

# Refuge



CANADA'S JOURNAL  
ON REFUGEES

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REVUE CANADIENNE  
SUR LES RÉFUGIÉS

# Refuge

*Canada's Journal on Refugees*  
*Revue canadienne sur les réfugiés*

Vol. 34, No. 2

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Founded in 1981, *Refuge* is an interdisciplinary journal published by the Centre for Refugee Studies, York University. The journal aims to provide a forum for discussion and critical reflection on refugee and forced migration issues.

*Refuge* invites contributions from researchers, practitioners, and policy makers with national, international, or comparative perspectives. Special, thematic issues address the broad scope of the journal's mandate, featuring articles and reports, shorter commentaries, and book reviews. All submissions to *Refuge* are subject to double-blinded peer review. Articles are accepted in either English or French.

*Refuge* is a non-profit, independent periodical funded by the Social Sciences and Humanities Research Council of Canada and supported by the membership of the Canadian Association for Refugee Studies (CARFMS). The views expressed in *Refuge* do not necessarily reflect those of its funders or editors.

*Refuge* is indexed and abstracted in the *Index to Canadian Legal Literature*, *Pais International*, *Sociological Abstracts*, the *International Bibliography of the Social Sciences*, and *Canadian Business and Current Affairs*. In accordance with the journal's open access policy, the full text of articles published in *Refuge* is also available online through our website, [www.yorku.ca/refuge](http://www.yorku.ca/refuge).

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ISSN (online): 1920-7336

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# La « crise migratoire » de 2015/16 en Europe : interprétation géohistorique

ÉTIENNE PIGUET

## Résumé

*Cet article analyse la croissance des demandes d'asile déposées sur le territoire ou à la frontière des démocraties occidentales et la « crise migratoire » qui s'en est suivie en 2015/16. Si la multiplication des foyers de violence à proximité de l'Europe a joué un rôle central, l'analyse doit être complétée par une prise en compte de trois évolutions géographiques de longue durée: le raccourcissement des distances, la crise des politiques de rétention et l'asymétrie géographique des droits. Elles permettent d'interpréter la réaction de fermeture des frontières comme une tentative de (re-)mise à distance des réfugiés dans un contexte de globalisation. Cette analyse complète par une approche géohistorique la littérature récente sur la « crise migratoire » centrée sur le rôle des partis populistes, la peur du terrorisme et les dysfonctionnements des mécanismes de solidarité.*

## Abstract

*This article analyzes the increase in the number of asylum claims submitted either in-country or at the border of Western democracies and the resulting 2015–2016 “migrant crisis.” Although the proliferation of outbreaks of violence near Europe has played a central role, three long-standing*

*geographical trends must also be taken into account when considering this issue: the shrinking of geographical distance, the detention policy crisis and geographically asymmetrical rights. These trends mean that the reaction of closing borders can be interpreted as an attempt to keep refugees at a distance once again, against a background of globalization. The analysis finishes with a geohistorical approach to recent literature on the “migrant crisis,” focusing on the role of populist parties, the fear of terrorism, and the dysfunctionality of solidarity mechanisms.*

Plus de 2,5 millions de demandes d'asile ont été déposées en Europe entre 2015 et 2016 selon EUROSTAT<sup>1</sup>. Des milliers d'êtres humains ont perdu la vie sur le chemin de l'exil<sup>2</sup>. Même si l'immense majorité des réfugiés restent dans les pays du Sud<sup>3</sup>, cette « crise migratoire » a suscité des tensions considérables en Europe. Les diagnostics politico-médiatiques sont fortement polarisés. Pour les uns, c'est l'attrait de l'Europe pour des migrants économiques et son laxisme dans le contrôle des frontières qui sont en cause. Pour les autres, c'est l'égoïsme, le barricadage des voies d'entrées légales et le mépris des droits humains qui marquent la faillite morale de l'Europe. Parmi les chercheurs, trois approches de la crise peuvent être identifiées. La première,

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sur laquelle nous reviendrons, porte sur les causes de fuite et les itinéraires des migrants<sup>4</sup>, la deuxième propose une réflexion critique sur la manière dont le phénomène a été appréhendé, les catégories (réfugiés, migrants, demandeurs d'asile, etc...) utilisées pour le décrire et les violations des droits humains<sup>5</sup>. Enfin, la troisième approche adopte une perspective politologique sur les raisons du manque de cohérence de l'Europe et la crise politique qui s'en est suivie<sup>6</sup> (difficultés à intégrer les flux migratoires précédents, inégalités sociales croissantes, craintes face à la globalisation, islamophobie, peur du terrorisme, montée des partis xénophobes, etc.).

Dans cet article, nous tentons de compléter ces analyses en nous concentrant sur les transformations structurelles sous-jacentes à la croissance des demandes d'asile. Nous laissons donc de côté les arrivées de migrants sans papiers et les autres formes d'immigration, même si elles sont certainement aussi concernées par les évolutions structurelles décrites. Notre positionnement épistémologique est celui de la géohistoire<sup>7</sup> puisque nous chercherons, sur une moyenne durée, à comprendre en quoi les espaces de circulation géographique des migrations se sont transformés, ouvrant ou fermant des opportunités de protection à longue ou courte distance pour les victimes de violence. D'un point de vue méthodologique, notre approche ne cherche pas à valider ou rejeter telle ou telle hypothèse. Nous cherchons, pour paraphraser Alejandro Portes, à proposer une interprétation, étayée et convaincante des enchaînements de causes multiples du phénomène étudié<sup>8</sup>.

Notre thèse centrale est que, malgré certains points communs avec des crises antérieures (ampleur des déplacements, manque de coordination entre les pays d'accueil, peurs et xénophobie)<sup>9</sup>, la situation actuelle marque une rupture dans l'articulation des territoires, de la souveraineté et des droits dans un contexte de globalisation. La crise a culminé en 2015/2016 en raison de la guerre civile syrienne, mais elle trouve son origine dans des évolutions plus anciennes. L'accalmie fragile qui prévaut depuis 2017 s'explique par la détermination de l'UE à réinstaller le régime de *mise à distance* des réfugiés en place depuis l'après-guerre, mais les fondamentaux d'un profond déséquilibre restent en place.

### 1. Historique d'une crise inédite

Commençons par un ordre de grandeur historique pour les dix principaux pays d'accueil en Europe (Graphique 1). L'ampleur record des demandes d'asile de 2015/16 y apparaît clairement<sup>10</sup>. D'autres épisodes de forts afflux doivent cependant être relevés. Les années 1991, 92 et 93 voient arriver en Europe – et principalement en Allemagne – de très nombreux ressortissants d'ex-Yougoslavie fuyant les crises en Slovénie puis en Croatie et surtout en Bosnie. Beaucoup

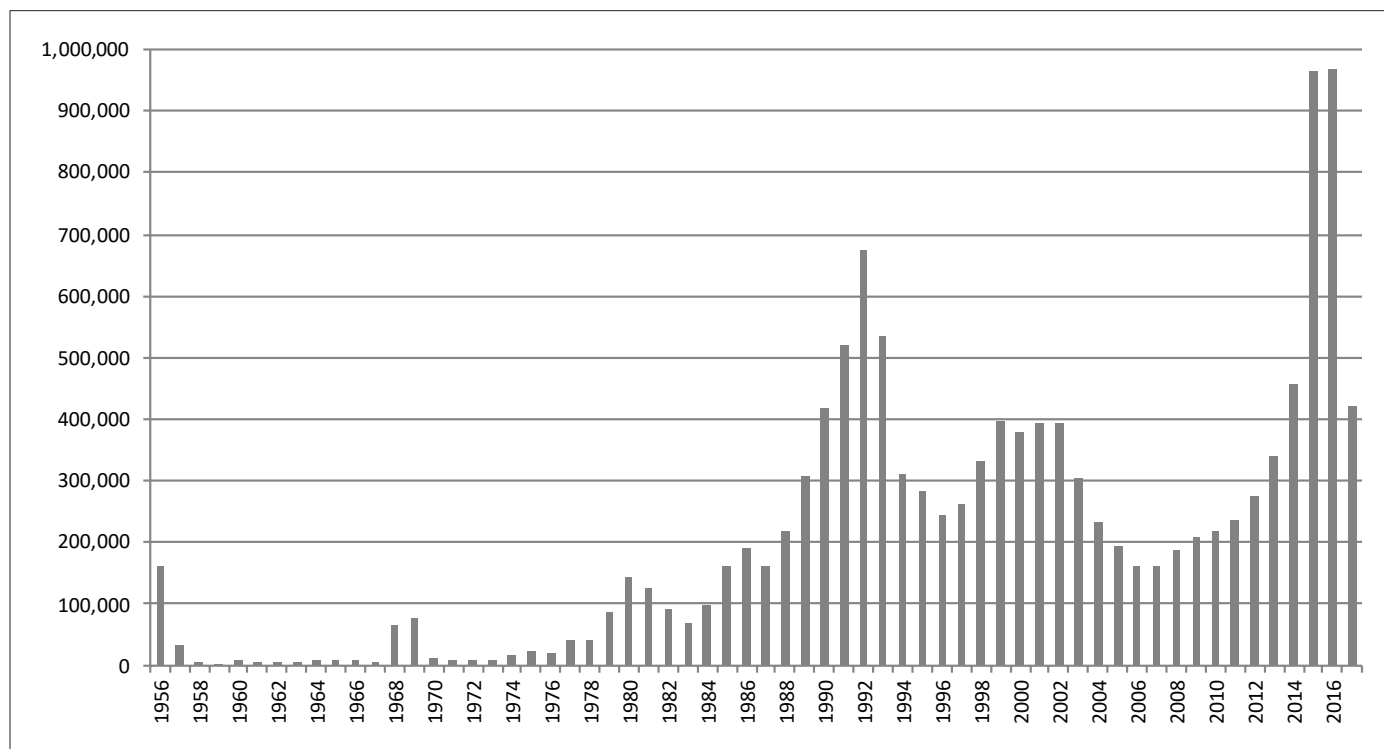
devront rentrer dès 1995, mais on estime que 350 000 seront accueillis à long terme<sup>11</sup>. Entre 1988 et 1993, la difficile transition post-Ceausescu<sup>12</sup> pousse 350 000 Roumains à déposer une demande d'asile en Europe, le plus souvent sans succès<sup>13</sup>. Dix ans plus tard, les demandes d'asile avoisinent 400 000 quatre années consécutives, principalement en raison de la guerre au Kosovo<sup>14</sup>. Une part importante des Kosovars seront acceptés, mais au seul bénéfice de permis temporaires et ils seront nombreux à devoir regagner leur pays au cours des années 2000<sup>15</sup>.

Il ressort de ces chiffres que, sans être totalement hors-norme, les années 2015/16 sont bien exceptionnelles. Ce constat reste valide si l'on remonte avant 1980 aux épisodes d'exode hongrois (200 000 départs de réfugiés en 1956/7<sup>16</sup>) et tchécoslovaque (170 000 départs en 1968/9<sup>17</sup>). Le cas des boat-people indochinois, dès 1975, est comparable à 2015/16 en termes de départs et de drames humains (3 millions de départs, des milliers de morts par naufrage), mais seule une petite minorité de réfugiés (185 000) sera réinstallée en Europe<sup>18</sup>.

Proportionnellement à la population de l'Europe (500 millions d'habitants), l'arrivée de 2.5 millions de demandeurs d'asile en 2015/16 équivaut à un taux annuel de 0.25%. On est donc loin des « flots » ou des « déferlements » décrits par certains médias. Plusieurs pays dont l'Allemagne (1%) et la Suède (1.5%) concentrent cependant les arrivées et, pour la démographie historique, un taux d'immigration annuel de 1% constitue un chiffre fort élevé<sup>19</sup>. Il correspond aux plus fortes arrivées migratoires en Europe des années 1960 et à celles de la fin du XIXe siècle aux Etats-Unis<sup>20</sup>. Il est donc compréhensible que, par-delà des réactions xénophobes condamnables, certains gouvernements se soient inquiétés de l'ampleur du phénomène.

Pour certains observateurs, la crise migratoire s'expliquerait par une proportion élevée de migrants économiques sans besoins de protection qui viendraient saturer les systèmes d'asile. Il est vrai que cette explication a parfois pu s'appliquer. Ainsi au début des années nonante les demandes d'asile de dizaine de milliers de Roumains en Allemagne avaient peu de fondements autres qu'économiques. Plus récemment, de nombreux migrants des Balkans ont tenté leur chance sans que leurs pays ne connaissent des situations de violence ou de violation des droits humains marquées. Au cours des années récentes cependant le tableau ci-dessous montre que les origines de la majorité des demandeurs d'asile correspondent à des pays où les violences et les violations à large échelle des droits humains sont largement documentées.

Dans d'autres cas (Afrique sub-saharienne, Pakistan, Balkans), il est difficile de tracer une séparation claire entre catégories de migrants<sup>21</sup>. De manière générale cependant, les études quantitatives systématiques sur les déplacements des



**Graphique 1.** Demandes d'asile dans 10 pays d'Europe 1956-2017

Source: UNHCR/Eurostat (Demandes déposées pour la 1<sup>re</sup> fois) – Avant 1980 propres estimations basées sur UNHCR

**Tableau 1.** Principales origines des demandes d'asile dans l'UE+

2011		2012		2013	
Afghanistan	24 235	Afghanistan	23 385	Syrie	49 155
Pakistan	14 985	Syrie	22 260	Russie	35 810
Nigeria	13 770	Russie	18 030	Afghanistan	22 580
Iraq	13 485	Pakistan	17 405	Erythrée	19 930
Somalie	13 260	Somalie	15 725	Pakistan	19 450
2014		2015		2016	
Syrie	124 750	Syrie	377 910	Syrie	337 505
Erythrée	45 885	Afghanistan	193 015	Afghanistan	186 530
Afghanistan	39 135	Iraq	126 810	Iraq	128 530
Kosovo	34 590	Kosovo	67 535	Pakistan	47 780
Pakistan	20 770	Albanie	66 990	Nigeria	47 315

Source: Eurostat (Demandes déposées pour la 1<sup>re</sup> fois) – Union Européenne + Suisse et Norvège

demandeurs d'asile confirment que la violation des droits humains constitue le facteur de fuite le plus important<sup>22</sup>.

Historiquement, guerres et violences sont donc les principales causes de fluctuation des demandes de protection<sup>23</sup> en Europe, mais d'autres évolutions, sans rapport direct avec les motifs de fuite, expliquent leur croissance tendancielle et culminent en 2015. Force est en effet de constater que d'innombrables épisodes de violence ont marqué l'après second guerre mondiale sans générer, à distance égale, des déplacements de population significatifs vers l'Europe. En 1967, la guerre du Biafra déplace 2 millions de personnes au Nigeria, en 1979, l'invasion de l'Éthiopie par la Somalie déplace 600 000 réfugiés, en 1985 la guerre d'indépendance en Érythrée fait 1.2 millions de réfugiés<sup>24</sup>, en 1992 la guerre civile au Mozambique fait 6 millions de déplacés, en 1994 le génocide au Rwanda 3.5 millions. En 2007 le HCR estimait à 2.2 millions le nombre d'Irakiens ayant fui le pays principalement vers ses voisins.

Il est donc nouveau que se dirigent vers l'Europe, de manière spontanée, désorganisée, et avec un coût humain intolérable des centaines de milliers de personnes en quête de protection. Trois explications conjointes peuvent être envisagées: le raccourcissement des distances, la crise des politiques de rétention et l'asymétrie géographique des droits.

## **2. Rapprochement des crises et connexions croissantes**

La distance physique a constitué historiquement un frein majeur pour les personnes en quête de protection<sup>25</sup>. Ces dernières se déplacent encore aujourd'hui le plus souvent sur de courtes distances et privilégient les pays limitrophes ou, s'ils n'offrent pas une protection suffisante, les premiers pays sûrs<sup>26</sup>. On peut relever à ce sujet que les troubles politiques ayant donné naissance à la crise migratoire de 2015 se trouvent plus proches du territoire européen que ce n'était le cas lors de nombreuses autres crises du passé, en particulier l'exode des boat-people indochinois. La Syrie, en particulier, se trouve aux marges immédiates de l'Europe. C'est là une première explication à l'ampleur des arrivées. De manière beaucoup plus générale cependant, ce sont les distances elles-mêmes que la globalisation a, en quelque sorte, «raccourcies»<sup>27</sup>. Les populations à protéger se sont par conséquent «rapprochées»; ce qui dès les années 1980 a pris par surprise les pays signataires du protocole de 1967 élargissant au monde entier la Convention de 1951 auparavant limitée à l'Europe<sup>28</sup>. Ainsi, selon Gil Loescher, «The 1980s rudely shook the industrialized countries out of their old notions of insularity from the world's refugee problems. Apart from the occasional ballet dancer, rocket scientist, or merchant marine seaman from the Soviet bloc, political asylum had been an exceptional event for the West. (...) Western governments

never envisaged large-scale population movements from the Third World. The developed world was simply too distant»<sup>29</sup>. Depuis lors, le phénomène de rapprochement s'est accéléré. Quelles en sont les composantes?

