or logistical help in preparing and presenting claims. Exclusion of LGBTQ people from presenting claims or defending themselves within the formal legal system also prevents abuses of these kinds from being reported or brought to light within country information; brief, cursory trials or summary decisions are far easier to conceal than sustained legal challenges to unjust legal or societal barriers. Discrimination and marginalization in countries of origin are reflected, even if partially, within country information, and hence may be replicated within the RSD process itself.

Applicants Who Fear Harm from Non-State Actors and Families

Many LGBTQ asylum seekers fear that they will be harmed because of their sexual orientation or gender identity by family members, neighbours, or other members of the community, and that the state will be unable or unwilling to redress such abuses. It is generally accepted that the Refugees Convention provides protection against the actions of non-state actors, even where the state is merely unable, as opposed to unwilling, to provide protection.⁸³ (Individuals may also, as in *MD*, fear both state and non-state actors.)

Feared abuses by non-state actors may be very difficult to corroborate with country information, which is far better equipped to discuss state policies, and risks resulting from state action, than risks arising from societal or familial violence. State actions can often be described in relatively uniform terms, applicable to large classes of people. State actions can even be attributed to particular documents or laws and are in turn capable of redress through “top-down legal-institutional reforms.”⁸⁴ Risks arising from social or family attitudes are inchoate, highly variable, and resistant to generalization. Country information may, for example, be able to attest to widespread societal intolerance, but it cannot (usually) substantiate claims that an individual applicant’s family are uniquely homophobic or transphobic, or lend credence to threats by particular non-state actors—whether families, clerics, or vigilante groups—to harm a person in a particular way if that person returned. (This is related to refugee law’s broader problem in connecting the legal category of “persecution” to the complexities in practice of “contingencies of structural violence,”⁸⁵ and the “state-centricity of human rights law” in general.⁸⁶) This lack of information potentially contributes to a “simplifying tendency,” of both advocates and decision-makers, in how circumstances or attitudes in other countries are regarded,⁸⁷ or else to a tendency to regard undocumented abuses as being insufficiently severe to constitute “persecution.”⁸⁸

Decision-makers must remain sensitive to the fact that not all risks can be corroborated, even by deduction from the experiences of others recorded in country information. Adverse inferences should not necessarily be drawn about applicants’ credibility or the probability of future harm simply because their experiences are the product of societal attitudes rather than state policies. Such inferences must also be avoided where the agents of persecution feared by the asylum seeker, whether a particular family or even a particular individual, are outliers or unrepresentative in this regard (and not easily proven). Individuals’ ability to live and love as they choose cannot be understood solely in terms of those individuals’ relationships with the state in their countries of origin.

Female applicants may face particular disadvantages in this regard. As Millbank has noted regarding hate crimes in Australia, “Lesbians face significantly more ‘private’ violence than gay men—they are more likely to be harassed and assaulted at home or at work rather than on the streets, and more likely to be attacked by men known to them, such as neighbours or former partners.”⁸⁹ Claims based upon treatment of this kind in asylum seekers’ countries of origin have historically faced significant difficulties in being characterized as Convention-related⁹⁰ or as reaching the level of severity necessary to amount to “persecution.”⁹¹ In addition, they are less likely to receive the level of attention in country information directed towards more “visible” forms of persecution (such as violence or penal sanctions), including because these same social attitudes may exclude women’s stories from available sources.

Case Study: *MD* (same-sex-oriented males: risk) *India CG*

MD is a gay man and a citizen of India. Because of his sexual orientation, he was expelled from his family home, he lost his employment in Mumbai, and he was arrested, detained, and beaten by police in India.⁹² He applied for asylum in the United Kingdom in November 2007. His claims for asylum were finally rejected by the Immigration and Asylum Chamber of the Upper Tribunal on 12 February 2014—two months after the Supreme Court of India’s decision in *Koushal v Naz Foundation* (“*Koushal*”)⁹³ affirmed the constitutionality of section 377 of the Indian Penal Code. Section 377 prohibits “carnal intercourse against the order of nature” and is widely understood to criminalize same-sex sexual conduct.

In *MD*, the tribunal found that neither *MD*, nor “same-sex oriented males” in general, would face a “real risk” of persecution if removed to India. The tribunal’s findings in *MD* constitute a “country guidance” decision—that is, its findings on which groups are at risk are binding upon future British

decision-makers in asylum cases.⁹⁴ It is hence itself a form of country information. This decision has also shaped the UK Home Office's *Country Information and Guidance* on claims for asylum based on sexual orientation and gender identity from Indian nationals.⁹⁵ The decision's character as a "country guidance" decision is central to this article's criticisms of its findings. The tribunal did not consider solely whether MD would be at risk, but expressed its findings on the risks faced by the broader class of "same-sex oriented males." This is a very broad category, overlapping with but not encompassing (or necessarily encompassed within) the category of "LGBTQ people in India." The breadth and artificiality of this category (given the extent to which it groups together a wide array of subgroups with which individuals may more readily identify) creates difficulty in providing precise guidance for how claims from this group should be regarded.

The tribunal considered various sources of country information, including reports from the UK Home Office, the US Department of State, the research divisions of RSD institutions in Canada and Australia, and numerous news reports.⁹⁶ The tribunal devoted far more attention in its decision, however, to the written and oral evidence of Dr. Akshay Khanna, at that time a research fellow with the Institute of Development Studies at the University of Sussex. The tribunal acknowledged Khanna's evidence regarding the limited reporting and varying impact of abuses⁹⁷ and his emphasis on differential treatment of gay people in India based on class. As Khanna stated, "If one is explicit about being gay, and is not upper class, it would be difficult to find both housing and employment" or to be part of a cohabiting relationship,⁹⁸ with poor and working-class same-sex-oriented males "being most likely to face extreme violence, exclusion and discrimination."⁹⁹ Khanna's evidence was that "same-sex desiring' males, except those in the upper classes," were at risk of violence, police extortion, and societal discrimination in India, with LGBT persons in general suffering from a lack of police protection.¹⁰⁰

In reaching this view, Khanna highlighted limits to available information. For example, while section 377 has rarely led to prosecutions in the higher courts, "that is not to say that the provision has not been used in the lower courts,"¹⁰¹ with no national records to enable a comprehensive analysis.¹⁰² Despite Khanna's caution, the tribunal was satisfied that such prosecutions are extremely rare at every level of the judiciary, given "the dearth of examples of such prosecutions before us."¹⁰³ Equivalent reasons were given, with far less justification, for rejecting Khanna's evidence of endemic police violence against LGBTQ persons—legitimized and shielded by the existence of section 377—in India. Noting the existence of "a significant LGBT rights network of NGOs in India" and litigation in support of LGBTQ rights, the tribunal

asserted (even while accepting that many abuses by police go unreported) that "had the practice of violence and blackmail of LGBT persons by the police been at the level Khanna suggested it is, or at such a level that it could be said that there is a real risk to any particular same-sex oriented male, we would have expected this to have been better reflected by the examples of such treatment given in the evidence before us."¹⁰⁴ (As explored above, there are myriad potential explanations for such silences in country information.)