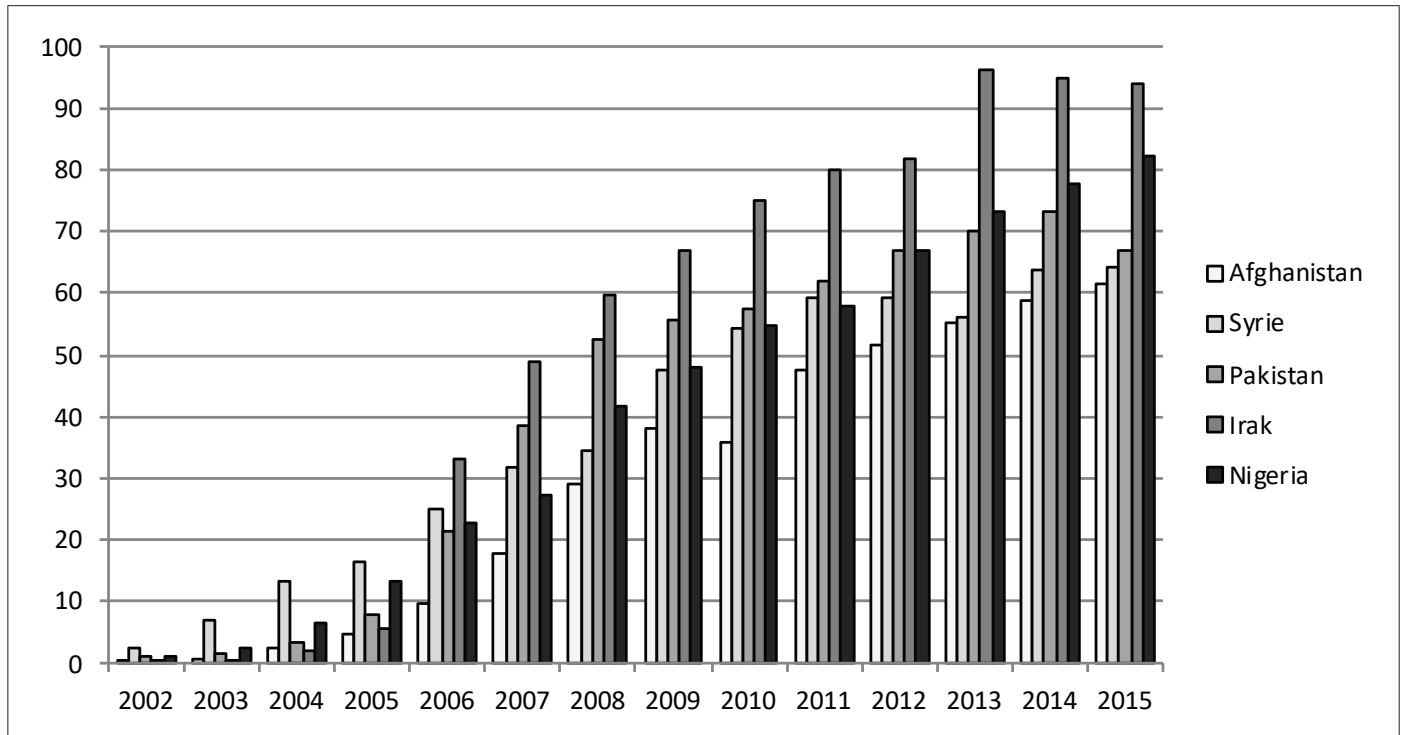
### *Connexions croissantes*

La première est l'accroissement des flux d'information qui contraste avec l'isolement des zones de crise de la guerre froide. Il semble raisonnable de postuler que les groupes et les individus soumis à des persécutions ou à des violences sont aujourd'hui beaucoup mieux informés sur les perspectives d'accueil et les modalités de déplacement. Il s'agit là d'un processus de longue durée – En 1938 un auteur fait déjà une observation similaire<sup>30</sup> – mais l'accélération récente reste spectaculaire. Une étude chiffre ainsi à 86% la proportion des jeunes réfugiés syriens possédant un téléphone mobile dans les camps de premier asile<sup>31</sup> et la Banque mondiale observe en Afghanistan<sup>32</sup> un taux d'abonnement au téléphone mobile de 62% en 2015, en Irak de 92% (Figure 2). Les moyens de télécommunication facilitent l'organisation du déplacement<sup>33</sup> et parfois les secours<sup>34</sup>. En 2015 on a ainsi vu apparaître des applications pour *smartphones* spécifiquement destinées à la traversée des pays des Balkans<sup>35</sup> ou à l'arrivée en Allemagne<sup>36</sup>. Plus récemment sont apparues des applications permettant de contacter un traducteur volontaire via Facebook<sup>37</sup>. L'implication croissante de la société civile dans le support aux réfugiés contribue aussi à ce rapprochement par des actions d'assistance et de sauvetage dans les zones de transit.

### *Moyens financiers et diasporas*

Une deuxième évolution qui tend à faciliter l'accès à l'Europe est l'accroissement des moyens financiers des ménages de nombreux pays d'origine. Si les inégalités se creusent, des centaines de millions de personnes sont néanmoins parvenues durant la dernière décennie à sortir de l'extrême pauvreté. Selon certaines estimations, six cent soixante-neuf millions de personnes auraient passé de la catégorie «pauvre» à «bas revenu». Cette évolution touche en premier lieu des pays tels que la Chine, mais l'Afrique a aussi connu une importante diminution de la pauvreté, y compris dans certains pays touchés par la violence: en Éthiopie la part des pauvres aurait diminué de 26 points de pourcentage, au Nigeria de 18<sup>38</sup>. Mobiliser quelques milliers de dollars afin de financer un voyage était totalement hors de portée d'une écrasante majorité des populations du Sud il y a quelques décennies. C'est désormais possible pour un plus grand nombre, pour qui s'accroît ce qu'Arjun Appadurai appelle la «capacité d'espérer»<sup>39</sup>. L'exode syrien marqué par une forte représentation de la classe moyenne est un bon exemple de ce phénomène<sup>40</sup>, à comparer avec la guerre du Biafra à la fin





**Graphique 2.** Abonnements de téléphonie mobile pour 100 habitants

Source: Banque mondiale

des années soixante ou, aujourd'hui encore, avec l'exode des Rohingyas du Myanmar confinés au Bangladesh.

L'existence de diasporas accentue encore les liens entre zones d'origine et destinations potentielles et facilite le financement des déplacements. Dans certains cas des canaux migratoires préexistants, issus de la migration de travail, se réactivent en cas de crise, comme ce fut le cas entre la Suisse et le Kosovo dans les années 2000, et permettent la fuite d'importantes populations. La fermeture de certaines voies d'accès économiques ou familiales peut aussi renforcer l'incitation à emprunter celle de l'asile.

#### *Fin du contrôle à la sortie et réseaux de passeurs*

Une troisième évolution géographique tient au déclin du «contrôle à la sortie» qui était l'une des grandes caractéristiques du régime migratoire de la guerre froide<sup>41</sup>. Ainsi de nombreux pays empêchaient leurs citoyens de quitter le territoire et considéraient le départ comme un délit. Bien que dénoncée par les pays démocratiques comme une violation des libertés, cette interdiction évitait tout exode massif qui aurait mis en péril le régime d'asile international. A l'heure actuelle, la fuite est parfois difficile, voire sévèrement réprimée, mais la fragmentation politique qui caractérise de nombreuses zones de conflit permet tout de même des

exodes transfrontaliers substantiels. Dans certaines régions, le pouvoir central n'a plus ni la volonté, ni les ressources, pour exercer un contrôle effectif sur ses ressortissants. En Erythrée, s'il n'hésite pas à faire tirer sur les fugitifs, le gouvernement s'accommode ensuite fort bien du départ des survivants en imposant officiellement aux expatriés une taxe sur les revenus acquis à l'étranger<sup>42</sup>. Le départ de réfugiés qui durant la guerre froide était vu par les pays d'accueil et d'origine comme un enjeu symbolique majeur pour démontrer la supériorité d'un système politique sur l'autre a, dans une large mesure, perdu ce statut<sup>43</sup> ce qui diminue l'incitation au contrôle à la sortie, tout comme d'ailleurs à l'accueil généreux<sup>44</sup>.

Enfin, la mise en place de réseaux de plus en plus professionnels de passeurs est une quatrième évolution qui contribue à faciliter – tout en rendant parfois plus dangereux – les déplacements. Si elle est souvent mise en avant dans le discours politique, l'activité des passeurs reste cependant plus une conséquence des autres évolutions et des besoins de protection qu'une cause en soi<sup>45</sup>.

De manière interdépendante, les évolutions que nous venons évoquer contribuent à accroître l'effectif des personnes pouvant envisager de tenter leur chance vers l'Europe. Sans abolir les freins au déplacement, elles définissent un

cerle géographique élargi d'accès possible qui inclut désormais la Syrie, l'Afghanistan, le Pakistan, la corne de l'Afrique et l'Afrique sub-saharienne. Ces zones de crises prépondérantes dans l'exode vers l'Europe correspondent à un périmètre d'environ 3000 kilomètres tandis qu'au-delà, l'Afrique des Grands lacs, l'Amérique du Sud ou le Myanmar restent trop distants pour générer des migrations substantielles vers l'Europe. D'autres régions d'accueil, l'Australie, les Etats-Unis et le Canada connaissent des évolutions comparables mais des conditions géographiques et des réponses politiques contrastées. Les gouvernements européens tentent de lutter contre l'élargissement des provenances en rendant plus difficile le franchissement des distances par des mesures de contrôle, des sanctions aux transporteurs de personnes sans documents de voyage, etc. Ces tentatives de rétention qui ne sont pas nouvelles sont cependant elles aussi en crise.

### 3. Affaiblissement du pacte de rétention

Un deuxième élément d'explication de la crise actuelle tient à l'affaiblissement, de ce que l'on pourrait appeler le « pacte de rétention » – en anglais de *containment* – informellement mis en place après la seconde guerre mondiale et durant la décolonisation lorsque les pays du Nord commencèrent à se préoccuper du sort des populations déplacées à l'échelle mondiale.

#### *La répartition des tâches mise en cause*

Pour Luc Legoux: « A la fin des années soixante, avec l'extension de la guerre froide à l'ensemble du monde, une répartition des tâches est instaurée (...). L'Occident accueille toujours un petit flux de réfugiés politiques essentiellement en provenance du monde communiste, les pays du Sud hébergent les flux massifs de réfugiés des guerres locales liées au conflit entre les deux blocs. »<sup>46</sup>. C'est le HCR qui assure dans une large mesure l'assistance des réfugiés dans des camps dans un contexte d'élargissement de son mandat voulu par le Haut-commissaire Felix Schnyder<sup>47</sup> et grâce au financement des pays du Nord<sup>48</sup>. Dans les cas trop problématiques, la réinstallation est une voie par laquelle une minorité de réfugiés se trouve finalement transférée au Nord. Plusieurs auteurs<sup>49</sup> ont mis en évidence l'existence de cette répartition des tâches basée sur l'idée d'une différence de nature entre réfugiés des pays de l'Est, considérés a priori comme « politiques », et réfugiés du Sud, considérés collectivement comme fuyant la violence. De nombreux auteurs ont critiqué le caractère artificiel de cette distinction que Bhupinder Chimni qualifie de « myth of difference »<sup>50</sup>.

La répartition des tâches entre pays d'accueil au Sud et bailleurs de fonds au Nord est évidemment toujours en vigueur, comme en témoignent les effectifs très supérieurs de réfugiés hébergés dans les pays du Sud et l'ampleur des

activités d'assistance du HCR<sup>51</sup>. Le contexte favorable des années 60-70 - passé commun de lutte pour la décolonisation au Sud, ampleur de l'aide financière du Nord et relative prospérité de certains états décolonisés<sup>52</sup> - s'est cependant transformé avec la fin de la guerre-froide et les pays occidentaux rechignent souvent à financer les activités d'assistance<sup>53</sup>. La Guinée, le Malawi et le Pakistan qui hébergeaient de nombreux réfugiés s'en plaignaient déjà dès les années 80-90<sup>54</sup>.

La crise syrienne est emblématique du désengagement des pays du Nord pour assurer la contrepartie financière de l'hébergement au Sud. Ainsi on a constaté quelles difficultés le Programme Alimentaire Mondial (PAM), le HCR et les autres organismes d'aide ont eues à financer leurs activités durant la crise. En 2014 le PAM annonçait avoir dû couper de 30% l'assistance aux réfugiés syriens du Liban<sup>55</sup>. De même, quelques semaines avant l'explosion des arrivées de réfugiés dans les îles grecques en 2015, un rapport conjoint de 200 organisations d'assistance annonçait que dans les zones de premier accueil, 1,6 million de réfugiés syriens avaient vu leur aide alimentaire réduite, que 750000 enfants n'étaient pas scolarisés et que les services de santé vitaux étaient trop chers pour beaucoup, y compris 70000 femmes enceintes<sup>56</sup>. De manière générale, si les contributions au HCR ont cru en valeurs absolues au cours des années récentes<sup>57</sup>, cette croissance n'a clairement pas suivi celle des besoins de protection.

Bien sûr, mobiliser au Nord des fonds d'assistance pour les réfugiés dans les pays du Sud a toujours été difficile – le HCR fut confronté à de tels défis en Indochine<sup>58</sup> – mais le contexte de guerre froide et de compétition entre les blocs y était beaucoup plus favorable qu'aujourd'hui. Selon Jeff Crisp, la démocratisation observée dans de nombreux pays du Sud a par ailleurs rendu plus difficile l'acceptation de politiques d'accueil et d'hébergement de grande ampleur<sup>59</sup>, transposant du Nord au Sud la tension bien connue entre processus démocratiques et accueil libéral des réfugiés<sup>60</sup>. On peut ajouter que le traumatisme du massacre de Srebrenica en 1995 a sans doute aussi grandement freiné les velléités de créer des zones protégées à l'intérieur même des régions en conflits comme cela avait été fait lors de l'« *Operation Provide Comfort* » de 1991 pour les Kurdes d'Irak afin d'éviter leur entrée en Turquie et leur éventuelle migration vers l'Europe<sup>61</sup>.

#### *Fermeture des voies d'accès protégées*

Nous l'avons relevé ci-dessus, la répartition des tâches instaurée entre le Sud et le Nord dans l'accueil des réfugiés comprenait aussi certaines modalités permettant d'accéder au territoire des pays du Nord ou de faire valoir des motifs de protection à distance. Une première passait par les ambassades: *l'asile diplomatique* théorisé par Grotius au XVII<sup>e</sup> siècle, a longtemps donné aux bâtiments diplomatiques un statut extraterritorial<sup>62</sup> permettant de demander protection sans

quitter son propre pays. En Suisse, la possibilité de déposer une demande d'asile en ambassade, tacitement reconnue dans l'après-guerre, a été formellement inscrite dans la première loi sur l'asile de 1979. Elle trouvait son équivalent dans de nombreuses législations européennes de l'époque.

En second lieu, les programmes de réinstallation menés principalement sous l'égide du Haut Commissariat des Nations unies pour les réfugiés (HCR) consistaient, pour un pays d'accueil, à accepter un contingent de personnes sélectionnées par le HCR dans des zones de premier exil. Les exemples historiques sont ici nombreux, du plan d'action international pour l'Indochine entre 1985 et 1997<sup>63</sup> au pont aérien mis en place pour le Kosovo en 1999. Dans ce dernier cas, près de 100 000 réfugiés furent évacués des Balkans vers l'Europe par les forces de l'OTAN puis répartis vers 28 pays d'accueil<sup>64</sup>.

Les deux instruments que nous venons d'évoquer ont permis dans le passé à des centaines de milliers de personnes de bénéficier d'une protection. Si les programmes de réinstallation sont toujours en vigueur, leur rythme de croissance est loin d'avoir suivi celui des besoins de protection. En 2016 les réinstallations ne représentaient que 3% des décisions de protection en Europe : tous les autres réfugiés étaient arrivés par leurs propres moyens<sup>65</sup>.

L'accès aux procédures d'asile dans les ambassades s'est lui aussi considérablement restreint. En 2002, on recensait sept pays européens (l'Autriche, le Danemark, la France, les Pays-Bas, l'Espagne, la Grande-Bretagne et la Suisse) offrant cette possibilité<sup>66</sup>. Depuis lors, tous l'ont abolie ou fortement restreinte<sup>67</sup>.

Ce chapitre nous permet de conclure que les pays du Nord ont de longue date cherché à tenir à distance les réfugiés potentiels des pays du Sud. La forteresse Europe n'est, à cet égard, pas nouvelle, mais elle a longtemps reposé sur un pacte tacite qui impliquait, en contrepartie à la fermeture, d'importantes contributions financières et le maintien de voies d'accès alternatives.

La fragilisation du pacte de rétention et le rapprochement des crises contribuent désormais à accroître les besoins de protection exprimés sur le territoire européen. Reste cependant à comprendre ce qui peut pousser un nombre croissant de migrants à prendre le risque d'un déplacement souvent meurtrier. L'asymétrie croissante entre les droits pouvant être associés à la présence sur le territoire européen et ceux dont peut se prévaloir une personne de l'extérieur l'explique.

#### 4. Asymétrie géographique des droits

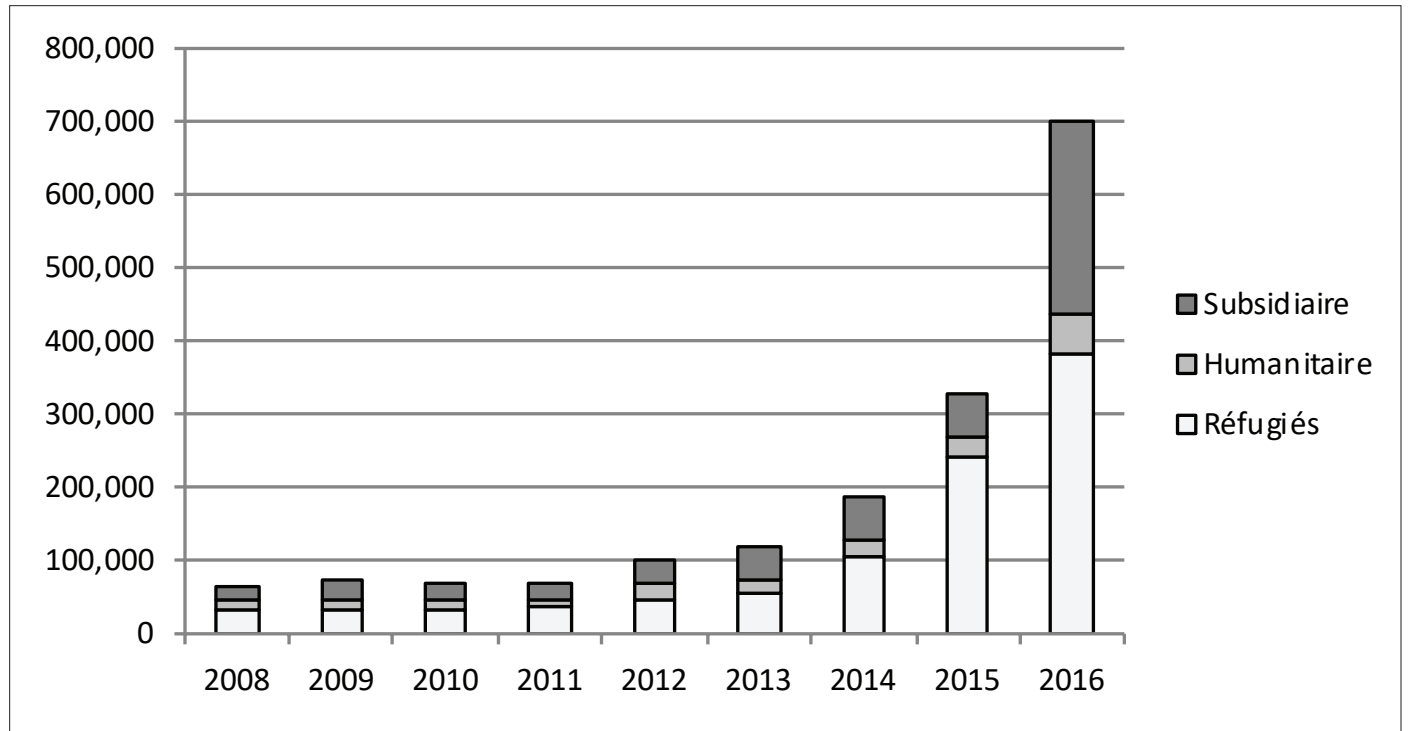
L'argument développé ici nuance la thèse souvent avancée d'une dégradation générale des conditions d'accueil des demandeurs d'asile en Europe. Si l'attitude de certains gouvernements et la récupération par des mouvements xénophobes,

ont contribué à crispier une partie de la population vis-à-vis des demandeurs d'asile et si de multiples politiques de dissuasion ont été mises en place, une évolution concomitante allant vers des droits plus étendus pour les réfugiés se manifeste depuis une vingtaine d'années<sup>68</sup>. Comme le relèvent Thielemann & Hobolth « *In many developed countries, material reception conditions have been improved, the definition of what constitutes protection needs has been widened, procedural safeguards in the refugee determination process and against the removal of those not qualifying for refugee protection have been strengthened* »<sup>69</sup>. Deux évolutions sont particulièrement remarquables, l'élargissement de la définition et la judiciarisation des procédures.