The tribunal hence concluded that police violence, extortion, and blackmail against same-sex oriented males in India is not "so prevalent as to constitute a real risk to any given same-sex oriented male, *whatever their class or status in Indian society*" (emphasis added).¹⁰⁵ The tribunal did not accept that this state of affairs would be altered by the Supreme Court's decision in *Koushal*.¹⁰⁶

Were the tribunal merely assessing MD's claims for protection (rather than to formulate a country guidance decision), it could have found merely that MD had not established that he would face a real risk of police violence, extortion, and blackmail upon his return to India (despite his past experiences of abuse by police). In issuing a "country guidance" decision, however, the tribunal instead established guidelines for the assessment of claims by all "same-sex oriented males" from India seeking asylum in the United Kingdom. Even to the extent that same-sex oriented men in India do not uniformly face a real risk of persecution, regardless of their class or status—in India, as elsewhere, class and social status are significant factors in how same-sex-oriented males, and LGBTQ people in general, relate to the state and police—the tribunal needed to disaggregate *how* class and status in Indian society relate to the risks faced by same-sex-oriented males, including from the police. In doing so, the tribunal might even have accepted that abuses against LGBTQ persons from disadvantaged groups are underreported, even if unwilling to accept the claimed extent of this underreporting for the community as a whole.

The tribunal similarly did not accept that violence by non-state actors demonstrates "that there is a real risk to any particular individual of suffering ill treatment at the hands of non-state actors,"¹⁰⁷ finding that Khanna's evidence in this regard contained "an element of overstatement."¹⁰⁸ Even where individuals' personal circumstances create a real risk of harm in their home area, the tribunal found that "it would not, *in general*, be unreasonable or unduly harsh for an open same-sex oriented male (or a person who is perceived to be such), who is able to demonstrate a real risk in his home area because of his particular circumstances, to relocate internally to a major city within India" (emphasis added).¹⁰⁹

The phrase "in general" hides substantial variation. The tribunal's decision presumes that it would be "reasonable"

for an individual to relocate within India without disaggregating the broad category of “same-sex oriented males” and considering risks arising from membership of different sexual minority groups, different ways in which sexuality is expressed or substantial diversity of class, race, and religion.¹¹⁰ In defence of the tribunal, it is open to individual applicants to whom the country guidance decision in *MD* may apply to argue that it does not apply to their circumstances or to press for exclusion from the decision’s broad ambit. Nonetheless, decision-makers and authors of country information must ensure that these subtle distinctions are not merely waved away by noting that their findings are expressed in “general” terms, and that diverse lived experiences of discrimination and persecution (shaped by privilege and class position) are appropriately acknowledged.

The tribunal hence found that, while *MD* may face some discrimination if removed to India, this discrimination would not amount to persecution,¹¹¹ and that *MD* would not face a real chance of persecution from the state or from non-state actors, “particularly in one of the major cities.”¹¹² *MD* was not granted protection in the United Kingdom.

Like any form of country information, country guidance decisions are undoubtedly difficult to craft. They cannot provide an exhaustive account of the experiences of entire groups, particularly groups so broad as “same-sex oriented males in India.” Nonetheless, some approaches to the production and employment of country information are inherently flawed. These include proceeding on assumptions that the absence of particular groups from country information indicates their safety, or that the absence of particular forms of abuse from country information indicates their non-occurrence.¹¹³ They also include assertions in general terms about the experiences of a group by reference to the security enjoyed by a portion of that group, with only cursory acknowledgment of the extent to which those experiences may be mediated by other forms of disadvantage.

Conclusion

The limitations of available country information should not serve as a cause for cynicism or hopelessness. Country information remains a powerful, indeed indispensable tool in *RSD*, even given such limitations. As Alston and Knuckey write with regard to human rights advocacy more broadly, “At a certain point, decisions have to be made on the basis of the best available evidence.”¹¹⁴ Similarly, in *RSD*, decisions on whether claims for protection are well founded must ultimately be made on evidence that is inevitably imperfect to some degree, and decision-makers must compensate for such imperfections (the “fragility of facts”¹¹⁵) as far as they can instead of rejecting any source that falls short of an imagined ideal of perfection.¹¹⁶

Nonetheless, these limits do exist and can potentially have severe effects on the assessment of the claims of LGBTQ asylum seekers. Decision-makers need to be conscious of the individual circumstances of applicants before them, including that limited country information about those particular circumstances is not of itself evidence of the *absence* of abuses; that those individual circumstances may themselves be the result of repressive societal attitudes or public policies; that persecution is not recorded merely by unblinking, objective, omniscient narrators, and that persecution affects even the means by which it is reported, related, and condemned; and that every asylum seeker’s sexual orientation or gender identity intersects with other elements of their identity. Individual experiences of sexuality and gender cannot and should not be “generalized” or assumed to follow uniform patterns.

NOTES

- 1 This article is based on a paper presented at the Fourth LASSnet Conference, India Habitat Centre, New Delhi, 10–12 December 2016. The author thanks Jess McDonald-Norman, Laurie Berg, Nikki Edwards, Roopashi Khatri, Rupali Samuel, Maggie Sheen, Danish Sheikh, and Mrinalini Shinde for their assistance, encouragement, and comments in preparing that paper. All errors remain the author’s own.
- 2 *RSD* is not unique in this regard; like other forms of human rights advocacy, it is centred in large part upon fact-finding, even given significant differences between fact-finding in human rights advocacy and ordinary judicial processes. See Philip Alston and Sarah Knuckey, “The Transformation of Human Rights Fact-Finding: Challenges and Opportunities,” in *The Transformation of Human Rights Fact-Finding*, ed. Alston and Knuckey (Oxford: Oxford University Press, 2016), 3; Frédéric Mégret, “Do Facts Exist, Can They Be ‘Found,’ and Does It Matter?,” in Alston and Knuckey, *Transformation of Human Rights Fact-Finding*, 29.
- 3 Laurie Berg and Jenni Millbank, “Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants,” *Journal of Refugee Studies* 22 (2009), 208–11.
- 4 *MD (same-sex-oriented males: risk) India CG*, [2014] UKUT 00065 (IAC) [*MD*].
- 5 Rosemary Byrne, “The Protection Paradox: Why Hasn’t the Arrival of New Media Transformed Refugee Status Determination?,” *International Journal of Refugee Law* 27 (2015): 625–48.
- 6 United States Department of State, *Country Reports on Human Rights Practices*, <http://www.state.gov/j/drl/rls/hrrpt>. This influence is not new and is not restricted to the United States: David A. Martin, “Reforming Asylum Adjudication: On Navigating the Coast of Bohemia,” *University of Pennsylvania Law Review* 138 (1990): 1310. When I was a practitioner, I used to call the release of the *Country*

- Reports on Human Rights Practices* "Country Information Christmas."
- 7 This observation is based on the author's experiences as a practitioner. The frequency with which these organizations' reports are employed is corroborated by Catherine Dauvergne and Jenni Millbank, "Burdened by Proof: How the Australian Refugee Review Tribunal Has Failed Lesbian and Gay Asylum Seekers," *Federal Law Review* 31 (2003): 309.
 - 8 Nicole LaViolette, "Independent Human Rights Documentation and Sexual Minorities: An Ongoing Challenge for the Canadian Refugee Determination Process," *International Journal of Human Rights* 13 (2009): 443-4.
 - 9 See Dustin N. Sharp, "Human Rights Fact-Finding and the Reproduction of Hierarchies," in Alston and Knuckey, *Transformation of Human Rights Fact-Finding*, 69-88.
 - 10 As Martin noted in 1990, the individualized character of assessment under the Refugees Convention had not (and arguably still has not) penetrated public perceptions of what a refugee is: "Reforming Asylum Adjudication," 1270-2.
 - 11 Alston and Knuckey, "Transformation of Human Rights Fact-Finding," 8.
 - 12 National Documentation Packages are available at <http://www.irb-cisr.gc.ca/Eng/ResRec/NdpCnd/Pages/ndpcnd.aspx>.
 - 13 The Immigration and Refugee Board's reports, although produced for Canadian RSD, are employed by lawyers, researchers, and RSD officials around the world. They can be found at <http://www.refworld.org/publisher/IRBC.html>.
 - 14 Although these reports play a critical role in Australian RSD, they are no longer published online.
 - 15 In the 1980s, country information produced for the purposes of RSD in the United States "[was] biased towards denying asylum to applicants from friendly countries and granting asylum to applicants from hostile countries": Matthew E. Price, *Rethinking Asylum: History, Purpose and Limits* (Cambridge: Cambridge University Press, 2009), 92.
 - 16 Samantha Hawley and Jane Norman, "Tribunals Ordered to Consider New Country Assessments When Deciding on Asylum Claims," AM, 17 July 2013, <http://www.abc.net.au/news/2013-07-17/refugee-tribunals-ordered-to-consider-new-country-information/4824788>; see also Douglas McDonald, "Simply Impossible: Plausibility Assessment in Refugee Status Determination," *Alternative Law Journal* 39 (2014): 244.
 - 17 Indeed, the title of this article reflects that of one of the earliest entrants in this field: Henry G. Watkins, "Credibility Findings in Deportation Proceedings: 'Bear[ing] Witness unto the Truth,'" *Georgetown Immigration Law Journal* 2 (1987): 231-94.
 - 18 Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 3rd ed. (Oxford: Oxford University Press, 2007), 547.
 - 19 The perceived limitations of witness testimony as a reliable or credible source of evidence are, of course, not solely restricted to refugee law and are the cause of longstanding complaint and critique, even in other fields of law; for a venerable example in the Australian context, see, e.g., John V. Barry, "The Problem of Human Testimony," *Australian Law Journal* 11 (1938): 317. Such complaints are, however, voiced with particular frequency in refugee law because so often there are only limited sources other than witness testimony to corroborate claims for protection.
 - 20 Mégret, "Do Facts Exist," 28.
 - 21 Dauvergne and Millbank, "Burdened by Proof," 308; see also Pia Zambelli, "Hearing Differently: Knowledge-Based Approaches to Assessment of Refugee Narrative," *International Journal of Refugee Law* 29 (2017): 20-1. For the political context and significance of this attitude, see, e.g., Michael Kagan, "Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination," *Georgetown Immigration Law Journal* 17 (2003): 368-71.
 - 22 See, e.g., Jenni Millbank, "From Discretion to Disbelief: Recent Trends in Refugee Determinations on the Basis of Sexual Orientation in Australia and the United Kingdom," *International Journal of Human Rights* 13 (2009): 398-9.
 - 23 David A.B. Murray, *Real Queer? Sexual Orientation and Gender Identity Refugees in the Canadian Refugee Apparatus* (London: Rowman & Littlefield International, 2016), 50.
 - 24 Audrey Macklin, "Truth and Consequences: Credibility Determination in the Refugee Context" (conference paper, International Association of Refugee Law Judges, 1998), 137, cited in Jenni Millbank, "'The Ring of Truth': A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations," *International Journal of Refugee Law* 21 (2009): 1.
 - 25 Hungarian Helsinki Committee, *Credibility Assessment in Asylum Procedures: A Multidisciplinary Training Module*, 2013, <http://helsinki.hu/wp-content/uploads/Credibility-Assessment-in-Asylum-Procedures-CREDO-manual.pdf>, 7.
 - 26 See, e.g., Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press), 3.
 - 27 Murray, *Real Queer?*, 118.
 - 28 *Ibid.*, 119.
 - 29 See, e.g., LaViolette, "Independent Human Rights Documentation," 449; Millbank, "From Discretion to Disbelief," 394.
 - 30 Millbank, "Ring of Truth," 19-22.
 - 31 *Ibid.*, 20.
 - 32 LaViolette, "Independent Human Rights Documentation."
 - 33 Sean Rehaag, "Patrolling the Borders of Sexual Orientation: Bisexual Refugee Claims in Canada," *McGill Law Journal / Revue de Droit de McGill* 53 (2008): 90.
 - 34 LaViolette, "Independent Human Rights Documentation," 444; see also Nicole LaViolette, "Coming Out to Canada: The Immigration of Same-Sex Couples under the *Immigration and Refugee Protection Act*," *McGill Law Journal / Revue de Droit de McGill* 49 (2004): 1000.