#### Elargissement de la définition du réfugié

La définition du réfugié figurant dans la Convention de 1951 implique une persécution individuelle. Si elle a d'emblée été utilisée de manière flexible en fonction des enjeux politiques du moment<sup>70</sup>, cette définition a progressivement été considérablement élargie dans les législations européennes. Pour Matthew Gibney : « *As restrictive measures have developed across Europe and North America, the legal grounds on which individuals can claim asylum have expanded significantly. Far from confining themselves simply to the 1951 Convention on Refugees, western countries now accept a range of human rights grounds as a basis for asylum* »<sup>71</sup>. De nombreux pays ont ainsi considéré les persécutions non-étatiques et les violences généralisées comme pouvant justifier l'octroi d'une protection. Le HCR a joué un rôle important dans cet élargissement à travers les clarifications successives données aux principes directeurs sur la protection entre 2002 et 2016. La dernière clarification de décembre 2016 considère ainsi que la Convention est « *directement applicable aux civils déplacés par des situations de conflits armés et de violence* »<sup>72</sup> et reflète la position du HCR durant la crise syrienne. Auparavant, le HCR avait été plus nuancés, par exemple pour les Tamouls du Sri-Lanka au milieu des années quatre-vingt<sup>73</sup>, et pour les ressortissants d'ex-Yougoslavie au début des années nonante<sup>74</sup>. Dans les deux cas, le HCR se fit – entre autre pour des raisons pragmatiques d'acceptabilité par les états d'accueil – l'avocat d'un accueil temporaire sans reconnaissance formelle du statut de réfugié.

L'une des conséquences de l'élargissement de la définition des personnes pouvant bénéficier du statut de réfugié semble avoir été, dès 2013, le déclin de la proportion des formes de protection subsidiaires et souvent temporaires. Ces statuts de deuxième ordre avaient été mis en place dans un but de dissuasion dans les années nonante à l'instigation de l'Allemagne et s'étaient rapidement appliqués à 50% des décisions de protection au sein de l'UE<sup>75</sup>.



**Graphique 3.** Décisions positive de 1<sup>re</sup> instance dans l'UE+ selon statut (val. absolues)

Source: Eurostat

Leur proportion tombe à 20% environ en 2015 avant d'augmenter à nouveau en 2016, probablement suite à la volte-face restrictive de plusieurs pays d'Europe<sup>76</sup>.

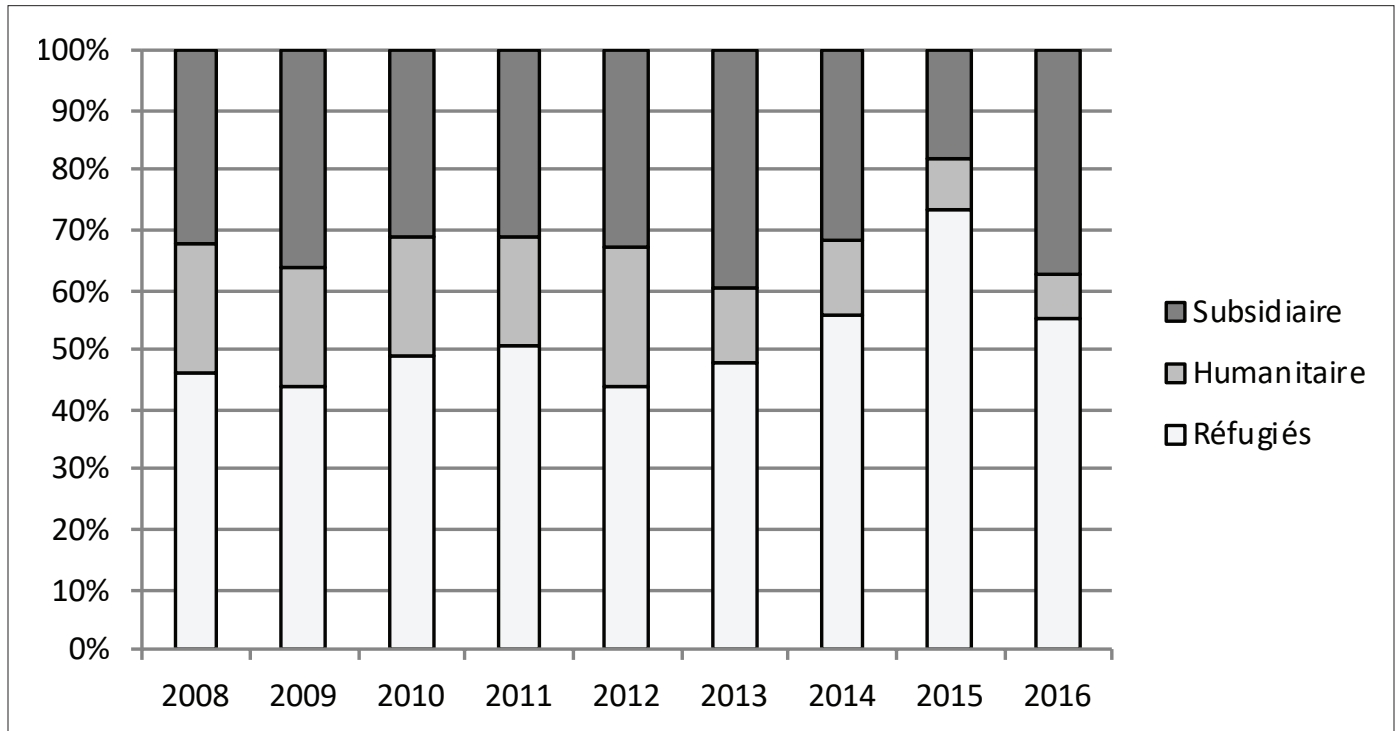
#### Judiciarisation

La deuxième évolution importante est le transfert partiel des compétences de décision de la sphère administrative à la sphère judiciaire. Les tribunaux jouent ainsi un rôle croissant dans la détermination des statuts de protection et tendent à contrecarrer les tendances restrictives des administrations étatiques<sup>77</sup>. À l'octroi discrétionnaire de l'asile par l'Etat, longtemps dominant, se substituent des procédures basées sur des droits clairement spécifiés et à caractère universel. Cette évolution s'inscrit dans une dépolitisation de l'asile sur la longue durée: les critères d'accueil ne sont plus liés comme au temps des proscrits du XIX<sup>e</sup> siècle ou de la guerre froide à un jugement porté par un Etat d'accueil sur un Etat d'origine. Désormais, ces considérations sont supplantées par la situation humanitaire individuelle des personnes accueillies. Matthew Price parle de dépolitisation<sup>78</sup> et d'humanitarisation de l'asile<sup>79</sup>. Une jurisprudence importante s'est aussi développée au niveau de la Cour européenne des droits de l'homme (CEDH) et étend certaines protections, jusqu'ici réservées aux réfugiés, aux personnes ne pouvant

se prévaloir de ce statut<sup>80</sup>. Comme le relève Alexander Betts: «*The most high-profile cases have shown that those who are not includable or are excludable under international refugee law may nevertheless be entitled to international protection if they face, for example, the prospect of torture or cruel, inhuman, and degrading treatment on their return*»<sup>81</sup>. Ainsi, le Jugement Salah Sheek (2007) de la CEDH considère pour la première fois qu'un renvoi peut être interdit en raison d'une situation de violence généralisée sans que la situation individuelle de la personne concernée ne diffère de celle du reste de la population<sup>82</sup>.

#### Asymétrie

L'élargissement de la définition du réfugié et la judiciarisation des procédures ont pour conséquence un élargissement des perspectives de protection et de séjour qui s'ouvrent aux candidats à l'asile en Europe. Dans le même temps, la présence sur le territoire du pays d'accueil est requise pour en bénéficier tandis que les voies d'accès se raréfient et que les restrictions se multiplient dans le cadre de ce que l'on peut appeler un régime de *non-entrée*<sup>83</sup>. Issu des traités de Westphalie (1648) et centré sur l'Etat-nation, le droit d'asile reste en effet marqué par cette condition cardinale: Il faut, pour être protégé, être à l'intérieur du territoire<sup>84</sup>. L'asymétrie entre



**Figure 4.** Décisions positive de 1<sup>er</sup> instance dans l'UE+ selon statut (pourcentages)

Source: Eurostat

les pays où s'appliquent le droit à la protection et le reste du monde s'en trouve accrue. Elle a été confirmée récemment par un jugement de la Cour de justice de l'UE déboutant une famille syrienne qui avait tenté de demander un visa pour fuir la ville assiégée d'Alep alors qu'elle réunissait clairement les qualités qui lui auraient permis d'obtenir un statut de séjour si elle avait pu le demander en Europe<sup>85</sup>. La clause de non-refoulement, désormais généralisée par la CEDH<sup>86</sup>, tend à accroître cette asymétrie des droits. L'admission de réfugiés de la violence se présentant à la frontière devient une obligation de droit international et non plus un acte humanitaire ou politique discrétionnaire.

### Conclusion

La proximité de crises humanitaires majeures accentuée par des interconnexions croissantes et des possibilités de déplacements accrues pour les victimes de violence, l'affaiblissement des efforts des états du Nord pour assister les victimes au Sud, la fermeture des voies d'accès protégées et une asymétrie géographique croissante des droits à la protection permettent de mieux comprendre la situation des régimes d'asile actuels et la crise qui culmine en 2015-2016. Ces résultats illustrent la nécessité de prendre en compte simultanément plusieurs échelles géographiques et temporelles

et de croiser les évolutions structurelles avec l'agencéité des personnes en quête de protection. Ils complètent les analyses existantes de la crise migratoire centrées sur le manque de cohérence et de solidarité des politiques européennes.

Du point de vue du droit d'asile, le contrôle à distance mené désormais par l'Europe via des accords de rétention, une surveillance accrue aux frontières et une politique générale de nonaccès<sup>87</sup>, apparaît comme le revers de la médaille d'un régime d'asile tendanciellement plus ouvert à l'intérieur des territoires<sup>88</sup>. Ainsi les Etats - ou plus souvent leurs tribunaux - octroient d'une main des droits plus étendus tout en verrouillant l'accès de l'autre.

Le dénouement récent et provisoire de la crise migratoire par la fermeture de plusieurs routes d'accès à l'Europe peut être interprété à cette aune comme la victoire de la raison politique sur la raison judiciaire et comme la remise en place d'un système de mise à distance des réfugiés longtemps dominant. L'accord formel avec la Turquie de 2016 et les arrangements informels avec les factions libyennes en 2017 rappellent à cet égard l'accord passé entre l'Italie et la Libye en 2008 et la politique espagnole durant la « crise des pirogues » de 2005<sup>89</sup>.

Notre analyse s'est focalisée sur le cas européen et sur l'accroissement des demandes d'asile. Les évolutions

structurelles que nous avons mises en évidence se manifestent cependant dans de nombreux autres contextes. Une future direction de recherche intéressante sera d'évaluer dans quelle mesure ces évolutions concernent des populations qui ne tentent pas forcément d'emprunter la voie de l'asile une fois parvenue à destination (les « migrants » en général pour reprendre le terme qui s'est récemment imposé). Une autre consistera à envisager le cas de pays d'accueil non-européens tels que le Canada, les Etats-Unis, l'Afrique du sud ou l'Australie. Le Canada est à cet égard particulièrement intéressant car on y pratique de longue date des politiques alternatives et complémentaires par rapport à l'accueil de demandes d'asile spontanées sur le territoire. La réinstallation<sup>90</sup> et le sponsorship privé<sup>91</sup> des réfugiés, peu pratiqués en Europe, sont des pistes à creuser afin de garantir une protection aux plus vulnérables sans les obliger à tenter de franchir des distances qui, si elles se réduisent, restent dramatiquement meurtrières.

#### NOTES

- 1 [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics) (demandes d'asile déposées pour la première fois).
- 2 [http://cartotheque.sciences-po.fr/media/Migrants\\_morts\\_et\\_disparus\\_en\\_Mediterranee\\_2014-2016/2268](http://cartotheque.sciences-po.fr/media/Migrants_morts_et_disparus_en_Mediterranee_2014-2016/2268).
- 3 UNHCR. *UNHCR Statistical Yearbook 2016*. Geneva: United Nations High Commissioner for Refugees, 2017. Nous utilisons le terme « pays du Nord », au sens anglophone de Global North, pour désigner les démocraties libérales riches et « pays du Sud » au sens de *Global South* pour les pays moins favorisés.
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- 5 Prem Kumar Rajaram. « Whose Migration Crisis? Editorial Introduction. » *Intersections - East European Journal of Society and Politics* 2, no. 4 (2016): 5-10; Heaven Crawley, and Dimitris Skleparis. « Refugees, migrants, neither, both: categorical fetishism and the politics of bounding in Europe's 'migration crisis'. » *Journal of Ethnic and Migration Studies* 44, no. 1 (2017): 48-64; Nicholas De Genova, ed. *The Borders of Europe - Autonomy of Migration, Tactics of Bordering*. Durham and London: Duke University Press, 2017; Anna Triandafyllidou. « A "Refugee Crisis" Unfolding: "Real" Events and Their Interpretation in Media and Political Debates. » *Journal of Immigrant & Refugee Studies* (2017): 1-19; Nando Sigona. « The contested politics of naming in Europe's "refugee crisis". » *Ethnic and Racial Studies* 41, no. 3 (2018): 456-60.

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- 7 Nicolas Jacob-Rousseau. « Géohistoire/géo-histoire: quelles méthodes pour quel récit? ». *Géocarrefour* 84, no. 4 (2009): 211-16.
- 8 « (...) narratives about how things got 'from here to there' including the multiple contingencies and reversals encountered in the process. At this level of analysis, it is possible to delineate, at least partially, the structural constraints and other obstacles affecting a specific individual or collective pursuit. » Alejandro Portes. « The hidden abode: Sociology as analysis of the unexpected ». *American Sociological Review* 65, no. 2 (2000): 1-18.
- 9 Bundy identifie quatre « crises de l'asile » historiques en Europe: la révolution russe et la 1<sup>re</sup> guerre mondiale, la 2<sup>e</sup> guerre mondiale et ses suites, les années 90 (ex-Yougoslavie, etc.) & la période actuelle dès 2011. Colin Bundy. « Migrants, réfugiés, histoire et précédents. » *Revue des migrations forcées* no. 1 (2016): 5-6.
- 10 Un certain nombre de demandes enregistrées en 2016 ont été déposées en 2015, année qui marque l'apogée des arrivées. Cf. EASO. *Annual Report on the Situation of Asylum in the European Union 2016*. Cyprus: European Asylum Support Office, 2017.
- 11 Klaus J. Bade. *L'Europe en mouvement - La migration de la fin du XVIII<sup>e</sup> siècle à nos jours*. Paris: Seuil, 2002.
- 12 Benedicte Michalon et Mihaela Nedelcu. « Histoire, constantes et transformations récentes des dynamiques migratoires en Roumanie. » *Revue d'Etudes Comparatives Est-Ouest* 41, no. 4 (2010): 5-28.
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- 14 Gil Loescher. *The UNHCR and world politics - A perilous path*. Oxford: Oxford University Press, 2001.
- 15 Bade, *L'Europe en mouvement - La migration de la fin du XVIII<sup>e</sup> siècle à nos jours*.
- 16 HCR, *Les réfugiés dans le monde 2000 - Cinquante ans d'action humanitaire*.
- 17 Bade, *L'Europe en mouvement - La migration de la fin du XVIII<sup>e</sup> siècle à nos jours*.

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- 24 Hélène Thiollet. «Wad Sharifey, Kishm el-Girbâ, Asotriba... Métamorphoses d'un réseau régional de douze camps de réfugiés érythréens dans l'est du Soudan (1962-2013).» In *Un monde de camps*, edited by Michel Agier, 203-17. Paris: La Découverte, 2014.
- 25 Richard Black, and Vaughan Robinson. *Geography and refugees*. London: Belhaven Press, 1993.
- 26 Will H. Moore, and Stephen M. Shellman. «Whither Will They Go? A Global Study of Refugees' Destinations, 1965-1995.» *International Studies Quarterly* 51, no. 4 (2007): 811-34.
- 27 Christian Grataloup. *Introduction à la géohistoire*. Paris: Armand Colin, 2015.
- 28 La Convention stipule dans son article 1 (al. 2) que seuls les événements survenus avant 1951 en Europe peuvent être pris en considération pour la reconnaissance de l'asile à une personne craignant «avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un certain groupe social ou de ses opinions politiques». Le protocole de 1967 élargi la protection aux événements survenus après 1951 et au dehors de l'Europe. <http://www.unhcr.org/fr/about-us/background-4b14f4a62/convention-protocole-relatifs-statut-refugies.html>.
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- 36 <https://play.google.com/store/apps/details?id=com.memorado.welcomeGuide>, <https://arriving-in-berlin.de/>.
- 37 <https://www.newsdeeply.com/refugees/community/2017/02/20/a-translator-in-your-pocket-app-aims-to-bridge-refugees-language-gap>.
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# Borders, Boundaries, and Exclusion in the Icelandic Asylum System<sup>1</sup>

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## Abstract

*Grounded in theories of borders and boundaries, this article critically engages with the processes through which asylum seekers in Iceland are excluded from full participation in society. Immigration laws and bureaucratic barriers contribute to this exclusion, which is a result of restrictions on labour market participation, lack of housing, temporality, and lack of meaningful activities. We discuss how borders and boundaries create the identity of the asylum seeker and how the participants in this study experience that identity. We identify three main areas of exclusion: social exclusion, isolation, and cultural boundaries.*

## Résumé

*Fondé sur des théories concernant les frontières et les limites, cet article envisage de manière critique les processus par lesquels les demandeurs d'asile sont, en Islande, exclus d'une pleine participation à la société. Les lois sur l'immigration et les obstacles bureaucratiques contribuent à cette exclusion, qui résulte de restrictions en termes de participation au marché du travail, d'un manque de logements, d'une temporalité et d'un manque d'activités constructives. Nous examinons la manière dont les frontières et les limites créent*

*l'identité du demandeur d'asile, et comment les participants à cette étude vivent cette identité. Nous déterminons par ailleurs trois domaines principaux d'exclusion : l'exclusion sociale, l'isolement et les frontières culturelles.*

In recent years increased numbers of people have claimed asylum in Iceland. After crossing multiple borders, they meet cultural boundaries and systemic barriers that they are sometimes unable to cross. These boundaries can lead to exclusion from the society in which they are trying to settle. In addition to state borders, the social and bureaucratic mechanisms that create boundaries can lead to social exclusion within states. We examine how borders and boundaries affect asylum seekers in Iceland. Asylum seekers claim a right to settle into society and they are simultaneously excluded from it. Within this context, we further investigate the interplay between national borders, cultural boundaries and social exclusion. We argue that immigration policy, bureaucracy, and social practices work as exclusionary mechanisms for asylum seekers in Iceland.

Analyzing the exclusion of asylum seekers can be problematic, since they are not generally understood to belong to the nation while their case is being processed. Their current exclusion from society is legitimated by the possibility

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of their future exclusion. As Cabot points out, the category of *asylum seeker* refers to the temporary nature of a person's relationship to a nation-state.<sup>2</sup> Hynes has described the status of asylum seekers as one of "liminality," the state of being in between statuses.<sup>3</sup> Yet, while maintaining this interim identity, asylum seekers live in Iceland, and they still participate in society despite these limitations on their status. As will be demonstrated in our analysis in this article, asylum seekers in our study are excluded from the normal activities of social life in Iceland. We find that this exclusion is produced through the application of immigration policy as well as through the bureaucratic practices and social norms in Iceland that create boundaries and barriers to participation in society.