- 35 Indeed, individuals who are sufficiently well-known that their views and exploits have been publicized in credible sources of country information may face even greater obstacles to fleeing their countries of origin, because of the corresponding level of scrutiny and control that they may face.
- 36 United States Department of State, *2015 Country Reports on Human Rights Practices: Sri Lanka*, 13 April 2016, <http://www.refworld.org/docid/57161206c.html>.
- 37 *Ibid.* As discussed above, such bans are one reason why applicants who are sufficiently high-profile to warrant specific mention in available country information may not be able to seek asylum abroad.
- 38 LaViolette, "Independent Human Rights Documentation," 447.
- 39 Sharp, "Human Rights Fact-Finding," 73–4.
- 40 For an examination of popular sentiment in this regard, see, e.g., Fiona H. McKay, Samantha L. Thomas, and Susan Kneebone, "It Would Be Okay If They Came through the Proper Channels': Community Perceptions and Attitudes toward Asylum Seekers in Australia," *Journal of Refugee Studies* 25 (2012): 117, 128.
- 41 Jenni Millbank and Catherine Dauvergne, "Forced Marriage and the Exoticization of Gendered Harms in United States Asylum Law," *Columbia Journal of Gender and Law* 19 (2010): 898; see also Jenni Millbank, "Imagining Otherness: Refugee Claims on the Basis of Sexuality in Canada and Australia," *Melbourne University Law Review* 26 (2002): 163.
- 42 Millbank, "Imagining Otherness"; see also Jacqueline Bhabha, "Internationalist Gatekeepers?: The Tension between Asylum Advocacy and Human Rights," *Harvard Human Rights Journal* 15 (2002): 161.
- 43 LaViolette, "Independent Human Rights Documentation," 448.
- 44 Satvinder Juss, "Sexual Orientation and the Sexualisation of Refugee Law," *International Journal on Minority and Group Rights* 22 (2015): 134.
- 45 LaViolette, "Independent Human Rights Documentation," 448.
- 46 *Ibid.*, 442.
- 47 Sharp, "Human Rights Fact-Finding," 73–4.
- 48 Shreya Atrey, "The Danger of a Single Story," in Alston and Knuckey, *Transformation of Human Rights Fact-Finding*, 166.
- 49 *DZADH v Minister for Immigration*, [2012] FMCA 1112 at para 33.
- 50 Jenni Millbank, "Gender, Sex and Visibility in Refugee Claims on the Basis of Sexual Orientation," *Georgetown Immigration Law Journal* 18 (2003): 77. Similar observations have been made in the United Kingdom: UK Lesbian & Gay Immigration Group, *Missing the Mark: Decision Making on Lesbian, Gay (Bisexual, Trans and Intersex) Asylum Claims*, September 2013, <http://uklgig.org.uk/wp-content/uploads/2014/02/Missing-the-Mark.pdf>.
- 51 Millbank, "Gender, Sex and Visibility," 79.
- 52 Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43 (1991): 1242.
- 53 Millbank, "Gender, Sex and Visibility," 83; Dauvergne and Millbank, "Burdened by Proof," 321.
- 54 Atrey, "Danger of a Single Story," 156.
- 55 *Ibid.*, 158–9.
- 56 *Ibid.*, 161.
- 57 *Ibid.*, 156, 162.
- 58 Bhabha, "Internationalist Gatekeepers?," 162.
- 59 This principle has been recognized by appellate courts, as well as by the UNHCR: see, e.g., *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs*, (2003) 216 CLR 473; *HJ (Iran) and HT (Cameroon)*, [2011] 1 AC 596; UN High Commissioner for Refugees, *Guidelines on International Protection No. 9: Claims to Refugee Status Based on Sexual Orientation and/or Gender Identity within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees* (2012), HCR/GIP/12/09. For a survey of jurisprudence on this question circa 2003, see Catherine Dauvergne and Jenni Millbank, "Before the High Court: Applicants S396/2002 and S395/2002, a Gay Refugee Couple from Bangladesh," *Sydney Law Review* 25 (2003): 115–17.
- 60 Berg and Millbank, "Constructing the Personal Narratives," 198.
- 61 *Ibid.*, 199–200.
- 62 See, e.g., *ibid.*, 206: "There are few even broadly common aspects in the experience of same-sex attraction."
- 63 On the potential inapplicability of the "stage model of sexual identity development" outside a Western cultural context, see Berg and Millbank, "Constructing the Personal Narratives," 206–8.
- 64 See, e.g., LaViolette, "Coming Out to Canada," 996; Berg and Millbank, "Constructing the Personal Narratives," 200: "The development of sexual identity is not universal or linear."
- 65 Millbank, "Imagining Otherness," 145.
- 66 *Samani v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8301 (FC) at para 4.
- 67 Jane Herlihy, Kate Gleeson, and Stuart Turner, "What Assumptions about Human Behaviour Underlie Asylum Judgments?," *International Journal of Refugee Law* 22 (2010): 358.
- 68 An example of the use of country information in this manner is provided in *ibid.*, 359.
- 69 Herlihy, Gleeson and Turner, "What Assumptions," 354; see also Pamela Heller, "Challenges Facing LGBT Asylum-Seekers: The Role of Social Work in Correcting Oppressive Immigration Processes," *Journal of Gay & Lesbian Social Services* 21 (2009): 295; Millbank, "Ring of Truth," 11, 15–16; Berg and Millbank, "Constructing the Personal Narratives," 197; Eddie Bruce-Jones, "Death Zones, Comfort Zones: Queering the Refugee Question," *International Journal on Minority and Group Rights* 22 (2015): 114.

- 70 Rehaag, "Patrolling the Borders"; Sean Rehaag, "Bisexuals Need Not Apply: A Comparative Appraisal of Refugee Law and Policy in Canada, the United States, and Australia," *International Journal of Human Rights* 13 (2009): 415–36.
- 71 Bruce-Jones, "Death Zones," 114.
- 72 See, e.g., Rehaag, "Patrolling the Borders," 101.
- 73 Berg and Millbank, "Constructing the Personal Narratives," 213.
- 74 Rehaag, "Patrolling the Borders," 73–5, 83–6, 91–3; Rehaag, "Bisexuals Need Not Apply," 425.
- 75 Rehaag, "Patrolling the Borders," 86–7; Rehaag, "Bisexuals Need Not Apply," 424.
- 76 See, e.g., Fikri, "Asylum Seekers and 'Dishonest' Sexualities: Bisexuality at the Border," *Autostraddle*, 2 July 2014, <https://www.autostraddle.com/asylum-seekers-and-dishonest-sexualities-bisexuality-at-the-border-243888>.
- 77 Berg and Millbank, "Constructing the Personal Narratives," 211–13.
- 78 Bhabha, "Internationalist Gatekeepers?," 162.
- 79 Murray, *Real Queer?*, 67.
- 80 LaViolette, "Independent Human Rights Documentation," 455. On whether state protection ought to be presumed at all, see James C. Hathaway and Audrey Macklin, "Should We Presume State Protection," 32, no. 3 *Refuge* (2016): 49–53.
- 81 Bruce-Jones, "Death Zones," 116.
- 82 LaViolette, "Independent Human Rights Documentation," 453.
- 83 For a dissenting perspective, see Price, *Rethinking Asylum*.
- 84 Sharp, "Human Rights Fact-Finding," 75.
- 85 Bruce-Jones, "Death Zones," 109.
- 86 Gregor Noll, "Asylum Claims and the Translation of Culture into Politics," *Texas International Law Journal* 41 (2006): 492.
- 87 Bhabha, "Internationalist Gatekeepers?," 163–4. See also Murray, *Real Queer?*, 127.
- 88 See, e.g., Murray, *Real Queer?*, 126.
- 89 Millbank, "Imagining Otherness," 158.
- 90 *Ibid.*, 160.
- 91 LaViolette, "Independent Human Rights Documentation," 450–4.
- 92 *MD* at para 11.
- 93 *Suresh Kumar Koushal and anor v NAZ Foundation and ors*, Civil Appeal No 10972 of 2013.
- 94 For the history and operation of UK country guidance decisions, see, e.g., Robert Thomas, "Consistency in Asylum Adjudication: Country Guidance and the Asylum Process in the United Kingdom," *International Journal of Refugee Law* (2008): 489–32. Calls for country guidance of this kind have a long history: Martin, "Reforming Asylum Adjudication," 1358.
- 95 United Kingdom Home Office, *Country Information and Guidance—India: Sexual Orientation and Gender Identity*, July 2014, <http://www.refworld.org/docid/53ce6d614.html>.
- 96 *MD*, paras 42–50.
- 97 *Ibid.*, para 18(g).
- 98 *Ibid.*, paras 22–3.
- 99 *Ibid.*, para 137.
- 100 *Ibid.*, para 111.
- 101 *Ibid.*, para 18(b).
- 102 *Ibid.*, para 131.
- 103 *Ibid.*
- 104 *Ibid.*, para 141. Similar examples of inference from silence in Canadian RSD have been catalogued by LaViolette: "Independent Human Rights Documentation," 442–3, 449–52. Findings of this kind were found to be particularly common in Australia by Dauvergne and Millbank: "Burdened by Proof," 310.
- 105 *MD*, para 144.
- 106 *Ibid.*, para 145.
- 107 *Ibid.*, para 151.
- 108 *Ibid.*, para 148.
- 109 *Ibid.*, para 174(e).
- 110 See Atrey on Chimamanda Ngozi Adichie's "concern with 'the danger of a single story': Atrey, "Danger of a Single Story," 155, citing Chimamanda Ngozi Adichie, "The Danger of a Single Story," *TED Talk*, July 2009, http://www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story/transcript?language=en.
- 111 *MD*, para 180.
- 112 *Ibid.*, para 177.
- 113 For criticism of this kind of assumption in RSD, see LaViolette, "Independent Human Rights Documentation," 451–2.
- 114 Alston and Knuckey, "Transformation of Human Rights Fact-Finding," 8.
- 115 Mégrét, "Do Facts Exist," 38.
- 116 See also Kagan, "Is Truth," 376: "Refugee status determination is a human process; it is not an exact science."

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Book Reviews

Diasporas Reimagined: Spaces, Practices and Belonging



Nando Sigona, Alan Gamlen, Guilia Liberatore, and H el ene Neveu Kringelbach, eds.
Oxford: Oxford Diasporas Programme, Oxford University, 2015, pp. 231

The concept of diaspora can be found everywhere: in academic literature, in policy debates at the World Bank, and in works of fiction. There is even a whole journal devoted to diaspora studies. The term and the concept have become household words and have been enlisted in the service of various intellectual, cultural, political, and economic agendas.

It is not a new term. It is a Greek word once reserved to describe Jewish, Greek, and Armenian dispersions or the “classic” diasporas. Today, the term encompasses all immigrant groups. Despite criticisms that the concept may suggest homogeneity and a historically fixed identity, as well as shared values and practices, diasporas are celebrated by academics, community leaders, and policy-makers.

Diasporas Reimagined is an example of such a celebration. The collection, expertly edited by Nando Sigona, Alan Gamlen, Guilia Liberatore, and H el ene Neveu Kringelbach, is designed to showcase the breadth as well as cohesion of research on diasporas linked to the Leverhulme-funded Oxford Diasporas Programme. The publication marks the end of the ODP initiative carried out between 2011 and 2015 and encompassing such wide-ranging studies as diaspora engagement in war-torn societies and in politics and international relations, impact of faith-based community organizations on diaspora inclusion and exclusion in London, African diasporas within Africa, and many others.

The same breadth of topics is included in the book: ways of imagining and conceptualizing diaspora, diasporic belonging and home-making, and the role of social networks and intermediaries in diaspora formation and engagement. The book features contributions from forty-five authors. The style of the contributions adds to the physical and intellectual beauty of the book. Drawing on a range of disciplines, including social anthropology, sociology, human geography, politics, international relations, development studies, and

history, the authors depict a world increasingly interconnected through migration. These depictions take the form of photo essays, ethnographic vignettes and case studies, theoretical reflections, and poetic musings.

The book is grouped loosely into four thematic domains: metaphors, concepts, genealogies and images; belonging, imagining and remaking home; spaces, networks, and practices; and governance and mobilisation: old and new actors.