In recent years, Iceland has experienced a rapid increase in the number of people claiming asylum. An island located on the periphery of Europe, Iceland has traditionally had low numbers of asylum seekers. Because of the country's location, many of the asylum seekers' cases are adjudicated through the Dublin Regulation, which allows countries to return asylum seekers to the European country to which they first arrived. Despite this likely outcome in the cases of many asylum seekers in Iceland, the waiting period for case resolution is typically long. During that period of waiting, asylum seekers are unable to fully participate in society.

This article raises the question of whether and how the asylum system in Iceland, through usage of national borders and cultural boundaries, leads to the exclusion and isolation of asylum seekers. We begin with a discussion on the theoretical background of the study, introduce the field and the methodology, and then move to the main findings. Three areas of exclusion emerged from our analysis: social exclusion, isolation, and cultural boundaries. This outcome results from restrictions on labour market participation, a reliance on social services, waiting for case resolution, and a lack of access to meaningful activities. Some asylum seekers also experience isolation related to their housing situation. We furthermore investigated the ways in which participants in this study experienced their identity as well as their experiences of racism and prejudice in Iceland. Finally, we consider their agency and resistance against the immigration system.

### **Theoretical Overview**

Classic studies of borders and boundaries entail descriptive analysis of geographical boundaries. More recent studies of "bordering" processes increasingly focus on the human practices that represent differences between geographical spaces.<sup>4</sup> Emphasis on borders as disappearing or becoming increasingly porous, common in the 1990s and early 2000s, is diminishing, while more focus is put on the study of borders as securitized and militarized. They are also increasingly

viewed as a dispersed or chaotic entities, performed or embodied.<sup>5</sup> Boundaries have been framed in different terms across disciplines, defined as a separation between spaces within geography and as a distinction between social groups within anthropology.<sup>6</sup> In this article we focus on borders and boundaries in the anthropological sense. While borders and boundaries are generally seen as fixed, stable entities that divide up space, within political science,<sup>7</sup> Anderson, Sharma, and Wright, view them as fundamentally ideological constructs.<sup>8</sup> They emphasize that the effects of borders on power relations and inequality need to be investigated, as opposed to the study of borders as mere territorial boundaries that can be crossed in single events. Although the forces of globalization require and create large scale population flows, human mobility is increasingly framed within the context of problems, crisis, and threats to security.<sup>9</sup> At the same time migration is becoming more dangerous as the result of stringent border control, which increasingly forces people to use unsafe routes and the services of smugglers.<sup>10</sup>

Traditionally within anthropology, borders and boundaries have been studied separately. Borders have been understood primarily to be territorial markers between states, whereas boundaries are seen as social constructs, establishing symbolic differences or producing identities.<sup>11</sup> According to Fassin, the two concepts must necessarily be combined in order to understand how immigration is governed and experienced. He argues that immigrants embody the articulation of borders and boundaries: "They cross borders to settle in a new society and discover boundaries through the differential treatment to which they are submitted."<sup>12</sup> Khosravi, moreover, claims that borders are used to expose migrants and refugees to exclusion, discrimination, and exploitation. States use borders to define who is allowed to live within their territory and who can be excluded from their territory through deportation.<sup>13</sup> De Genova describes deportation as a means of separating what is inside from what is outside. That separation allows for the exploitation of those who are excluded from the state. By being deported or undocumented, their existence is reduced to what Agamben termed "bare life."<sup>14</sup> Those who are "deportable" are therefore excluded from the nation and the state, even though they still live within its boundaries.<sup>15</sup>

Exclusion, furthermore, has been a subject of analysis in border studies, since the making of borders and boundaries inevitably leads to exclusion of some and inclusion of others.<sup>16</sup> In this article, however, we focus mainly on social exclusion within Iceland while asylum seekers reside there. Studies analyzing refugee resettlement in relation to social exclusion suggest that recently resettled refugees may be vulnerable to social exclusion due to factors such as socio-economic disadvantage, lack of social support, and experiences of discrimination.<sup>17</sup>

The concept of social exclusion highlights mechanisms that act as barriers to full participation in society. Some individuals and groups may experience only partial social exclusion, in some aspects of social life, while those who are excluded in many ways are more vulnerable and generally experience greater difficulties.<sup>18</sup> Social exclusion has been defined as an inability to participate in normal activities in the society in which one is geographically residing.<sup>19</sup>

### ***The Field and Background***

The borders of Iceland may seem easily defined: the country is an independent island state located in the middle of the North Atlantic Ocean. The coastline marks an obvious border between nations as well as between land and sea. It marks the outer limits of the Schengen area. Border control is strict when leaving Schengen but is less strict when moving between Iceland and other countries within Schengen. Therefore, many asylum seekers who are on their way to Canada get stuck in Iceland during border control and have few options other than to apply for asylum in Iceland.<sup>20</sup> As the result of Iceland's location, the majority of the asylum seekers who originate outside Europe have passed through another Schengen country on the way to Iceland. The Dublin Regulation allows countries to transfer asylum seekers back to the first European country they entered.<sup>21</sup>

Historically, migration in Iceland has been on a small scale. Immigrants made up less than 2 per cent of the population in 1996. Since 2001 this proportion has steadily risen and immigrants accounted for around 9.6 per cent of the Icelandic population of just over 332,000 residents in 2016.<sup>22</sup> Only a small proportion of immigrants are refugees. Between 1956 and 2016, 995 individuals have immigrated to Iceland as refugees or have been granted humanitarian status. Of these individuals 675 were resettled in Iceland, while 350 persons arrived as asylum seekers.<sup>23</sup> The number of asylum seekers in Iceland has traditionally been low in comparison to neighbouring countries. The number of asylum claims was 354 in 2015 and 1,130 in 2016.<sup>24</sup> Since 2008, the acceptance rate of finished applications for asylum has ranged from 6 to 28 per cent. In 2016, despite a record number of accepted applications, the proportion of accepted applications was still low: just 11 per cent.<sup>25</sup> In comparison, the acceptance rate in Norway and Sweden in 2016 was around 55 per cent.<sup>26</sup> This difference can partly be explained by the fact that Iceland uses the Dublin Regulation more often and also by the number of asylum applicants considered to come from "safe" countries.<sup>27</sup>

According to a political scientist, Einarsson, Icelandic immigration policy follows that of the EU and the other Nordic countries, but within that frame, the harshest possible policy is constructed.<sup>28</sup> Unlike Denmark, Norway, and Sweden there is a lack of clear policy on asylum seekers and

refugees.<sup>29</sup> When taking into account both geographic location and immigration laws and regulations, what appears is a strict and exclusionary immigration policy in regard to asylum seekers. As stated above, asylum seekers who arrive in Iceland are likely to have come to another European country first. The Dublin regulation *allows* states to send asylum seekers back to their first country of entry into Europe. The Icelandic law,<sup>30</sup> however, states that if an asylum seeker falls under the Dublin regulation, he or she *shall* be sent back to the first country of entry, unless strict criteria for exceptions apply. These exceptional criteria are becoming stricter since the law was introduced in 2016, with additional regulations set by the minister of justice, allowing only very narrow room for exceptions for using the Dublin Regulation.<sup>31</sup>

If an application for asylum does not fall under the Dublin regulation, it may still be considered to be manifestly unfounded if the applicant comes from a country defined as a "safe country."<sup>32</sup> Additionally, an application is considered manifestly unfounded if the person does not come from a "safe country" but the application is considered to be based on economic reasons or "ridiculous" claims.<sup>33</sup> Whether or not an application may be considered manifestly unfounded can matter a great deal for the applicant. This is because when such application is rejected, the applicant can be deported from Iceland and forbidden to enter again for a minimum of two years and possibly permanently. Only in exceptional circumstances is he or she allowed time to leave Iceland voluntarily.<sup>34</sup>

### ***Participants and Methods***

The discussion in this article is based on data from participant observation and interviews with eighteen men. Fifteen of the men are asylum seekers. One man is a refugee who has recently received asylum, and two of the men have received residence permits through marriage. The participants are men in their late twenties or early thirties, and they come from nine different countries. They have been away from their country of origin for different lengths of time: some for close to ten years while others left their home country less than one year prior to the study. They have also been in Iceland for various lengths of time.

The analysis is also informed by a discourse analysis of online news and comments about asylum seekers in Iceland. The participants were recruited through participation in events for asylum seekers, protests by refugee advocacy groups and meetings, as well as snowball sampling, where key informants were recruited through shared acquaintances and these informants later pointed to other participants. The participant observation was conducted through discussions and informal conversations with asylum seekers, by accompanying them to meetings with lawyers and journalists, and

through help and consultation with bureaucratic tasks. The length of the interviews was between forty minutes and two hours. In eight of the interviews the first author was acquainted with the participant beforehand and knew some of the participant's background from informal conversations prior to conducting interviews. No data from these prior conversations were used until participants had given their consent at the time of interview. When interviews were conducted, the participants were presented with an introductory letter that explained the research and clearly stated that they were allowed to withdraw from it at any point until the publication of the results. The findings are based upon transcripts of interviews and field notes collected by the first author and thematically analyzed. In this article we will discuss the topics raised by participants indicating barriers and boundaries that they face related to participation in society.

In order to preserve the anonymity of the participants, each man's country of origin remains confidential in this analysis. This consideration is important in Iceland, where the numbers of asylum seekers are low from some countries of origin. Describing further details about the asylum seekers' identities is avoided for the same reason. Their names and other details that may reveal their identity have been changed. Ten participants are originally from the Middle East and Central Asia, seven are from Africa, and one is from Europe. Therefore the participant group is not representative of the majority of asylum seekers in Iceland in terms of country of origin, as the largest groups of asylum seekers come from Albania and Macedonia. The research findings offer a description of the situation that the study participants face. However, the findings do not allow for generalizations about refugees or asylum seekers in Iceland. The participants had different reasons for leaving their countries of origin. The majority were fleeing from conflict, murder threats, or persecution, while others talked about migrating to experience more freedom. At the time of interview, all participants under the jurisdiction of the Dublin regulation had already waited for more than six months for answers on their requests to have their cases processed in Iceland, and six of these participants had already been waiting for two to three years.

### ***Exclusion from the Labour Market***

The concept of social exclusion has been used to highlight barriers to participation in society and to analyze how social institutions systematically contribute to the exclusion of particular groups.<sup>35</sup> A recurrent theme in the discourse on asylum seekers in Europe alludes to asylum seekers living off social benefits and being a burden on the welfare state. This discourse fails to acknowledge that asylum seekers are often denied the right to seek employment while waiting for a decision on their asylum application.<sup>36</sup> According to Sales,

the emphasis on full employment, which is a central focus in policies used to tackle social exclusion, can actually create boundaries between those who are allowed to work and those who are not.<sup>37</sup>

The participants in our study expressed a strong will to work and provide for themselves. A prominent theme in the interviews related to the participants' desires to be able to continue their lives, to study, and to start careers. Many of those who had been waiting for an answer for their asylum claim for a long time could not understand why the government would rather hand them money and free housing, instead of allowing them to work and pay taxes. For many, it was unclear whether or not they were allowed to work, and they received confusing advice from different sources. Those who did not fall under the Dublin Regulation were allowed to apply for a temporary work permit.<sup>38</sup> These participants often found themselves in a Catch-22 situation, where a potential employer would be unwilling to offer the asylum seeker a work contract without a social security number, and the asylum seeker was not able to apply for the social security number (*kennitala*) without a job contract. Nyamekye explained, "I never got job, I never got job. I tried in many places. When you go to a company, the company will tell you, "Go to immigration and go and bring *kennitala* [social security number]." Immigration will tell you, "Go and bring contract from the company" and waiting the company will give you contract without a social security number ... Why do they tell them to go find a work when they know you are not allowed to work?"

Many of the participants who were legally allowed to apply for a temporary work permit encountered institutional and bureaucratic barriers. To apply for the permit they needed to pay over \$100 (12,000 ISK).<sup>39</sup> After that they had to wait for an answer for up to three months, risking losing the job offer in the meantime. One participant went through this process three times and another participant endured the process five times, both without receiving any information explaining that they were not allowed to work because their application fell under the Dublin Regulation. Aref explained,

I'm not a doctor, I'm not an engineer. I'm getting like a very simple job that they can, you know, replace someone else very fast. It's matter of days or hours to get this job. And how you want me to wait for six months or three months for having *kennitala*? This is so stupid. So I lost three other jobs just like that. I paid 12,000, 12,000, and 12,000. And at the end my lawyer called me: "I'm sorry but from the immigration, they told me that you cannot work." So why they took my money?

The participants described other barriers to receiving a temporary work permit. For example, some participants

were asked to show a rental agreement or a certificate from a house owner that they already had a place to stay.<sup>40</sup> For these participants, who had not started working to save up for rent, and who lacked social networks, that requirement proved difficult to fulfill. At the time of interview, six participants had applied for a temporary work permit after getting a job contract. Three of them had received work permits, and the other three participants were still waiting for an answer. All six of them had to wait for several months to receive their social security numbers. If the work permit was granted, it was always on a temporary basis and could be revoked if the asylum application was denied.

Those participants who did not have jobs talked about this situation taking a toll on them both mentally and socially. The consequences of not being allowed to work have been discussed elsewhere, but they include the loss of purpose, negative self-esteem, difficulties filling one's days with activities, and lack of access for integration into society. For these participants with little else to do, the lack of activity meant greater depression and increased distress.<sup>41</sup> The participants talked about work as being important for the mental health of refugees generally. One of them explained, "These people need to work. Not because of the money or something like this. The money is also part of it. But it's kind of mental addiction, you know, the work. They need to work. They are kind of OK when they are working. When they are doing something, they are feeling that they are OK, because they don't think."

Yamin also pointed out, "Work is good to get your mind off things." Working was therefore seen as a coping strategy. From the perspective of the asylum seeker, the asylum process normally consists of one interview, and then there is just waiting for the state's decision. Therefore, temporality and waiting exemplifies the status of asylum seekers. The uncertainty of what will happen to the asylum seekers influences their whole existence. During the primary waiting period for change of immigration status, there are many smaller, but significant periods of waiting, which include waiting for lawyers, waiting for jobs, waiting for benefits, and waiting for appeals.<sup>42</sup> As Abdou described it, "It is hard to sleep and eat, sleep and eat, so even the days feel like not twenty-four hour but fifty hours." Farid similarly said, "I have nothing to do. I really want to get my paper gone through so I can start my life. It is so boring, so tiring to just sit at home and do nothing."

Because of the lack of access to the job market, all participants had to rely on social benefits at some point, for short or long periods of time. None of them were happy about that. Adewale said, "I don't need no social service, I need a place to stay, that's what I need, that's why I left my country." Yet the majority expressed gratitude for being able to receive benefits, which some had not been able to do in other countries. When

asked about the social service Jamshed said, "Everything is good. If you really have problem, if you go ask them, they will sort out your problem." Talking about the difference between being an asylum seeker in Iceland and Spain, Abdoulaye explained, "Here the way they help you if you are not working they give you food, they give you somewhere to be." They also discussed the stigma of being young and physically fit while being dependent upon social benefits. Some felt they were getting strange looks if they had to go to the social service office: "All the people are like this: they go direct to making a statement, you know, 'OK, fucking lazy.' They make decision, they make judgement very fast. And they look at you—you can read it, you don't need to ask them—they just look at you like [*makes a face*] ... you know what that mean: 'Lazy people, they don't work they come in and take the ... we work like a ... I'm disabled, but why are you in here?'"

Another participant mentioned that it mattered to him to wear decent clothing when he went to the social service in order to maintain his dignity.

Borders are part of the capitalist mode of production and create a "docile workforce" by giving employers power over workers.<sup>43</sup> People who have insecure immigration status often fear losing their job and are therefore forced to accept more difficult labour situations. Some of the participants went to great lengths to both get a job and to keep it. For example, one participant, who was living around fifty kilometres away from Reykjavík, Iceland's capital city, was not able to afford the bus ride to and from work. He took to sleeping outside in the freezing cold Icelandic winter in order to go to work the day after. Talking about the experience he said, "I went to work at ten o'clock in the morning and I work until ten o'clock at night. I go out and I was walking. It was so cold, I couldn't sleep, I couldn't sleep. I walked until morning and I went to work again from ten to ten."

A few days later he got the information from the immigration office that he was not allowed to work. Another participant, who also resided outside of Reykjavík, negotiated with his employer to work at night instead of during the day for the same salary. That modification in his work schedule was the only way for him to complete his job on time in coordination with the bus schedule to his home. He was then unable to keep that job because his work permit application was pending.

Even though working may be seen as a way to diminish asylum seekers' social exclusion, their interim identity and temporary work permit does not necessarily imply inclusion within the workforce since their lack of permanent legal status hinders them from finding a permanent job. Many of the participants had been asylum seekers for five to ten years and felt that they had already missed out on the part of their lives that they should have spent educating themselves and building a career. Many believed that they were

stuck in marginal jobs that—without the prospect of continued employment, training, or promotion—might lead to continued social exclusion.<sup>44</sup>

### ***The Isolation of Asylum Seekers***

Schuster has argued that asylum seekers, along with undocumented migrants, are the most excluded group in society. She criticizes the practice of dispersal, which involves spreading asylum seekers geographically across many areas and not allowing them to choose where to live.<sup>45</sup> Compulsory dispersal can be seen as one way of increasing the isolation of asylum seekers. This view is supported by Larsen, who analyzed the Danish policy of dispersing resettled refugees. Although the goal was to facilitate their integration into society, the policy in some cases increased their social isolation.<sup>46</sup>

Until 2013, asylum seekers in Iceland lived in the town of Reykjanesbær, which is located forty minutes away from Reykjavík by car. The accommodation was offered by the municipal social services. In 2013 the Icelandic state made a contract with the social service in Reykjavík as well. Since that time, asylum seekers have been housed in Reykjavík in diverse housing arrangements, from individual apartments for families, to shared apartments and accommodation centres, housing thirty to fifty asylum seekers. The biggest accommodation centres are located seven to fifteen kilometres outside the periphery of the city.<sup>47</sup> Of the ten participants who had been housed in accommodation centres outside Reykjavík, none said that they liked staying there. Many participants cited isolation, problems surrounding living with multiple other people, and not having much to do outside the home as reasons that contributed to these negative feelings. In that regard the people housed in smaller apartments in Reykjavík were more satisfied with their situation. Some of the accommodations are still run by the social services while others are run by the Directorate of Immigration (UTL). The houses run by the UTL have rules forbidding all visits, and at least two of them have security guards implementing those rules. Although the asylum seekers are allowed to leave their housing, the visiting ban can still increase their isolation. One participant who lived in a shared house in Reykjavík was stopped by a security guard from inviting friends over for coffee; he was told to go to a café instead. During most of the year in Iceland, it is too cold to sit comfortably outside, so meeting outside of homes often requires spending money in private establishments. Abdoulaye compared the shared house to a jail, even though they were allowed to go out: “I don’t like that place either. There are too many restrictions. It is like a jail.” The ban on visits can also lead to the feeling of not being completely “at home” in one’s home because there is lack of full control over the space. The housing practices

of the UTL might thereby be increasing the social isolation of asylum seekers.