Despite the breadth of information and case study material presented, with very few exceptions—scarcity of employment opportunities for British young men of colour, racist harassment of Muslim immigrants and children of immigrants, to give but a couple of examples—the volume romanticizes the imagined diasporas. I am reminded of a blog post by Toks-Boy *Look ma. I am in the Diaspora now!*, which opens the book *Diasporas* by St ephane Dufoix (2008): “I have been away from Nigeria for 30 years ... All this time I have been ‘abroad’ studying and working my ass off, sitting in dull offices, with dull people, doing dull things to pay off dull bills when I could have been in the diaspora with nubile virgins with understanding ways. I am so mad.”

Indeed, I too have been living outside my homeland for more than thirty years, but never considered myself part of *Polonia* or the Polish diaspora. I know many Polish refugees and immigrants who do not identify with this imagined community where everyone is supposed to be eating pierogi and dancing the polka. I couldn’t dance the polka if my life depended on it!

I hope that as the scholars involved in the Oxford Diasporas Programme chart their future research agendas, they will consider the questions that nobody is asking: Why do we expect immigrants to send remittances home instead of investing in their own or their children’s lives in the adopted homeland? Why are diasporas supposed to be responsible for taking care of the issues that the governments of their

ancestral homelands continue to neglect? And why, for God's sake, are we supposed to focus on our own? Immigrants are as cosmopolitan as the next person. We need to study diasporas' involvement in global issues as well.

In the meantime, however, we can use *Diasporas Reimagined* as a springboard and inspiration for debating the diversity of immigrant communities and reimagining the migration scholars' and the general public's views of who

we, the members—both the enthusiastic and the reluctant ones—of the diaspora really are.

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Elusive Refuge: Chinese Migrants in the Cold War



Laura Madokoro

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In the aftermath of the Chinese civil war and the 1949 Chinese communist revolution, millions of Chinese from the People's Republic of China crossed over the border into Hong Kong. Once they arrived there, they became caught up in the politics of the Cold War and the contradictions of post-Second World War humanitarianism. Laura Madokoro's timely book on the history of Chinese migrants within this global context provides a well-documented study that will be an important contribution to our understanding of global migration, cold war politics in Asia, humanitarianism, and racial exclusion. The location of Hong Kong as the site of this study provides an especially useful lens for understanding these themes, as this space was characterized by local ambiguities that reflected larger global contradictions and ambivalences towards Asian migrants. Much like a recent book by Rachel Bright on an earlier group of Chinese migrants to the South African gold mines (*Chinese Labour in South Africa, 1902–10*, Palgrave Macmillan 2013), these accounts of Chinese migrants in white settler colonies (and their post-colonies) throw into relief the boundary struggles over nation, race, and class that their presence provoked. The story Madokoro tells also has resonance for contemporary tensions over the entry of mainland Chinese into Hong Kong since its handing over to the PRC in 1997.

Madokoro situates her work primarily in the literatures on refugees, migrants, and humanitarianism. She outlines the history of the category of "refugee," reminding us of its changing meaning over time as nineteenth-century nation states and national borders created the category of a "stateless person," and after 1951 defined the refugee as a persecuted individual in need of protection. For the migrant Chinese in Cold War Hong Kong, these nuances were critically important. Chinese migrants were viewed (and constructed) by humanitarian organizations as refugees from hardship and persecution, an argument that was embraced by the anti-communist

regime in Taiwan but questioned by British colonial officials. The United States and other white settler colonies countered that migrants from the People's Republic of China were "rice refugees" or economic rather than politically persecuted migrants. The specific geopolitical position of Hong Kong made these arguments both specific to the East Asian region and emblematic of global Cold War politics: Hong Kong was a British colony whose governing authorities favoured neutrality in order to maintain relations with the PRC; the colony was historically situated at the edge of mainland China while looking outwards to the West; thus Hong Kong represented a "middle ground" in the competing Cold War claims of the PRC and Taiwan, and this played a key role in these debates.

Not only is this story of migration situated at a critical moment in the history of identity and belonging for East Asia itself, but it is also entangled in the longer historical arc of Chinese exclusion in the white settler colonies. Migrants from Eastern Europe fleeing communism after the war were resettled in the United States and elsewhere in white settler colonies like Canada and Australia, while migrants from Asia generally faced more stringent barriers: "The long history of Chinese exclusion in the West defined the politics around humanitarian assistance and settlement programs for the people from "Red China" (2). European migrants were more likely to be accepted as political refugees, while Asians were not. Madokoro thus spends considerable time outlining the history of Asian exclusion globally and argues that the Chinese migrant experience in Hong Kong must be viewed through this lens.

Madokoro first traces this arc of historical Asian exclusion backward in time from 1950s Hong Kong, then takes us forward into the 1970s with a chapter on refugees from conflict in Indochina. In this case, she argues, the United States and other white settler societies used resettlement of Indochinese refugees to demonstrate their "humanitarian identity" and compassion, while obscuring their histories of

racial discrimination. This chapter in the book moves from the Hong Kong material to take up Indochinese refugees and resettlement globally, arguing that the mythologizing narratives that instrumentalized generosity among white settler societies came to dominate popular understanding of these events. During this process, Hong Kong was a critical intermediary as a country of first asylum for peoples of Southeast Asia and helped to shape the global response to Southeast Asian refugees through screening, repatriation, and resettlement. Once again, decisions were made based on definitions of what constituted a “real refugee” as opposed to a less deserving migrant, decisions that ultimately played a gatekeeping role that restricted migration according to classification.

Laura Madokoro’s book has used the history of Chinese migrants in Hong Kong to demonstrate the complexities

as well as the continuities of movements of East Asian and South Asian peoples in the twentieth century. Starting with the Cold War contradictions of humanitarian construction of the “refugee” in post-1949 Hong Kong, and moving through the history of Asian exclusion and the ambivalent resettlement policies of white settler colonies through the 1970s, she is able to simultaneously tell a local and a global story. This monograph will have relevance for scholars and students of global refugees and migration, not only in historical perspective but also today.

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Protection amid Chaos: The Creation of Property Rights in Palestinian Refugee Camps



Nadya Hajj

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Based on extensive fieldwork and interviews, this book outlines the complex nature of property rights in Palestinian refugee camps in Jordan and Lebanon. Particular attention is devoted to issues that have arisen in the reconstruction of Nahr al-Barid refugee camp, following the 2007 conflict there between the Lebanese Army and the Fateh al-Islam armed group. Hajj offers considerable insight into social and economic dynamics within Palestinian camps. She also makes a substantial contribution to our understanding of how informal institutions, local configurations of social and political power, and formal law and regulation interact to shape property ownership. Her study is particularly relevant to protracted refugee situations, but its value extends well beyond.

Most Palestinian refugees in Jordan are Jordanian citizens, with full legal rights. Hajj’s analysis shows that a gradual synthesis has occurred between the initial post-1948 community-based system whereby property rights were recognized and enforced in the camps, and the formal Jordanian legal system. Since the Jordanian civil war (1970–1), the government has sought to expand state control and authority. The author might have more fully addressed the original ownership of refugee camp land: some camps were built on state land, while others stand on land that is nominally rented from Jordanian landowners. Some original landowners feel they have lost effective control over their former properties and have threatened to use the legal system to regain it. The Jordanian government has discouraged court challenges in

order to maintain political stability, but it has sometimes suggested if the refugee issue was resolved, such claims of (re)ownership would indeed go forward.

In Lebanon, matters are more complex. Most Palestinian refugees are stateless, and Lebanese law prohibits refugees from owning property. The rise of Fateh and other Palestinian armed factions in the camps from the late 1960s created a new dynamic of local power, one that largely displaced any limited authority exerted by the already weak Lebanese state. Customary systems were also increasingly supplanted by the quasi-hegemonic role of Fateh, and the growing role of formal camp committees. In many cases, later changes in local power structures then forced modification or renegotiation of these practices. In Nahr al-Barid, for example, Hajj shows how the Lebanese government pressed for greater control and authority as the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) undertook camp reconstruction.

As the author points out, very little has been written on the lived practices of refugee camp property rights in Palestine. In the late 1990s and 2000s the World Bank and the Palestinian Authority partially examined how informal property rights in Palestinian refugee camps might affect redevelopment, repatriation, and reparations in a Middle East peace agreement. It is hardly surprising that the author does not appear to be aware of this, since (in view of its potential political sensitivity) none of their work was ever

published. The issue of acquired rights was also prominent in UNRWA's development of participatory planning for its reconstruction of Jenin camp in the West Bank, which was partially destroyed by fighting between Palestinian militants and the Israeli Army in 2002. Indeed, aspects of the Jenin experience served as a model for Nahr al-Barid.

The bulk of Hajj's research and interviews in Lebanon focus on the north of the country. It would have been useful to have seen comparative attention to other camps where there have been less dramatic changes in local power structures, where Fateh was marginalized for a time after 1982, or camps that experienced considerable local insecurity, violence, and factionalization (notably in Ayn al-Hilwa camp). It might have also been interesting for the book to have more deeply explored the differences between land ownership in Nahr al-Barid camp itself (the "Old Camp"), and the surrounding mixed areas into which the Palestinian refugee population has expanded over the years (the "New Camp"). In many cases, properties in the latter areas are "owned" by Lebanese lawyers or other intermediaries acting on behalf of one or more Palestinian families, thereby creating an informal workaroud of Lebanese restrictions on refugee property ownership.

Although the book focuses primarily on adaptation of informal and formal institutions by refugees to maintain a

workable system of property rights, host country policy is often more complex, nuanced, or even contradictory than accounts suggest. In Lebanon, for example, very different views of Nahr al-Barid reconstruction could be heard from Lebanese security officials on the one hand, and those in official Lebanese-Palestinian Dialogue Committee on the other. It is noteworthy that, despite a legacy of political tension over the refugee issue that dates to the Lebanese civil war (1975–6) and before, the Lebanese government formally committed to reconstruct Nahr al-Barid, even as the fighting was ongoing, distributing posters and pamphlets among displaced refugees that pledged, "Your departure is temporary, your return is certain, reconstruction is guaranteed."

Protection amid Chaos stands as a major contribution to the refugee literature. While there are aspects of the issue that one might have wished to see more fully addressed, this arises more from the importance and complexity of the topic, and the limits of available space, than to any shortcomings in the author's analysis. I strongly recommend this book.

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Congolese Social Networks: Living on the Margins in Muizenberg, Cape Town



Joy Owen

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Cette monographie par Joy Owen est captivante principalement pour deux raisons. En premier lieu, il s'agit du premier ouvrage académique qui se concentre totalement aux Congolais de la ville du Cap (Afrique du Sud) comme une communauté transnational à part entière. Deuxièmement, l'auteur fait preuve de grande habileté comme chercheuse en cultures transnationales, mais aussi d'un niveau avancé de connaissance de son milieu de recherche (Muizenberg, au Cap) et de ses « sujets » de recherche (les Congolais). Ici, nous soulignons sa proximité avec ses sujets qu'elle nous narre fièrement à travers ses notes ethnographiques et surtout quand elle nous informe que la production de *Congolese Social Networks* « est une culmination de 15 mois de travail sur terrain de 6 ans, relations battues et maintenues à travers de distances nationales et internationales, et une recherche qui est partie d'un intérêt honnête d'une connaissance : un « autre » » (p. 68).

L'ouvrage est subdivisé en trois parties. La première contenant les trois premiers chapitres de l'ouvrage est introductoire

au sujet majeur abordé dans la suite. Le premier chapitre traite brièvement de la République Démocratique du Congo (RDC) et de son histoire dans le contexte migratoire local et transnational. Dans cette partie, Owen revoit les aspects les plus importants des migrations de l'époque précoloniale à la colonisation Belge en passant par les années de travaux forcés dans le Congo du Roi Léopold II. Ensuite, elle passe à l'époque d'après la colonisation, en insistant sur les longues années du règne du Président Mobutu sous lesquelles émerge la fameuse « deuxième économie » basée sur les « circuits personnels » sur lesquels se fonde le discours de « article 15 » souvent dit « débrouillez-vous ». Concernant ce dernier, Owen explique que l'époque de Mobutu « a engendré une société souple, voulant circonvenir les normes sociales et les mœurs pour parvenir à survivre » (p. 26). Cette débrouillardise demeure au cœur de la survie socio-économique des Congolais partout où ils se retrouvent.