Social isolation increases the risk of suicide and other mental health problems. Amongst asylum seekers utilizing mental health services in London, nearly half reported having positive social contact less than weekly. Even those living in shared accommodation with other asylum seekers were reported to be living in social isolation.<sup>48</sup> This finding coincides with the findings of Ingvarsson, Egilsson, and Skaptadóttir on asylum seekers in Iceland who did not consider other asylum seekers to be a community to which they belonged.<sup>49</sup> Five of the participants in our study had at some point been admitted to a psychiatric hospital. Four participants were admitted after having their applications for asylum denied in Iceland, and one was admitted before coming to Iceland. Torture and other traumatic events that asylum seekers have often experienced increase the risk of developing post-traumatic stress disorder and other mental health problems. These developments increase the risk of suicides and self-harm.<sup>50</sup> Bhatia describes the asylum process and the situation of asylum seekers in Britain as an *ongoing trauma*, where lack of sleep, housing, and food, as well as the isolation and stress of the bureaucratic process lead to self-harm and suicide attempts. “It is crucial to note that the prevalence of mental health issues amongst asylum seekers is often caused or exacerbated by the way they are treated by authorities, combined with the lack of provision for treating mental ill health.”<sup>51</sup> Worrying about family members in countries of origin also increases anxiety. Some participants in our study repeatedly described how the stress of the asylum process and waiting for resolution interfaced with their mental health struggles associated with personal experiences of traumatic events. According to them, being sent back to their homeland and executed would be preferable to their current situations: “Maybe if I stayed in [home country] I would be executed by government, but in Europe I was executed in my soul. My soul was executed. It’s harder and ... you know, even I’m still with pain what happened in [home country] and also in [Dublin country]. How long can I live? I just need to rest.”

The depressing situation of being an asylum seeker, with all of the waiting it entails, cannot be underestimated. While some activities are available for asylum seekers, the uncertainty surrounding their status, an ever-present fear of being deported, and their past experiences of trauma all lead to increased isolation. Many had problems sleeping, and many also talked about stress, anxiety, and depression. For example, when asked if he used the library card they were given, Yamin said, “Several times I went to library but I don’t go there anymore because there is no motivation for me, no progress.” Many of them also talked about having memory

problems, as Nyamekye explained: “One is not with the brain or the fresh mind that I had before. We can talk. Me and you, we can just talk and finish. Then later when I see you outside I don’t know who you are.” These memory problems lead to even further isolation: “I do forget, I do forget things and sometimes it just make me ... I just feel like being alone. I don’t want to talk to anybody.”

Several factors create and reinforce social exclusion. Geographical isolation of asylum seekers results from living in small towns or remote areas as the result of the housing arrangements. Geographical isolation restricts access to social activities that help asylum seekers cope with their difficult situations. These activities include religious activities, prayer meetings, and other social activities held by the Red Cross.

### ***Racism, Identity and Resistance***

One boundary that immigrants face is their racialization.<sup>52</sup> As Fassin explains, borders and boundaries “are tightly related in a process in which immigrants are racialized.”<sup>53</sup> Linke talks about blackness as attracting visual attention in Germany, where black bodies are “immediately seen, recognized and identified, catapulted out of the terrain of whiteness and perceived as alien, foreign and other.”<sup>54</sup> This phenomenon can also be seen in Iceland, where black people are often seen as exotic and there is little general understanding of diversity: whiteness is understood as a normative category and part of Icelandic identity.<sup>55</sup>

The participants who had been living outside of Reykjavík spoke about standing out in the small towns and neighbourhoods in which they lived and about feeling separated from the local residents. Most of them talked about experiencing more incidents of racism or prejudice in the smaller towns. Some of them described incidents of buses driving right past the bus stop when there were only asylum seekers waiting. Others explained that in a small town, asylum seekers are much more visible than they would be if they were to live in Reykjavík. One participant described this situation: “You are like dark spot in this white, white wall. Everybody knows you, and this is not good.”

Most discussion of racism amongst the participants focused on their experiences of institutional racism. While one participant said that he had experienced no racism in Iceland, that everyone was treated equally, others talked mainly about institutional racism. When Yasim was asked if he had experienced racism in Iceland, he said, “By people, no, but by immigration, yes.” Three participants said they had experienced racism many times, yet explained that they had also met a lot of good people. Most of them expressed gratitude towards Icelanders, usually explaining that they had made Icelandic friends and that many people were friendly and helpful. Some talked about Iceland being better

in this regard than other European countries in which they had applied for asylum. Although many of the participants did not experience racism directly, one reason might be that racism against asylum seekers in Iceland is commonly expressed online, often in comments sections and Facebook groups. The comments are usually in Icelandic and are typically not directed at the asylum seekers themselves but instead toward other Icelanders or politicians.

Different life experiences also create boundaries between asylum seekers and Icelanders. Most of the study participants had experienced trauma in their home countries and/or on the way to Europe. Some believed they were different from Icelanders because people born in Iceland could not comprehend these traumatic experiences: “But if you are going to see those things in your life you look like a different person, you don’t look like others,” said Nyamekye. One representation of this different life experience is the seemingly innocent question of “Where are you from?” For travellers in hostels or campsites this question is mostly meant as a way to establish a common ground. For refugees however, the question has different connotations and creates separation, thus constructing their identity as “others” who must constantly explain their presence.<sup>56</sup> One participant explained, “The people here always ask me like: ‘Where are you from?’ I say, ‘I don’t have country.’ ‘How is possible? Where were you born?’ ... You can just say, ‘Yeah, this is your country’ because you cannot think, you cannot imagine what is happening there to people like me.”

Some of the participants were unhappy with the *refugee* identity and claimed that it stripped them of their rights instead of granting them rights.

Even though the system can be seen as exclusionary and isolating, asylum seekers engage in multiple strategies of resistance,<sup>57</sup> which include reaching out to local activists and community members, asking for legal and political assistance, starting petitions, participating in demonstrations and sit-ins, and telling their stories to the media. The participants often referenced their human rights. They explained that they should be allowed access if Europe in general, or Iceland in particular, was committed to upholding human rights. They also referred to their disillusionment in how the European system worked: “I don’t beg them. I don’t beg nobody and ... to give me place and ... you know. ‘Oh please give me place.’ No. According to human right you have to. If you sign, you respect for human right. Also you have to do not on paper ... just sign, act, action, but [otherwise it is] ... just slogan.”

### ***Discussion***

As Anderson, Sharma, and Wright point out, borders are an ideological construct and instead of asking what is a border, they point out that we should ask *where*, *who*, and *what*



constitutes a border, underlining the temporality, territoriality, and subjectivity of borders. Borders are therefore experienced in myriad ways by different people, from “registered travellers” to irregular border crossers.<sup>58</sup> Asylum seekers inhabit a space at the border. Although they are geographically present within a territory of the state, their status is somewhere between resident and alien. Khosravi discusses who is the border in the context of Agamben’s term of “inclusive exclusion,” where undocumented migrants and asylum seekers are positioned at the “threshold of in and out” where their existence is “indistinct from the border.”<sup>59</sup> They are therefore neither fully included nor fully excluded: “Hence the undesirable persons are not expelled by the border, they are forced to *be* border.”<sup>60</sup> Fassin similarly speaks of immigrants as embodying the articulation of borders and boundaries.<sup>61</sup> The idea of who is the border can also be discussed in terms of Butler’s idea of “petty sovereigns”: bureaucrats who perform sovereign power.<sup>62</sup>

So who is the border? Is the border the asylum seeker who embodies the border? Or is the border the bureaucrat who creates and maintains these power relations by doing the “dirty work of selecting the good immigrants from the bad ones?”<sup>63</sup> Borders are an exclusionary mechanism in their function of defining who belongs to the state. Borders are therefore, by their very nature, “a tool of exclusion.”<sup>64</sup> In that sense, borders are also used for building a community within the nation-state and as a means of defining the nation. According to Aas, border surveillance is not meant just as an externally directed exclusion but also for “internal community building, integration and governance.”<sup>65</sup> Bosworth points out that a sharp distinction is made in the United Kingdom between deserving and undeserving migrants. By stating who may enter and how long they may stay, the state differentiates the centre from the margin and distinguishes the citizens from the non-citizen.<sup>66</sup> The state therefore fabricates a vision of national identity, based on exclusion. This practice of deciding who is accepted or excluded raises questions of eligibility: who can belong to the nation, and how that is decided. In this sense, borders are a vital part of forming and defining a nation.

Boundaries share with borders the function of exclusion, since they are social constructs that are based on symbolic differences, whether they are class, gender, race, or other identities.<sup>67</sup> By creating identities of those who belong to these groups, boundaries also create the identity of those who do not belong to them. The idea of racialized boundaries suggests that boundaries between immigrants and other inhabitants in Western nations are formed on the basis of a contrast between those who are visually black, and the majority population whose whiteness is seen as the norm.<sup>68</sup> Social boundaries can therefore be racial, but boundaries are

formed according to how “we” are created in distinction to “them.”<sup>69</sup> This might be seen as one reason why some participants in this study are reluctant to take up the refugee identity, because they want to belong to the majority population rather than being singled out as a different group. As the participants themselves pointed out, the different legal status of asylum seekers in comparison with residents, different life experiences, and the identity of the refugee create a boundary between them and other residents of Iceland. This is in accord with Brown’s critique of the identity category of refugee, precisely because of the exclusionary character of identity categories.<sup>70</sup>

Both Anderson and Griffiths have pointed out that time remains under-theorized in relation to migration and that exclusion in relation to migration can also be temporal.<sup>71</sup> Griffiths describes how irregular migrants have to suffer from both imminent and absent change, both being subject to deportation orders and the inability to change their situation. She describes how time, which is considered to be a limited resource by people participating in capitalist production, becomes not abundant but oppressive, because of the anxiety felt by asylum seekers and deportable migrants. The temporality of their situation colours their existence, both in terms of waiting for long periods and in “frenzied time” when they face negative decisions and have a short time to file appeals or contest the orders.<sup>72</sup> Bourdieu defines absolute power as the power to make oneself unpredictable and place other people in total uncertainty: “The all-powerful is he who does not wait but who makes others wait.”<sup>73</sup> In this view, the power relations between asylum seekers and the state can be understood as the relationship between the all-powerful and the powerless, where the state can make asylum seekers wait for years or deport them with short notice. However, as Khosravi notes, “Waiting can be an act too, a strategy of defiance by the migrants.”<sup>74</sup> Filing appeals, for example, prolongs their wait, but it might lead to positive results. Therefore, many asylum seekers are prone to not give up hope, even if it entails more waiting.

Because of asylum seekers’ in-betweenness and the temporality of their situation, they are faced with barriers that hinder their full participation in society and increase their exclusion from it.<sup>75</sup> In this article we have identified several barriers that can lead to the social exclusion of asylum seekers. European welfare states put great emphasis on full economic participation and, as Sales has pointed out, paid employment is seen as a path to social inclusion.<sup>76</sup> Therefore barriers to participation in the labour market serve not only serve as economic disadvantages but also as exclusionary mechanisms. The ultimate exclusion of persons in this world must be the exclusion from rights, as Arendt discussed in her famous works. Since only national states have the power

to implement human rights, they are therefore confined to national citizens.<sup>77</sup> The participants often referenced their human rights as a reason for their refugee status should be accepted. They resisted their negative answers or deportation orders on the grounds that these decisions violated their human rights.<sup>78</sup> Borders are a space of exclusion and transgression, but also of resistance. However, resistance can be indicative of both inclusion and exclusion, since many asylum seekers want to be cooperative in order to be allowed to settle in Iceland, the goal therefore being inclusion within the state.<sup>79</sup>

### Conclusion

We have discussed the multiple ways in which borders and boundaries are created and maintained daily and how the participants in this study experience them. We have shown how many aspects of the asylum system create barriers to full participation in society and how that leads to social exclusion. When asylum seekers come to Iceland, many boundaries hinder their participation in society. Employment has often been seen as a means to tackle social exclusion, but asylum seekers who experience barriers to employment are rarely able to use it to be included. The participants in this study all expressed will to work and participate in society, although most encountered structural barriers to that goal. Not being able to work took a mental toll on them and increased their isolation. The participants not only saw employment as a means to survive or a way to a better life, but also as a way to relieve anxiety and let time pass. The participants who managed to get a temporary work permit while they were still waiting for an answer in their asylum case had a very insecure employment status, since their work permit could be revoked if their asylum claim was rejected. Most participants depended on social housing, which acted as a barrier to employment, since having their own home was a requirement to receive a work permit. Then again, renting an apartment was difficult without a job. That led them to depend on the social service, which, instead of creating a common identity with other people in the same position, reinforced their exclusion from society because they were young and able-bodied.

Social isolation is a risk factor for suicide and self-harm. Asylum seekers are often seen as a homogenous group that ought to be able to socialize among themselves. However, not all asylum seekers feel they belong to a community based on their shared experience. Many would prefer to socialize as a part of the wider society. Some of their social isolation is due to them wanting to be alone, as a result of their difficult situation and traumatic past, which make them want to isolate themselves even further. In that way, different life experiences also contribute to isolation and exclusion.

The participants experienced racialization, particularly in the smaller residential communities. The boundaries were also based upon their identity as asylum seekers, which many of the participants thought was a negative stamp. The legal status of asylum seekers contributes to their exclusion and isolation from society. Waiting is a crucial aspect of being an asylum seeker, and in many ways their existence is defined by it. The waiting to which they are subject also underscores their powerlessness vis-à-vis the bureaucratic system and increases their isolation. Although many of the participants had felt hopeless at some point, they still showed methods of resistance and ways of coping with their situation.

The boundary between the asylum seekers and Icelanders is due to these different factors: not being able to work, living off government benefits, and just waiting. The borders that asylum seekers face are not only the very real borders they have already crossed on boats, walking through deserts and forests, or by climbing walls and mountains; they are also met with boundaries daily that are result from the colour of their skin, different life experiences, and their identities imposed upon them and/or accepted by them. Boundaries are also constructed by factors such as not blending in and result directly from identification as a refugee or asylum seeker instead of just being a person.

### NOTES

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*Helga Tryggvadóttir was a PhD researcher at the University of Iceland before her unfortunate and untimely death. The Refugee editorial team expresses our sincere condolences to Helga's family, friends, and colleagues.*

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# The Development of the Asylum Law and Refugee Protection Regimes in Portugal, 1975–2017<sup>\*</sup>

LÚCIO SOUSA AND PAULO M. COSTA

## Abstract

*This article examines the development of the legislation on asylum law and refugee policies in Portugal. The assessment begins in 1975, the year when democracy was re-established in the country, following the 1974 Carnation Revolution, and ends in 2015, the year the European asylum crisis started. We want to discuss whether, during this period, the policies established indicate an open regime, with an integrationist perspective, or whether they proclaim a closed regime with an exclusivist position; in other words, whether the asylum system promoted an active policy of receiving and integrating refugees, or whether the policies pursued intended to limit the access of refugees to the borders of the state. In order to understand these developments, we analyze asylum application figures and asylum laws, trying to understand the main circumstantial contexts that influence them, namely Portugal's integration in the European Union.*

## Résumé

*Cet article examine l'élaboration, au Portugal, de la législation concernant les politiques relatives au droit d'asile et aux réfugiés. Cet examen débute en 1975, année du rétablissement de la démocratie dans le pays à la suite de la Révolution des Œillets en 1974, et s'arrête en 2015, année où débute la crise européenne de l'asile. Il s'agit pour nous de discuter si, au cours de cette période, les politiques établies signent un régime d'ouverture, dans une perspective intégrationniste, ou si elles déclarent un régime fermé, signant une position exclusiviste ; en d'autres termes, si le système d'asile promeut une politique active d'accueil et d'intégration des réfugiés, ou si les politiques poursuivies ont pour objectif de limiter l'accès des réfugiés aux frontières de l'État. Pour comprendre l'élaboration de ces politiques, nous analysons les chiffres de demandes d'asile et les lois sur l'asile en essayant de comprendre les principales circonstances contextuelles*

\* This is an updated, translated version of a chapter published as Lúcio Sousa and Paulo Manuel Costa, "A evolução do direito de asilo e regimes de proteção a refugiados em Portugal (1975–2015)," in *O contencioso do direito de asilo e proteção subsidiária*, ed. Sofia David, (Lisboa: Centro de Estudos Judiciários, 2016). It is reproduced with permission of the authors and the original publisher.

*qui les influencent, en l'occurrence l'intégration du Portugal à l'Union européenne.*

### Introduction: General Overview

Within the European context, the numbers of asylum seekers and refugees in Portugal over the last forty-one years is rather small. The annual average of asylum seekers is around just 400 applications a year (figure 1). This level had been surpassed only twice, 1980–1 and 1993–4. In 2015, the number of asylum applications increased, with 872 applications. However, in view of the figures recorded in Europe, the number of asylum seekers in Portugal is a relatively peripheral phenomenon.<sup>1</sup>

Until the 1980s, most asylum applications came from former Portuguese colonies, mostly Angola and Mozambique. This post-colonial configuration decreased with time and was replaced in the 1990s by other African countries, such as Serra Leone and Liberia. Over the last ten years, the patterns of the country of origin changed, with applicants coming from Eastern European countries, like the Ukraine, Asia (Pakistan and Afghanistan), and South America (mostly Colombians). In recent years there has also been a perceptible increase in applicants from Syria.<sup>3</sup>

The meagre data available regarding recognized refugees in Portugal<sup>4</sup> allow us to conclude that few have been granted refugee status. In fact, despite the number of applications submitted, refugee status, including residence permits for humanitarian reasons, was granted to only 1,605 people: 741 concessions for refugee status and 864 on humanitarian grounds (figure 2). Refugee status was granted to more people in the 1980s. From the 1990s, permits given for humanitarian reasons surpassed refugee status concession figures.

Figures for the refugee population can be analyzed using UNHCR data.<sup>6</sup> According to its numbers, between 1976 and 1983, there were 7,600 people considered as refugees. We believe this number can be understood only within the social context at the time, with many people coming from former Portuguese colonies. We cannot forget that, in the aftermath of decolonization, between 1975 and 1977 around 500,000 people returned to Portugal from the former colonies.<sup>7</sup>

After this brief overview of the main figures on asylum seekers and refugees in Portugal, we turn to an analysis of asylum law and refugee regimes in Portugal. We have divided our approach into five main stages, following the legislative production on asylum, asylum seekers, and refugees, seeking to ascertain key features of the legal regime in force for each of them.