Le deuxième chapitre touche les complexités autour des lois migratoires en Afrique du Sud. Owen analyse le

comportement de Sud-Africains à l'égard de migrants surtout Africains de l'apartheid à la démocratie (les années 90) avant d'aborder en détail les causes actuelles de nombreux attaques xénophobes. En revisitant les travaux d'autres chercheurs à ce sujet, Owen analyse comment dans les années 80, l'Afrique du Sud était plus intéressé à accueillir «les Africains professionnels» pouvant travailler comme enseignants, médecins, dentistes, etc. Avec la démocratie dans les années 90, l'Afrique du Sud a laissé entrer un bon nombre d'investisseurs venant de partout au monde mais aussi des réfugiés des guerres en Afrique. En ce qui concerne ces réfugiés, Owen nous apprend que c'est seulement en 1998 que le pays adopte des lois claires pour les régir (p. 43). Se focalisant sur les Congolais comme réfugiés en Afrique du Sud, Owen détaille les difficultés liées non seulement à l'obtention de papiers de réfugiés, mais aussi les défis liés à vivre en Afrique du Sud où les réfugiés sont souvent considérés comme une charge de plus sur «les ressources étatiques» (p. 52). Cependant, Owen reconnaît que malgré tous ces obstacles, les Congolais en Afrique du Sud «ont survécu et d'autres ont prospéré» (p. 53), même si les récits de leur succès figurent rarement dans ces nombreuses recherches sur les migrations en Afrique du Sud.

Dans le troisième chapitre, Owen nous parle de son travail de terrain parmi les Congolais de Muizenberg, une banlieue de la ville du Cap, tout près de la plage du même nom sur l'Océan Atlantique. Elle commence par nous narrer la manière dont les talents acquis de sa carrière d'anthropologue lui ont servi sur le terrain parmi les Congolais. Elle nous expose entre autre de sa biographie et de son identité perçue en termes de genre et race dans le contexte Sud-Africain; et comment cela a impacté sur son «terrain» parmi les Congolais. Elle nous parle de Muizenberg et son histoire en tant que banlieue préféré des réfugiés Africains venant du Rwanda, Congo-Brazza, Rwanda, Angola; et comment Muizenberg était appelé «Little Congo» dans les années 90 à cause de la forte visibilité de Congolais et de leur culture. Owen explique aussi comment des simples «relations de recherche» avec ses «sujets» de recherche sont devenues «de lieux intimes de l'humanité commune, d'incompréhensions, détestation, irritation, appréciation et respect» (p. 67). Evidemment tout cela a contribué positivement à l'obtention de la riche et intime information contenue dans cette étude.

La deuxième partie de la monographie: «s'installer» et «s'adapter», comporte deux chapitres. Le quatrième parle des techniques de survie d'immigrantes et aussi de l'importance de bâtir de réseaux sociaux allant au-delà des races, classes, genres et nationalités, comme presque indispensables pour réussir à l'étranger. Le cinquième chapitre parle aussi du rôle des Eglises de Réveil Congolais comme faisant parti de réseaux sociaux. Au centre de cette partie, il y a le concept de

«capital social» qui s'acquiert à travers les relations humaines et qui aide à atteindre une «mobilité sociale» dans un environnement étranger (p. 73).

La troisième partie analyse les mariages d'hommes Congolais avec les femmes «étrangères» comme moyens d'agrandir leurs «réseaux sociaux». De plus intéressant dans cette partie est que Owen se décide d'étudier les mariages «interraciaux» entre hommes Congolais et femmes blanches Européennes rencontrées dans un pays étranger – l'Afrique du Sud. Dans le chapitre six qui se concentre sur le couple Henri-Donna, Owen démontre comment quand un Congolais parvient à marier une blanche c'est une «économie politique» et que «l'homme Congolais gagne le plus dans ce genre de relation» (p. 143) Le septième chapitre, continue la discussion des couples binationaux, cette fois-ci en se focalisant sur le couple Sam et Noel. Le chapitre montre la manière dont la masculinité se manifeste chez les hommes Congolais. Ici, l'observation participante comme méthode principale dans cette recherche se voit vivement. Les talents de recherche d'Owen se distinguent surtout dans la manière dont elle choisit l'épisode de deuil d'un homme Congolais et tous les détails de son déroulement pour illustrer «la manifestation de la masculinité» chez les Congolais. Enfin, le huitième et dernier chapitre toujours sur ces couples, entame la trajectoire romantique de Michelle (une Suisse) et Ghislain, et aussi Zakia et Andrea (une Allemande). Selon Owen, l'union de Zakia et Andrea est une réussite «socioculturelle» pour Zakia d'abord aux yeux de sa famille car elle représente pour lui le passage «de garçon» à homme». En plus, ce mariage à une blanche Européenne «augmente son prestige» au sein de la communauté Congolaise de Muizenberg (p. 212). Cette partie est particulièrement intéressante car elle ramène à réfléchir de nouveaux sur les relations entre «noir(e)s» et «blanc(he)s» par rapport surtout aux mariages hétérosexuelles qui se forment dans un «pays neutre» (l'Afrique du Sud pour ce ca) pour les conjoints (p. 213). Owen conclut que les motifs et expériences liés à ces genres de romances sont «complexes» (p. 213).

Cet ouvrage d'Owen est une innovation dans la recherche sur les réseaux sociaux les immigrants Africains en Afrique du Sud. Il est particulièrement exceptionnel pour le cas des Congolais. Owen démontre que les réseaux sociaux des Congolais en Afrique du Sud vont au-delà des jobs de gardes sécuritaires, gardes des véhicules dans les parkings de centres commerciaux, de coiffeurs et vendeurs de marchés ouverts, et des activités liées à la fraude. Cette monographie montre qu'il existe d'autres voies pour les transnationaux Congolais d'élargir leurs réseaux sociaux, économiques et même culturels, et qui ne se heurtent pas (nécessairement) avec la loi. «Le facteur romantique» tel que décrit dans cette étude poussera à en détecter d'autres du même genre.

Cette recherche touche ou mentionne d'autres sujets intéressants qui ne sont pourtant pas discutés à fond. Par exemple, la tension entre Kinois (ressortissants de Kinshasa) et Katangais (ressortissant du Katanga) et qui parfois se manifeste comme une haine ethno-régionale – est mentionnée plus d'une fois mais sans approfondir la question (voire par exemple p. 28-29). Ce serait intéressant de savoir, par exemple, si ces identités auraient un rôle dans l'accès au capital social à l'étranger. Au même titre, ça aurait été important de discuter plus à fond ce qui motive ces rares femmes blanches à épouser des hommes Congolais relativement « accomplis ».

Ce serait tout simplement faire justice à ces hommes et femmes Congolais, qui se sont ouverts à Owen plus peut être qu'il n'en fallait pour le succès cet ouvrage. Les Congolais (hommes et femmes) et ces femmes Européennes (peut être!) auraient certainement beaucoup à dire là-dessus.

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