### The Carnation Revolution: Post-colonial Refugees and Returnees, 1974–1980

In 1960 Portugal signed and ratified the 1951 Geneva Convention on the Status of Refugees. However, Portugal ratified the 1967 New York Protocol only in 1976. In the 1960s Portugal was mostly a country of origin of refugee flows: political exiles, opponents to the *Estado Novo* regime, and the colonial war refugees. In fact, since 1960, hundreds of thousands of refugees, comprising population and freedom fighters from the independence movements, took refuge in neighbouring countries, accounting for 50 per cent of refugees in Africa.<sup>9</sup> For propaganda purposes, the regime also claimed to receive refugees, such as the 6,600 who arrived in Angola from the Republic of Congo in 1960.<sup>10</sup>

In 1974 the Carnation Revolution of 25 April overthrew the forty-one-year-old Salazar-Caetano regime. Between

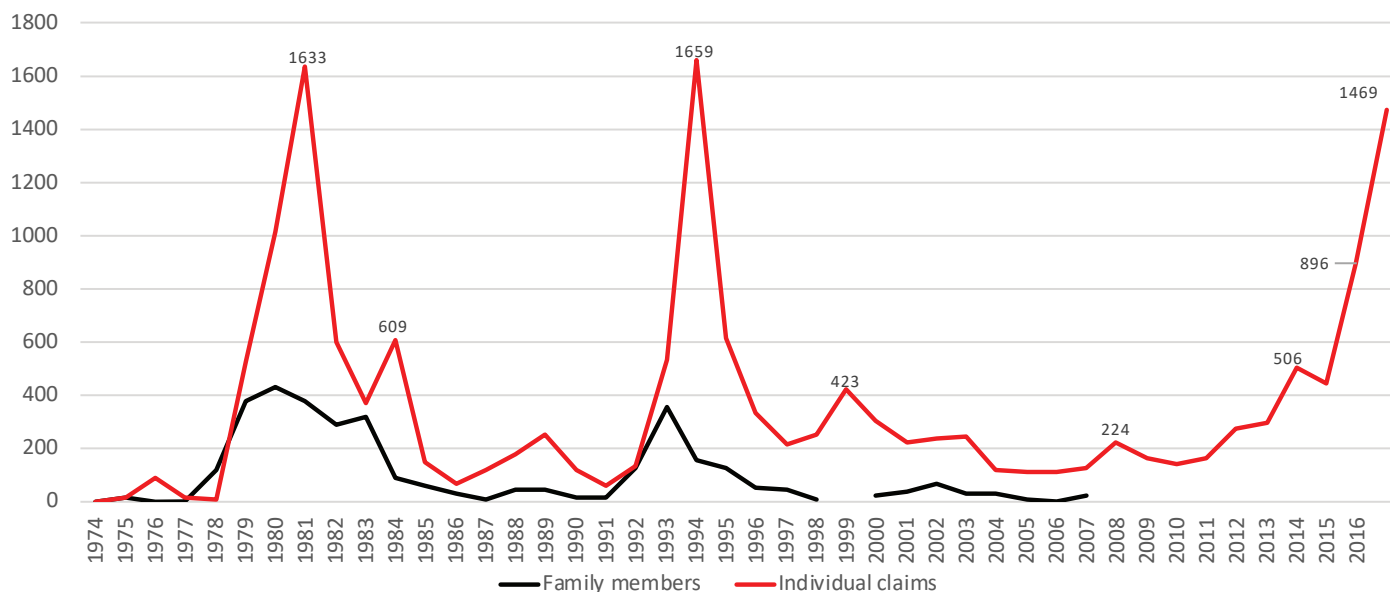


Figure 1: Asylum claims, 1974–2016<sup>2</sup>

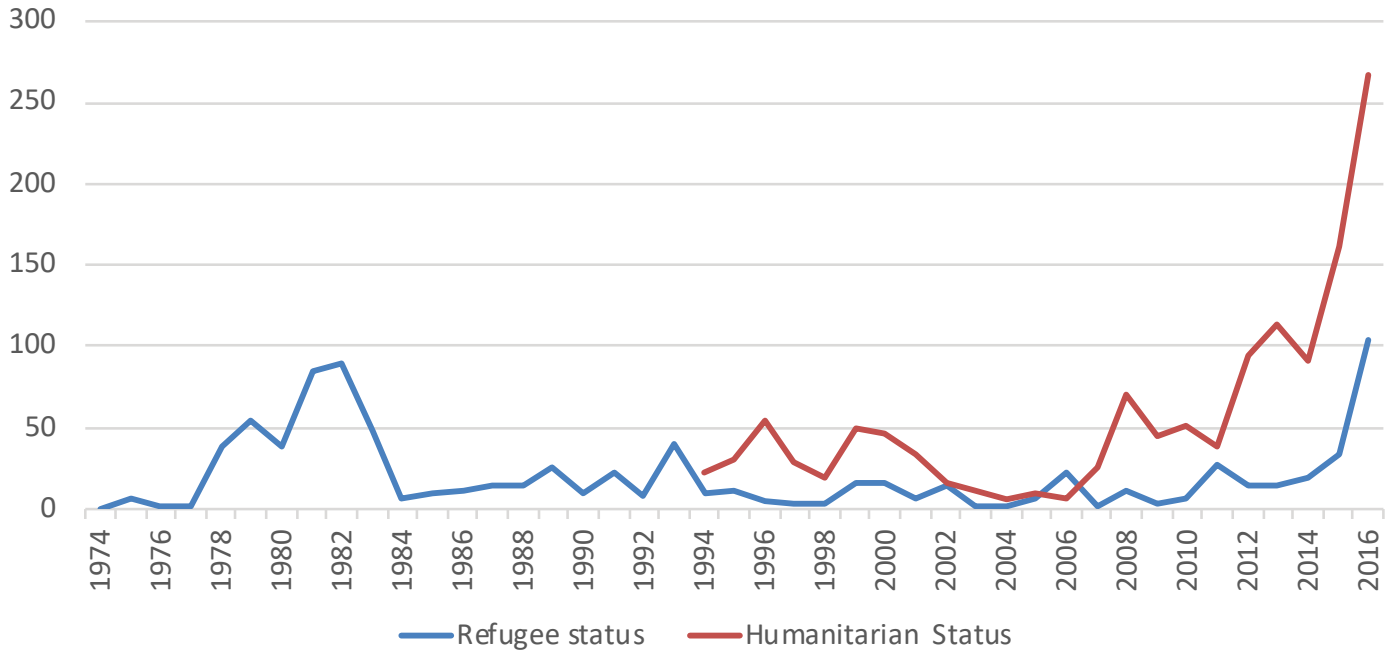


Figure 2: Concessions of refugee and humanitarian status, 1974–2016<sup>5</sup>

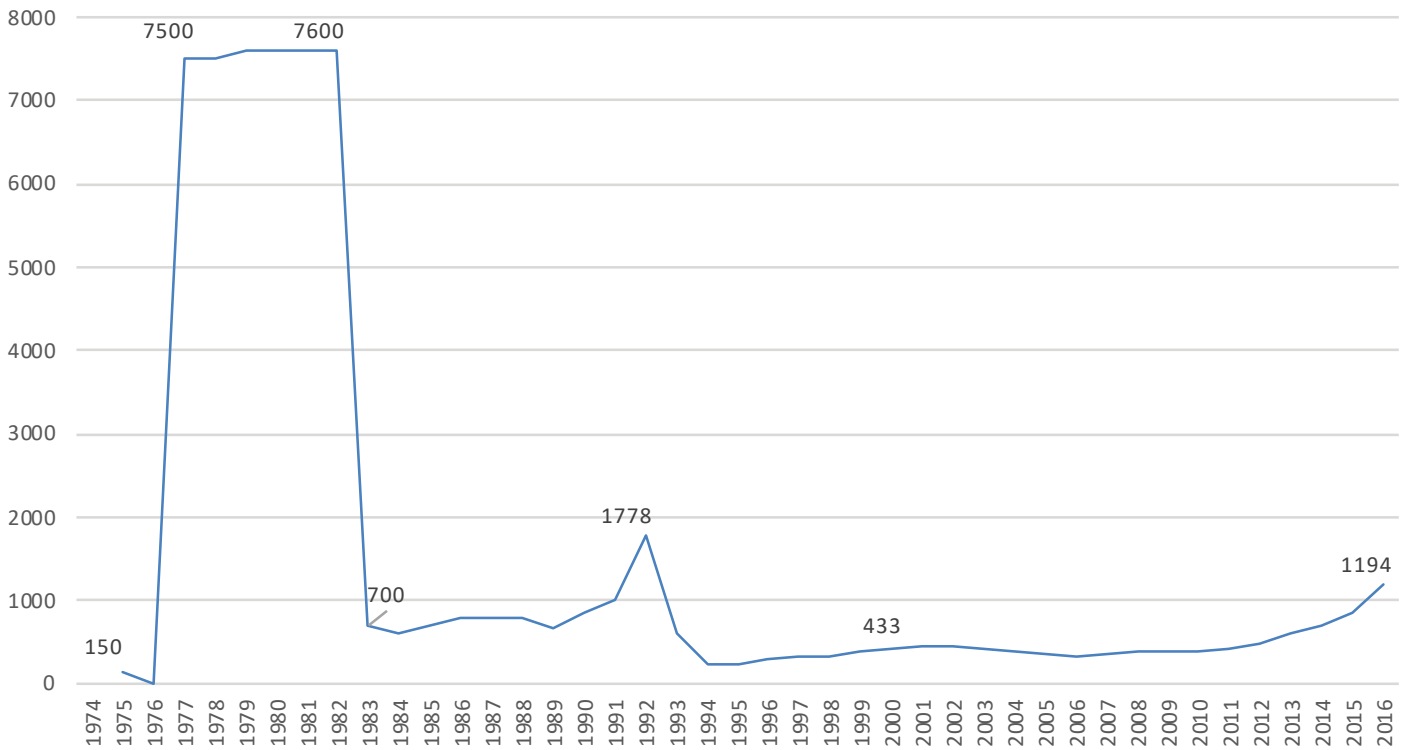


Figure 3: Refugee population in Portugal, 1974–2013<sup>8</sup>



1974 and 1980 Portugal had no national legislation on asylum. Nevertheless, article 22 of the new 1976 Constitution<sup>11</sup> recognized the right of asylum. Between 1975 and 1977 most applicants came from Spain and South America, essentially Brazil and Chile.<sup>12</sup> Given the absence of national legislation, the UNHCR, who meanwhile established a country office, recognized refugee status under its mandate.

In 1978 the First Cooperation Agreement between Portugal and UNHCR was established to support the social integration of people from the former Portuguese colonies with a “likelihood of refugee status.” The relationship between the “refugee support process” and decolonization involved “individuals without proof of Portuguese nationality.” So, for the Portuguese authorities, the issue of refugees was centred on the Africans who followed the exodus of returnees and whose nationality was doubtful, especially after the approval of decree-law no. 308-A/75, of 24 June,<sup>13</sup> which left thousands of “ex-Portuguese” Africans in a “legal limbo in their nationality.”<sup>14</sup>

In this context, it is worth mentioning that, between 1978 and 1984, the number of asylum seekers who obtained Portuguese nationality was almost two and a half times higher than the number of refugees who had obtained refugee status between 1974 and 1993.<sup>15</sup> The fact that the overwhelming majority of these were made by applicants from the ex-Portuguese colonies in Africa indicates the close connection between the decolonization process, the amendment of the Portuguese nationality law, and how the right of asylum was used to solve the situation.

### ***A Generous Asylum Law: 1980, Progress, and Setbacks***

At a time when some European countries were already establishing restrictive legislation on asylum,<sup>16</sup> the first Portuguese asylum law, law 38/80, of 1 August, is considered “extremely generous.”<sup>17</sup> In fact, the law provides for asylum on political grounds and for humanitarian reasons. Thus, although abiding by the Geneva Convention, the law is preceded in article 1 by a broader concept:

1. The right of asylum to aliens and stateless persons persecuted as a result of their activity in favour of democracy, social and national freedom, peace between peoples, freedom and human rights, exercised respectively in the state of their nationality or habitual residence.

Article 2 described asylum for humanitarian reasons:<sup>18</sup> “Asylum may also be granted to foreigners and stateless persons who do not wish to return to the state of their nationality or habitual residence on grounds of insecurity due to armed conflict or the systematic violation of human rights therein.”

According to article 4 (2), granting asylum on the basis of article 2 gave the beneficiary a status *analogous* to that of a refugee, which would be lost in time. The effects of asylum were extended to spouses and minor or disabled children of the applicant, and could also include other members of their household. As for asylum seekers, they were granted a temporary residence permit, valid until the final decision.

However, the legislation was amended in 1983 by decree-law no. 415/83 of 24 November. The alterations focused on procedural issues and resulted in a reduction of the protection afforded asylum seekers. In terms of the application, a distinction was made between those who entered Portuguese territory illegally and who should immediately submit the request, and those who entered legally, who could do so, in writing and in Portuguese within sixty days.

In addition, the notion of a preliminary refusal to asylum applications (article 15a) was introduced for those considered to be “manifestly unfounded” (e.g., no substance to the applicant’s claim or deliberate deception).

Despite the introduction of these restrictive measures, the situation of asylum seekers did not deteriorate immediately. On the one hand, the number of asylum seekers was small, and most cases were handled using the normal procedure, albeit in an increasingly time-consuming manner; on the other hand, there was still relatively broad social support.

The 1980s began with the structuring of the reception and integration mechanisms of applicants, with the transition from a system of ad hoc measures applied by different institutions (inherited from the 1970s) to a model valid to all applicants. Nevertheless, in the early 1980s the phenomenon of refugees was still strongly linked to decolonization.

### **European Union Integration: The 1993 Asylum “Crisis”<sup>19</sup>**

The beginning of the 1990s marked a withdrawal of mechanisms for the reception and integration of asylum seekers and refugees. This retraction begins with the end of much of UNHCR’s support in 1991.

In 1993 the Portuguese authorities, faced with an increased number of asylum seekers,<sup>20</sup> approved a new asylum law, initially vetoed by the president of the republic, law no. 70/93, 29 September. This law incorporated the principles of the Dublin Convention<sup>21</sup> and Schengen Agreement,<sup>22</sup> both of which Portugal had signed. The convention makes the state responsible for examining asylum applications and outlines a common external border, the most visible feature of the increasingly restrictive measures on access and reception of asylum seekers at the European level.

In the new asylum law two types of evaluation procedures were instituted: the “normal procedure” and the “expedited procedure.” The “normal procedure” was intended for

applications considered to be “reliable,” while the “expedited procedure” was for applications that were considered “manifestly unfounded.” Applications for claimants coming from a country “qualifying as a safe country or host third country” were also subject to the accelerated procedure. “Safe countries” were understood as countries for which there were no reasons to justify the existence of refugees, like the respect for human rights, democratic institutions, and its ordinary running. “Host third countries” are countries considered to be “safe,” which applicants have passed through and from which they could have obtained protection or to which could have submitted applications.

The safe country concept, promoted by the European (and national) legal system of asylum, created a legal fiction that allowed European states to avoid the international obligations, in particular those arising from the Geneva Convention. As all European Union countries are considered safe, and many still have readmission agreements with neighbouring countries, many applicants can be sent back to those countries without the merits of their applications being examined. This wall was created around Europe, in practice preventing potential refugees from accessing an organized asylum assessment system.

The extension of refugee status to family members and the possibility of reunification is restricted to spouses and minor children who are single and incapacitated or, in the case of a minor, to the parents. Lodging an appeal, both in normal and accelerated proceedings, no longer has suspensive effect, meaning that the decision to leave the country can be immediately enforced to those applicants.

Like the previous law, law no. 70/93 continued to allow refusal of asylum whenever “internal or external security justifies it or when the protection of the population so requires, considering the country’s social or economic situation” (article 4 (2)). If internal or external security reasons are understandable, refusing asylum for social or economic considerations is unjustifiable. This is all the more incomprehensible when we consider that Portugal has never been a destination for significant numbers of refugees.

### ***Specific Europe and National Features: The 1998 Law***

Although the number of asylum seekers decreased in the late 1990s, the legal regime for asylum continued to be restrictive. With the approval of law no. 15/98, 26 March, protection for humanitarian reasons became regulated in article 8, the most significant change being the provision that the residence permit for humanitarian reasons “is granted,” instead of “exceptional.” As a result, this reduced the discretion on decisions on humanitarian grounds as provided for in the exceptional regime of law no. 70/93.

The main innovation of law no. 15/98 was the regulation of a procedure for the admissibility of asylum applications. The exclusion criteria set out in the Geneva Convention and the criteria of the Schengen Agreement and the Dublin Convention, particularly the concepts of safe country of origin and host third country, are the criteria of inadmissibility (article 13).

In practice the inclusion of these criteria of inadmissibility prevents, in the Portuguese case—due to its geographical situation—any application for asylum made at the land border, so asylum seekers can arrive in Portugal only by sea or air. The implementation of this type of procedure stems from a process of legal and administrative harmonization with the other European Union countries.

However, law 15/98 introduced a role for the UNHCR<sup>23</sup> and the Portuguese Council for Refugees (CPR) to monitor the process and provide legal support for the social aspects of asylum seeker reception. The concept of “human dignity” is presented as a key value on which social support should be based. Another important aspect was the possibility of transferring reception tasks to non-governmental organizations. In this context, a temporary reception centre with twenty-three seats was opened by the CPR to welcome asylum seekers, pending a decision on the admissibility of their application.

Another important development was the possibility of temporary protection (article 9)<sup>24</sup> for “displaced persons from their country, as a result of serious armed conflicts that give rise to largescale flows of refugees.” It is important that this standard, although attributing a different legal status, refers to these people as “refugees”—implicitly recognizing that the concept of refugee is much broader than that provided for in article 1, which covers only what we might call “classic refugees.”<sup>25</sup> However, this recognition of a broader concept of refugee did not translate into the extension of the asylum regime but rather into the creation of temporary and precarious forms of protection, which do account for the impact that the events that gave rise to the flows of people have on their lives and the difficulties that usually lead to an immediate return to the country of residence or nationality.

In 1998 Portugal twice provided temporary protection. One with 2,000 Kosovar refugees, although protection was granted for up to six months (Council of Ministers resolution no. 44/99, 25 May). The refugees were dispersed throughout the country, supported by a larger number of entities, including local ones.<sup>26</sup> The other occasion involved the refugees from the former Portuguese colony of Guinea-Bissau. According to the Council of Ministers Resolution no. 94/98, 14 July, temporary protection was granted to Guineans coming directly from Guinea-Bissau, whose physical safety had been directly threatened as a result of the ongoing

armed conflict. The refugees were granted an annual residence permit (ordinance no. 470-D/98, 31 July), valid for one year, which could be renewed for up to two years. Some 4,000 Guineans were expected to benefit from temporary protection.<sup>27</sup>

As of 2003, temporary protection was regulated by law no. 67/2003, 23 August, which transposed into the Portuguese Directive 2001/55 /CE, of the Council of the European Union, 20 July.<sup>28</sup> The temporary protection procedure would be activated whenever there is a massive influx of people, meaning the arrival of “many displaced persons”; its implementation depends on a decision of the Council of the European Union that there is a massive influx of people and thus emphasizes a political component in this humanitarian intervention to ensure a balanced distribution of the effort by each European state. Protection can be guaranteed to those who have left their country or region of origin voluntarily or through an evacuation program, because of armed conflict or endemic violence, or because they are at risk or have been victims of systematic and widespread violations of human rights.

The duration of the temporary protection is one year, extended for periods of six months up to one year. Under exceptional circumstances, this period can be extended for a further year by a decision of the Council of the European Union, which means that temporary protection can be provided for up to three years. Once the temporary protection period has expired, and in accordance with article 22 (2), the beneficiaries “have a duty” to return to their country, although they may benefit from the possibility of postponing return to the country of origin (article 25).

During temporary protection, beneficiaries may apply for asylum, and the application must be considered by the Portuguese state, as the latter accepted the transfer of such people to Portuguese territory.<sup>29</sup>

Last, law no. 15/98, article 27, also provided for the resettlement of refugees under the UNHCR’s mandate. Only in 2006 would this resettlement mechanism be used, with seventeen refugees being accommodated (SEF, 2006, 45). Later, in 2007, Resolution of the Council of Ministers no. 110/2007, 21 August, created a refugee reception program for the resettlement of a minimum of thirty persons every year. Between 2006 and 2014 this program enabled the resettlement of 180 refugees.<sup>30</sup>

Following the adoption of directive 2003/9/EC, 27 January 2013, which established minimum standards for the reception of asylum seekers and the need to transpose them into national legislation, law no. 20/2006, 23 June, was adopted, which approved “additional provisions of the legal framework on asylum and refugees, established by law no. 15/98.” The aim was to ensure minimum material conditions that guaranteed a decent standard of living for refugees and

comparable living conditions in all member states (recital 7 of directive 2003/9/EC).

### ***More Definitions, More Ambiguity: Law No. 27/2008***

In 2008 a new asylum regime was approved: law 27/2008, 30 June, which transposed three European directives: directive 2004/83/EC; directive no. 2005/85/EC; and directive 2003/9/EC.

Law no. 27/2008 renamed the former “safe country” as “safe country of origin.” Nevertheless, this definition is unclear, since it is considered to be the country “in respect to which the applicant has not invoked any serious reason for considering that it is unsafe”; if we take into account that, in accordance with article 19 (2) (D), a safe country of origin is a reason to consider an application unfounded and inadmissible and, as such, subject to expedited procedure. It is not clear how the country of origin is considered safe or not. In directive 2005/85/EC, the concept of safe country is clearer (article 31), referring to a common list of countries that are considered safe.

Also, in the case of the “safe third country,” the definition of law no. 27/2008 leaves much to be desired in clarity, particularly regarding the rules set out and understanding the “link” that allows the person to go to the safe third country. In this case, the law merely transcribes article 27 (2) of directive 2005/85/EC, a copy-paste formula that causes too many doubts.

Granting a residence permit for humanitarian reasons is now referred to as “subsidiary protection” (article 7). The situations that can be covered are both a little more specific and broader. Subsidiary protection may, therefore, be granted to people who are prevented from returning or unable to return to the country of nationality or residence because of a serious threat to their life or physical safety, as a result of “indiscriminate violence in situations of international or internal armed conflict or a widespread and indiscriminate violation of human rights.” In addition to these situations, subsidiary protection may also be granted to people who are at risk of being subjected to the death penalty or to torture or to inhuman or degrading treatment or punishment.

The concept of “international protection” was also incorporated into the law, which is intended to designate refugee status and subsidiary protection status.

The consequence is that any procedure previously organized to deal with asylum applications is now used to assess applications for international protection (whether asylum or subsidiary protection). Given that the care to be taken in asylum applications is necessarily distinct from subsidiary protection, this “disappearance” of asylum in the law is not a good sign and, above all, cannot translate into lesser guarantees for applicants. The determination of the type of request

**Table 1.** Policies for the admission and reception of asylum seekers and refugees in Portugal

Phase	Statutes	Admission policies
1974–1983	Asylum seekers and returnees from the PALOP	Receptive posture
1983–1993	Asylum seekers and resettlement	Introduction of restrictive measures
1993–1998	Asylum seekers, ad hoc resettlement	Exclusive posture with the aim of reducing orders; diversification of legal statutes
1998–2008	Asylum seekers, resettlement and “temporary refugees”	Exclusive posture; diversification of the legal statutes with greater discretion regarding concession
2008–2017	International protection	
“Relocation”	Increasing harmonization of national policies of EU states; attempt to establish a European system of admission. Implementation of an European “relocation” program.	

cannot be definitive and will have to be flexible to adapt to the information gathered; in addition, and as appears logically from article 10 (2), refusing to grant the right of asylum must oblige the authorities to verify to what extent subsidiary protection may be given to applicants.

### ***The 2015 European Asylum Crisis: The “Burden” of the Relocation Process***

The influx of migrants and refugees into the EU peaked during 2015, with around one million migrants arriving in Europe, mainly in Greece and Italy.<sup>31</sup> It was a year of crisis and highlighted the limitations of the Common European Asylum System and solidarity among EU countries. According to the European Commission’s initial proposal, Portugal was to take around 2,000 people (relocation and resettlement combined); nevertheless, the country accepted 4,500, later increasing this figure to 10,000 relocated refugees.<sup>32</sup> The reasons for this move are manifold: for the first time, civil society was eager to be involved in the humanitarian effort, both abroad and in the country, with many institutions, such as the church and town councils stepping in, offering to receive refugees.

So, politically speaking, accepting thousands of relocated refugees was an opportunity, providing internal solidarity, and, within the EU context, expressing external solidarity by a peripheral country that had been burdened with an economic crisis amid general indifference from Europe. At the same time, there were economic and demographic considerations, as the country lacks skilled workers and has a very low birthrate.<sup>33</sup>

Nevertheless, until July 2017 the number of relocated people was just 1,400 (out of 2,951 relocated assigned to Portugal

from Council decisions), many of whom have moved to other countries, mostly in central Europe, where family networks are established.<sup>34</sup>

The length of the relocation process, particularly the small number of people actually relocated, has been one of the most significant criticisms of the European institutions, due to the impact this has on people waiting for a decision in precarious conditions.

This is happening because the Common European Asylum System is not sufficiently consolidated. There are specific rules for determining which member states deal with refugees’ applications for international protection, which, in principle, would be the country where refugees first entered European territory, namely Greece and the Italy. However, as we have seen, the system was not prepared to deal with a significant influx of people and has been incapable of finding alternative answers to the difficulties that EU border states have endured. At the same time, there has been no efficient redistribution mechanism for the other member states, which would facilitate national efforts.

This relocation process highlights the difficulty of reconciling the desire to create a European system for responding to requests for refugee protection, while its implementation is referred exclusively to national institutions.

Portugal’s geographical location seems to protect it from the dramatic situations on the Greek and Italian borders, which is all the more significant, as there are no national structures capable of responding to refugees’ needs. In this sense, this new experience of hosting refugees could produce changes in national policy and a new approach to refugee reception, particularly in response to the economic and demographic needs of the country.

## Conclusion

Portugal does not have a great tradition of receiving asylum seekers. The most significant refugee flows prior to 1974 were during the Second World War, when the flows mostly continued to other countries, like the United States.

In the period under analysis, Portugal received approximately 19,000 asylum applications, one of the lowest in Europe.<sup>35</sup> However, its policies of admission and reception have developed in a similar way to those that Muus<sup>36</sup> identifies in the Netherlands. Although the actual conditions differ from country to country, it is important to note that from an initial model of inclusion, with a relatively open asylum system, there is a transition leading to exclusion and closed asylum system.

How asylum regimes evolve is linked not only to the number and types of request but also to political circumstances, as Milner points out.<sup>37</sup> In Portugal, this development is closely linked to the process of national asylum policy harmonization promoted by the European Union, which, to a certain extent, sought to create a European regime for the admission of refugees. Although the use of the concept of international protection reveals a broader concept of refugee within Europe, it cannot be used as a way to reduce the protection afforded to people who should benefit from the right of asylum, nor can it ignore their personal condition and the impossibility of returning to their country of origin or residence.

Refugee admission policies in Portugal can be divided into five phases.

At first, after 1974, with the exception of Brazilian and Chilean refugees, the link between decolonization and the influx of refugees from the former colonies is clear. Thus, we can say that the period between 1974 and 1983 is typically “domestic,” a post-colonial legacy. Indeed, the overwhelming majority of recognized asylum seekers and refugees came from Portuguese-speaking African (PALOP) countries, most notably Angola and Mozambique.

From 1980 to 1990, a legal and social structure for refugees began to be implemented. A generally liberal law and an inclusive posture characterize this period. Since 1990, and especially after 1993, the policy of asylum seekers and refugees is clearly one of exclusion. At this point, the Portuguese state reacted defensively to the increase in asylum applications, with the measures to discourage the arrival and permanence of asylum seekers. To this end, amendments to the asylum system focused mainly on procedural issues, resulting in the adoption of more expeditious procedures when examining applications. The new legal regime demonstrates mistrust of refugees by allowing the great majority of applications to be forwarded as “fast-track procedures,” to avoid pressure from flows and the need to provide social support.

As the time taken for appraisal is increasingly limited, the examination of applications, and evidence in particular, depends increasingly on assumptions about all refugees and not on the individual condition of each person and his or her life history. Until 1993 aid for all asylum seekers was meagre. From that year onwards, the state delegated most of the burden of reception on NGOs, offering occasional support, creating structural pressure on them.

In 1998–9 Portugal had two cases of temporary protection with refugees from Guinea-Bissau, Bosnia, and Kosovo. These are two moments that, symbolically, also mark the position and context of Portugal before the refugees: the colonial heritage and European projection.

Since the beginning of the twenty-first century, the European context has become essential. Portugal is part of the process of establishing a common asylum system, which seeks to avoid the submission of several applications by the same people. This approach was accompanied by the adoption of measures to limit access to Europe, in particular by using safe countries and countries of origin clauses and readmission agreements. At the same time, responsibility for controlling the legality of entry conditions was transferred to private companies, under penalty of heavy fines, in order to keep refugees in buffered territories, as seen recently with the political-financial agreement reached with Turkey. The 2015 European asylum crisis confronts the eagerness to establish a common European regime, with a *de facto* situation, showing that the pressure generated at the external borders of certain states (such as Greece and Italy) is not offset by expedited redistribution of refugees and solidarity between states. In this context, Portugal deviated from its regular practices, as civil society stepped up in an unprecedented way, and governments saw an opportunity to foster an image of responsibility and solidarity, both at home and on the EU stage.

In the current crisis, the Central European states seem to withdraw from these common asylum mechanisms and (re)introduce national measures, effectively ceasing the Schengen principles and (re)designing borders, as if to institute new limits of inclusion and exclusion. Solidarity and shared responsibility, a principle invoked globally, seems to be eroding in Europe.

## NOTES

- 1 Although the number rose in 2015, according to Eurostat, Portugal remained one of the European countries with the fewest applicants per million inhabitants. Eurostat NewsRelease, “Asylum in the EU Member States: Record Number of over 1.2 Million First Time Asylum Seekers Registered in 2015,” 4 March 2015, <http://ec.europa.eu/>

- eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/790eba01-381c-4163-bcd2-a54959b99ed6.
- 2 Data by year: 1974–93: José Martins Barra da Costa, *Exílio e Asilo (A questão Portuguesa 1974–1996)* (Lisboa: Universidade Aberta, 1996); Lúcio Sousa, *Percursos de Inserção de Refugiados em Portugal* (Lisboa: Universidade Aberta, 1999); 1994–6: Serviço de Estrangeiros e Fronteiras (hereafter SEF), *Relatório Estatístico 1996* (s.l., SEF, 1997); 1997: Portuguese Refugee Council, “Pedidos de Asilo em Portugal 2006,” accessed 12 February 2012, [http://refugiados.net/\\_novosite/estatisticas/pa\\_2006.html](http://refugiados.net/_novosite/estatisticas/pa_2006.html) (site discontinued); 1998–9: UNHCR, “2003 UNHCR Statistical Yearbook,” <http://www.unhcr.org/cgi-bin/texis/vtx/page?docid=41d2c195c>; UNHCR, “2004 UNHCR Statistical Yearbook,” <http://www.unhcr.org/cgi-bin/texis/vtx/page?docid=44e5c78911>; SEF, “Estatística 2000,” [http://sefstat.sef.pt/Docs/Rifa\\_2000.pdf](http://sefstat.sef.pt/Docs/Rifa_2000.pdf); SEF, “Estatísticas 2001,” [http://sefstat.sef.pt/Docs/Rifa\\_2001.pdf](http://sefstat.sef.pt/Docs/Rifa_2001.pdf); SEF, “Relatório Estatístico 2002,” [http://sefstat.sef.pt/Docs/Rifa\\_2002.pdf](http://sefstat.sef.pt/Docs/Rifa_2002.pdf); SEF, “Relatório Estatístico 2003,” [http://sefstat.sef.pt/Docs/Rifa\\_2003.pdf](http://sefstat.sef.pt/Docs/Rifa_2003.pdf); SEF, “Relatório Estatístico 2004,” [http://sefstat.sef.pt/Docs/Rifa\\_2004.pdf](http://sefstat.sef.pt/Docs/Rifa_2004.pdf); SEF, “Relatório Estatístico 2005,” [http://sefstat.sef.pt/Docs/Rifa\\_2005.pdf](http://sefstat.sef.pt/Docs/Rifa_2005.pdf); SEF, “Relatório de Actividades 2006,” [http://sefstat.sef.pt/Docs/Rifa\\_2006.pdf](http://sefstat.sef.pt/Docs/Rifa_2006.pdf); SEF, “Relatório de Actividades 2007: Imigração, Fronteiras e Asilo,” [http://sefstat.sef.pt/Docs/Rifa\\_2007.pdf](http://sefstat.sef.pt/Docs/Rifa_2007.pdf); SEF, “Relatório de Imigração, Fronteiras e Asilo 2008,” [http://sefstat.sef.pt/Docs/Rifa\\_2008.pdf](http://sefstat.sef.pt/Docs/Rifa_2008.pdf); SEF, “Relatório de Imigração, Fronteiras e Asilo 2009,” [http://sefstat.sef.pt/Docs/Rifa\\_2009.pdf](http://sefstat.sef.pt/Docs/Rifa_2009.pdf); SEF, “Relatório de imigração, Fronteiras e Asilo 2010,” [http://sefstat.sef.pt/Docs/Rifa\\_2010.pdf](http://sefstat.sef.pt/Docs/Rifa_2010.pdf); SEF, “Relatório de Imigração, Fronteiras e Asilo 2011,” [http://sefstat.sef.pt/Docs/Rifa\\_2011.pdf](http://sefstat.sef.pt/Docs/Rifa_2011.pdf); SEF, “Relatório de Imigração, Fronteiras e Asilo 2012,” <http://sefstat.sef.pt/Docs/Rifa%202012.pdf>; SEF, “Relatório de Imigração, Fronteiras e Asilo 2013,” [http://sefstat.sef.pt/Docs/Rifa\\_2013.pdf](http://sefstat.sef.pt/Docs/Rifa_2013.pdf); SEF, “Relatório de Imigração, Fronteiras e Asilo 2014,” [https://sefstat.sef.pt/Docs/Rifa\\_2014.pdf](https://sefstat.sef.pt/Docs/Rifa_2014.pdf). Since 2006, the SEF does not distinguish the household from the applicant. The data from 2006 and 2007 were obtained from the Portuguese Refugee Council, “Pedidos de Asilo em Portugal 2007,” accessed 12 December 2012, [http://refugiados.net/\\_novosite/estatisticas/pa\\_2007.html](http://refugiados.net/_novosite/estatisticas/pa_2007.html) (site discontinued); SEF, “Relatório de Imigração, Fronteiras e Asilo 2015,” <http://sefstat.sef.pt/Docs/Rifa2015.pdf>; 2016: SEF, “Relatório de Imigração, Fronteiras e Asilo 2016,” <http://sefstat.sef.pt/Docs/Rifa2016.pdf>.
  - 3 In December 2013, seventy-four Syrians aboard a TAP airplane coming from Guinea-Bissau were sent back on grounds of false documents and pressure from local authorities on the airplane crew. Following this incident, the Portuguese government suspended flights between Guinea-Bissau and Lisbon. These were resumed only in November 2016. See *Jornal de Negócios*, “TAP retoma voos para Bissau,” <http://www.jornaldenegocios.pt/empresas/transportes/aviacao/detalhe/tapretoma-voos-para-bissau>.
  - 4 Sousa, *Percursos de inserção de refugiados em Portugal*, 78.
  - 5 Costa, *Exílio e Asilo*, 335; Sousa, *Percursos de Inserção de Refugiados em Portugal*, 104; UNHCR, “2003 UNHCR Statistical Yearbook”; UNHCR, “2004 UNHCR Statistical Yearbook”; and SEF 2001–14.
  - 6 UNHCR, “Total Refugee Population by Country of Asylum, 1960–2013 & Total Refugee Population by Origin, 1960–2013,” [http://popstats.unhcr.org/en/overview#\\_ga=2.95596380.1769678322.1505299377-18504437.1485564412](http://popstats.unhcr.org/en/overview#_ga=2.95596380.1769678322.1505299377-18504437.1485564412).
  - 7 Rui Pena Pires, M. José Maranhão, João P. Quintela, Fernando Moniz, and Manuel Pisco, *Os “retornados”: Um Estudo Sociográfico* (Lisboa: IED, 1984).
  - 8 UNHCR, “Total Refugee Population by Country of Asylum.”
  - 9 W.T.S. Gould, “Refugees in Tropical Africa,” *International Migration Review* 8, no. 3 (1974): 413–43; and James Milner, *Refugees, the State and the Politics of Asylum in Africa* (Basingstoke: Palgrave Macmillan, 2009).
  - 10 Agência Geral do Ultramar, *Boletim Geral do Ultramar* 36, no. 424–5 (1960): 437–8.
  - 11 The right of asylum is currently provided for in article 33 (8) and (9) of the Portuguese Constitution.
  - 12 Costa, *Exílio e Asilo*, 291; Sousa, *Percursos de Inserção de Refugiados em Portugal*, 270.
  - 13 According to this decree-law, approved on the eve of Mozambique’s independence, with rare exceptions, all inhabitants of African origin of former colonies lost Portuguese nationality. Maria do Céu Esteves (org.), *Portugal, País de Imigração* (Lisboa: IED, 1991).
  - 14 The head of UNHCR’s social integration service, interviewed in 1998, stated, “At that time there was that great ... confusion, whether they were refugees if they were returnees ... the Foreign Office itself at the outset if they had a Portuguese ascendant could go by nationality, if they had no nationality at the beginning and then the cases began to be pending.” Sousa, *Percursos de Inserção de Refugiados em Portugal*, 135.
  - 15 Costa, *Exílio e Asilo*, 370; Sousa, *Percursos de Inserção de Refugiados em Portugal*, 286.
  - 16 Philip Muus, ed., *Exclusion and Inclusion of Refugees in Contemporary Europe* (Utrecht: ERCOMER, 1997).
  - 17 Portuguese Refugee Council, *Protecção dos Refugiados: Contexto Nacional*, Curso de e-Learning de Sensibilização sobre Asilo e Refugiado (SAR), 6-Rev., 2-Dez-14; 2, [http://www.refugiados.net/e-learning/docs/6\\_contexto\\_nacional\\_02dez14.pdf](http://www.refugiados.net/e-learning/docs/6_contexto_nacional_02dez14.pdf).
  - 18 It resembles the concept of refugee defined by the 1969 Convention of the Organization of African Unity.
  - 19 The media depicted the situation as a “crisis,” a term also used by some of the social workers interviewed. Sousa, *Percursos de inserção de refugiados em Portugal*, 144.
  - 20 These figures are slightly different from UNHCR data because the figures presented by the UNHCR are rounded to 100.

- 21 Approved by resolution of the Assembly of the Republic no. 34/92, of 18 December and ratified by decree of the president of the republic no. 58/92 of 18 December.
- 22 Approved by resolution of the Assembly of the Republic no. 35/93, of 25 November and ratified by decree of the president of the republic no. 55/93, of 25 November.
- 23 UNHCR closed its delegation to Portugal in December 1998. The Portuguese Council for Refugees (CPR), established in 1991, becomes UNHCR national operational partner.
- 24 This rule would be repealed by law no. 67/2003, of 23 August, which, when transposing directive 2001/55 / EC into the national legal order, has now regulated the granting of temporary protection in case of influx of displaced persons.
- 25 Aristide R. Zolberg, Astri Suhrke, and Sergio Aguayo, *Escape from Violence: Conflict and the Refugees Crisis in the Developing World* (Oxford: Oxford University Press, 1989).
- 26 Alto Comissariado para as Migrações, “A experiência portuguesa,” <http://www.refugiados.acm.gov.pt/a-experiencia-portuguesa/>.
- 27 Alto Comissariado para as Migrações, “A experiência portuguesa.”
- 28 This law remains in force, as it results from article 87 of law no. 27/2008, of 30 June.
- 29 In principle, according to the Dublin Convention, the state responsible for examining the application for asylum would be the state for which the applicant entered the European Union.
- 30 Portuguese Refugee Council, “Reinstallation of Refugees 2006–2014,” <http://refugiados.net/1cpr/www/reinstalacao/estatisticas-reinstalacao2006-2014.pdf>.
- 31 European Commission, “Managing the Refugee Crisis: State of Play and Future Actions,” [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/eam\\_state\\_of\\_play\\_and\\_future\\_actions\\_20160113\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/eam_state_of_play_and_future_actions_20160113_en.pdf).
- 32 Paulo M. Costa and Lúcio Sousa, “‘You Are Welcome in Portugal’: Conviction and Convenience in Framing Today’s Portuguese Politics on European Burden Sharing of Refugees,” *Oxford Monitor of Forced Migration* 6, no. 2 (2017): 49–53.
- 33 Costa and Sousa, “You Are Welcome in Portugal,” 51; Lúcio Sousa and Paulo M. Costa, “Portugal’s Position on Resettlement: A View from the Periphery of the EU,” *Forced Migration Review* 54 (2017): 22–3.
- 34 Valentina Marcelino, “Em dois meses duplicou número de refugiados a abandonar Portugal,” *Diário de Notícias*, 24 April 2017, <https://www.dn.pt/portugal/interior/em-dois-meses-duplicou-numero-de-refugiados-a-abandonar-portugal-6239385.html>.
- 35 UNHCR, “Total Refugee Population by Country of Asylum.”
- 36 Muus, *Exclusion and Inclusion of Refugees in Contemporary Europe*, 78.
- 37 Milner, *Refugees, the State and the Politics of Asylum in Africa*, 4.

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# Competing Motivations in Germany's Higher Education Response to the "Refugee Crisis"

BERNHARD STREITWIESER AND LUKAS BRÜCK

## Abstract

*In 2015–16 Germany was confronted with over 1 million new refugees, which challenged public and private institutions alike and increasingly divided public sentiments. This article investigates the cultural, political, and economic dynamics as they were in Germany in 2015–16 and in particular how its higher education sector responded. The discussion covers a comprehensive review of media debates, public and private institutional research, new German- and English-language scholarship, and case studies the authors collected of fifteen universities. The article ends with recommendations as German universities prepare for 30,000–50,000 refugees eligible for study in the coming years.*

## Résumé

*En 2015-2016, l'Allemagne a fait face à plus de 1 million de nouveaux réfugiés, ce qui a remis en question les institutions publiques et privées et généré des sentiments de plus en plus divisés de la part du public. Cet article explore les dynamiques économiques, politiques et culturelles telles qu'elles se présentaient en Allemagne ces années-là, et en particulier la réaction de son enseignement supérieur. La discussion porte sur un examen exhaustif des débats médiatiques, de la*

*recherche institutionnelle publique et privée, des nouvelles bourses d'études pour apprendre l'allemand ou l'anglais, et d'études de cas colligées par les auteurs dans 15 universités. L'article se termine sur des recommandations, alors que les universités allemandes se préparent à accueillir de 30 000 à 50 000 réfugiés admissibles aux études dans les années à venir.*

## Introduction

The ongoing Syrian civil war has been a tragedy of historic proportions. Over 250,000 Syrians died during its first five years, 6 million became internally displaced, and over 4 million were rendered stateless throughout the Middle East and North Africa (MENA), or sought safe havens in Europe, the United States, but mostly in neighbouring countries (e.g., Turkey, Jordan, and Lebanon). Much of the rest of the Arab world remains in turmoil, with tribal warfare and terror groups in countries where dictatorships were overthrown during the Arab Spring and simmering or boiling conflicts persist.<sup>1</sup>

This upheaval has intensified the migration of refugees and asylum seekers in many directions, including toward Europe.<sup>2</sup>

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This article shares a study of the cultural, political, and economic dynamics that played out in Germany in 2015–16 in response to the influx of refugees that came into the country in only a matter of months. In particular, we focus on how the German higher education sector responded. We begin with a comprehensive review of media debates, public and private institutional research, and new German- and English-language scholarship that was just emerging at the time, and triangulate that with case studies we conducted of fifteen diverse universities throughout the country as well as findings from other studies emerging at the same time. The article concludes with recommendations for German universities preparing for 30,000–50,000 refugees expected to become eligible to enter universities between 2016–2020, according to the German Academic Exchange Service (DAAD).

In 2015 the refugee influx reached a peak in Germany, setting off what the German and global media soon began referring to a “refugee crisis”<sup>3</sup> when as many as 890,000 refugees in 2015 and another 280,000 in 2016 sought asylum in the country, known for its generous social system and liberal immigration policies.<sup>4</sup>

The influx of the large numbers of refugees arriving in Germany at the time carried with it a sense of urgency that verged on panic.<sup>5</sup> This was fuelled mostly by an overwhelmed bureaucratic system that was struggling to process and house the large numbers of people arriving at the borders daily.<sup>6</sup> Even after the initial influx was stemmed and German bureaucracy re-stabilized, however, the 2015–16 period continues to have ramifications on current policy and a new right-wing party in parliament, even if factually the country had weathered greater disruptions in its postwar history, including previously larger refugee streams. This contextual reality laid the groundwork for our study of Germany’s response to the “refugee crisis,” and in particular how its higher education sector responded.

Of the new refugees coming into the country in 2015–16, 76.2 per cent were males between the ages of eighteen and twenty-five.<sup>7</sup> At first Germany could only cope with processing and sheltering new arrivals, but over time it also began to direct them into retraining and educational and professional pathways. Between 30,000 and 50,000 refugees were projected at the time to become eligible to begin or resume their interrupted university studies in Germany within the next one or two years when their credentialing and qualification hurdles would be resolved.<sup>8</sup> Applying as an organizing principle Robertson and Dale’s<sup>9</sup> Critical Cultural Political Economy of Education, this article analyzes how the social, political, and economic realities of education affected Germany’s universities and the ways they responded in the first years of this newest refugee challenge for Germany, how they

began to adapt their programming on the basis of their experience with the first refugee cohorts, and what challenges they foresaw for integrating refugees into higher education.

### *An Ambivalent Land of Migration*

Since World War II Germany has gradually transitioned into being regarded as a so-called land of migration, although with contested public support.<sup>10</sup> This transition began immediately after the Second World War, when Germany absorbed between 12 and 14 million expelled ethnic Germans who were being driven out of Poland, Czechoslovakia, and the Soviet Union.<sup>11</sup> In subsequent years, large numbers of foreigners arrived through so-called guest worker programs of the 1960s.<sup>12</sup> When as the result of accelerating economic recovery in the late 1940s through the 1950s and 1960s and attendant labour shortages, roughly 14 million guest workers arrived through bilateral recruitment agreements established with Turkey as well as several European and North African countries. Of these, roughly 3 million eventually stayed in the country.<sup>13</sup> More recently in the 1990s, increasing migration streams followed, particularly in the mid-1990s during the Balkan War, when 1.504 million applied for asylum status in Germany.<sup>14</sup> Gradually, the federal republic became a major target for migration flows among industrialized countries.<sup>15</sup> Despite the inflow, there had been no laws in Germany that dealt with the issue of immigration, and the public was slow to accept Germany’s new status as a country of migration.<sup>16</sup> The first national Law on Immigration and Migrant Integration (*Zuwanderungsgesetz*) came into effect only in 2005, which was late when compared with other migration countries.<sup>17</sup> Thus, while 2015 saw heavier records of asylum applications than in years past, the events that unfolded in 2015–16 were not an unprecedented migration rush, and previous periods witnessed even larger refugee streams.<sup>18</sup>

What marked the 2015–16 “crisis” as different from previous mass migration events into Germany was the initial welcome refugees received. Vivid images in the media hearkened back to another recent moment in modern German history, when West Germans welcomed East Germans after the Berlin Wall opened in 1989. But this did not last long. While the generous reception refugees received in 2015 and early 2016 was characterized by a supportive media heralding the *Willkommenskultur*, when their numbers continued to increase, the media’s language turned to “compassion fatigue”<sup>19</sup> and not long thereafter a “refugee tsunami.”<sup>20</sup> With a rate in 2015 of granting 49.8 per cent constitutional asylum, refugee status, or another type of protective status—and 90 per cent if economic migrants from the Balkan states were discounted—the debate around the integration of refugees took on particular urgency.<sup>21</sup>

## ***Background on the German Higher Education Context***

### *Responses to Massification: Standardization vs. Addressing Individual Needs*

Germany has a well-established, tuition-free higher education system with 429 institutions, from research universities to universities of applied sciences. Education decisions lie at the state level within the federal system, giving them substantial autonomy. This status has allowed for the development of a diverse higher education system, although, as in any system, geographic and other contextual factors have also led to significant differentiation among university profiles.

Along with being a magnet for refugees, Germany in 2015–16 was also the fifth most popular destination for international students and indisputably a key player in the competitive international education marketplace.<sup>22</sup> In 2016, 357,835 international students (12.76 per cent of the student body) were enrolled at German universities,<sup>23</sup> attracted by its generally high quality and well-resourced, tuition-free system. The combination of international students coupled with the persistent growth in domestic students led to a 44.5 per cent increase of the total student body since 2007–8.<sup>24</sup> Universities reacted to this increase by limiting students' choice within study programs, which is consistent with reforms introduced throughout the European Higher Education Area via the broader Bologna Process. This policy resulted in greater numbers of students crowding into seminars and lectures and greater student-professor ratios (from 1:59 in 2004 to 1:66 in 2014), as well as fewer contact hours, more online lectures, and fewer student services, among other cost- and personnel-reduction measures.<sup>25</sup>

While the 30,000–50,000 refugees estimated to seek access to higher education within the following years would amount to an increase of only 1–2 per cent among the total university student body of 2,803,916 at the time,<sup>26</sup> refugee students would also need new and additional support and services to succeed. That difference marked a stark contrast to the coping strategies universities had applied over the previous years to deal with the more incremental growth in student enrolments. Services needed by refugees were extensive, from verification of higher education entrance requirements to language preparatory classes, from buddy and mentoring programs to additional guidance and individual consultations. All of these also required additional staff and financial and material resources.<sup>27</sup> These needs continue to place significant new demands on the capacities of universities to adequately serve their students.

### *Access to Higher Education*

Despite a reputation for bureaucracy, German university entrance requirements for refugees are no more onerous than quality control mechanisms imposed by most other higher education systems in Europe or North America. German employers and institutions rigorously review diplomas, transcripts, and certificates of authenticity of any applicants for education or employment. While early cohorts of refugees were still able to flee with their documents in hand or had uploaded them onto online storage clouds, some later cohorts who fled more quickly under rapidly deteriorating conditions arrived without documentation. To meet these challenges, the Standing Conference of the Ministers of Education and Cultural Affairs (KMK) eased their burden in December 2015 by implementing through statute the following three entrance stages for refugees unable to provide proof of credentials from their home countries.<sup>28</sup>

#### 1. Hochschulzugangsberechtigung, HZB (university entrance qualification)

The HZB is a valid university entrance qualification that can be verified against the Anabin database (Recognition and assessment of foreign qualifications) and then processed by universities with the help of a credential service provider. The Anabin database can compare school leaving certificates, training certificates, individual achievement reports, and other documents to a vast collection of original documents from 180 countries and 25,000 higher education institutions. For example, a Syrian student who earned a 70 per cent or above on his or her high school leaving examination in Syria would be granted direct access to higher education in Germany if the Anabin database proves the veracity of those credentials.

#### 2. Verification of scholastic aptitude with TestAS

TestAS is a standardized scholastic aptitude test to measure students' intellectual abilities. While the test can be taken in either German or English and is free of charge for the first sitting, in our research we learned that some universities, such as the University of Cologne and the Goethe University Frankfurt, also provided the test in Arabic.<sup>29</sup> Although TestAS is neither a language competency exam nor a test of subject-specific knowledge, it is an important measure of an applicant's general intellectual competencies to study at a German university or technical institution. Subject-level testing must still be conducted by an individual department once a university has determined an applicant is sufficiently qualified, however.<sup>30</sup>

### 3. Verification of required language proficiency

While C1 German-language proficiency is required to study for a BA or MA taught in German, by 2015–16 approximately 150 BA and MA programs were on offer throughout Germany in English, according to the German Academic Exchange Service (DAAD).<sup>31</sup> However, even for fully English-taught programs, certain universities in our study, such as the University of Duisburg-Essen, require at least a B2 German-language proficiency. Even so, while the dominant language of instruction at German universities remains German, there has also been a clear trend over the past decade toward more English-language programs. As an example of this trend, which at its core is meant to assertively attract international students, both the Technische Universität Darmstadt and the Heinrich-Heine-Universität Düsseldorf in our sample offered five English MA programs, including Physics and European Studies.

#### *Financing Education Studies*

As of 2015–16, public universities in Germany were all free of charge, apart from an administrative fee of €150–€350 customarily charged per term, which also includes a regional travel card. A monthly grant-loan combination (BaföG) provides a living allowance, which depends on a student's personal assets, earnings, and parental income but cannot exceed €735. There has been no change in the funding mechanisms for all students, including refugee applicants. The policy continues to be that half the sum is granted as an interest-free loan for which repayment begins after the fifth year following graduation; the rate is based on monthly salary income and can be forgiven if a set salary threshold is not met.<sup>32</sup> Additional loans with interest rates below 1 per cent are available to students from the government-owned development bank, KfW. Refugees have the same access to these generous German educational support mechanisms as do all domestic students, are neither given special favours nor disadvantaged in this regard.<sup>33</sup>

#### *Theoretical Framework*

In looking at the German higher education response to the current refugee influx as a macrosocial challenge, we apply Connie Gersick's Punctuated Equilibrium Paradigm<sup>34</sup> and Susan Robertson and Roger Dale's Critical Cultural Political Economy of Education (CCPEE) framework.<sup>35</sup> We see both as helpful organizing principles.

We utilize the Robertson and Dale framework to organize our discussion, as their use of cultural, political, and economic lenses provides a helpful gestalt on which to structure our own discussion. We see the German higher education (HE) response to the 2015–16 "refugee crisis" as embodying larger globalizing processes and structures. Robertson and

Dale's CCPEE framework insightfully helps to analyze the broader context that influences and conditions German HE policy and institutional responses to refugee integration and access to higher education. Their framework emphasizes the critical interrogation of what they call the "education ensemble" as it interacts with and emerges from the cultural, political, and economic processes that are embedded within globalization. The use of the concept of "education ensemble" does not simply reduce education to being an agent of socialization or allow it to be merely measured through learning outcomes; it acknowledges that education is deeply embedded in often highly contested, multiple societal relationships through the very actors, institutions, and structures that operate within it.<sup>36</sup> It is in this context that we analyze the way emerging and existing juxtapositions between cultural, political, and economic forces shaped the response, both broadly in Germany and also through the actions taken by its universities, as they prepared to accommodate this new group of incoming students.

In looking at the university sector and how cultural, political, and economic forces challenged the refugee integration programming they were beginning to organize at the time, we also find particular resonance in Gersick's Punctuated Equilibrium Paradigm.<sup>37</sup> This paradigm describes organizations as characterized by "relatively long periods of stability (equilibrium), punctuated by compact periods of qualitative, metamorphic change (revolution)."<sup>38</sup> This model provides an appropriate lens to look at the German university landscape in its assumption that, along with continuous adaptation efforts, major changes also suddenly occur at times. Ideally universities are responsive, but it may be in how they react that sheds the brightest light on their openness to reform and adaptation. This puncturing of otherwise general equilibrium in the German higher education system is what makes the case of the refugee influx into the country and its university sector so intriguing. Even though German universities had been reforming incrementally during previous decades in response to the Bologna Declaration,<sup>39</sup> the unexpected influx of refugees in 2015–16 presented them with a new opportunity to more urgently consider targeted reforms.

#### *The Study*

The rush to cope with the regulatory demands of processing so many new arrivals allowed relatively little time to reflect on the effectiveness and impact of the process. Early on, accounts of the sudden influx of refugees and limited analysis came primarily from the media, German education and migration ministries, and a handful of policy and philanthropic organizations that were conducting primarily demographic studies. Mostly missing were more careful and deeper academic analyses on specific aspects of a critical

period in Germany's recent history as it was unfolding in the early days of the influx in 2015–16.

Only more recently have publications in German-language academic journals<sup>40</sup> and research reports by German ministries (e.g., Autorengruppe Bildungsberichterstattung<sup>41</sup>) and university research groups (e.g., Kleist<sup>42</sup>) begun to examine the legal and practical boundaries that have faced refugees trying to access German higher education. International journals only more recently have begun to publish research on the German case, and theses and doctoral studies have also begun to emerge (e.g., Ragab et al.<sup>43</sup>). Given the fact that the education sector is a critical player in refugee resettlement in offering a primary conduit back into society and acting as a powerful antidote to the trauma of forced migration,<sup>44</sup> documenting this process is important, and understanding what happened early on in the German case is critical for historical and policy studies that are still to be written.

This article contributes to this important area of scholarship by detailing the situation in Germany and how various sectors and key players reacted in 2015–16. The German higher education system provides an ideal setting to study the refugee response and to look initially at the early success and failures of its universities to integrate this potentially significant new workforce. How the process played out early on, and will continue to evolve, will have significant short- and long-term ramifications in a country in which the immigrant influx has been discussed as a possible solution to the demographic challenges facing the country after decades of a declining birth rate and an aging population.<sup>45</sup>

The goal of this study was to investigate how German universities sought to help newly arrived refugees primarily from Syria, Afghanistan, and Iraq, but also in lesser numbers from Africa (e.g., Eritrea), Central and Eastern Europe, and other countries and regions, integrate into the German higher education system by creating academic programming and support services. We did this by looking primarily at how the migration dynamic in Germany played out in cultural, political, and economic terms as reported in the daily and weekly newspapers and magazines spanning the political spectrum, through grey literature published by higher federal authorities at the time, independently commissioned research projects that had just been published, and individual academic researchers publishing in English and in German at the time. Since then much more research has begun to emerge, but our focus is on the earliest studies that came out in the initial crisis period.

In addition to the literature review, we also sent out an email survey in the autumn and winter of 2016 to a selection of seventeen universities<sup>46</sup> throughout Germany (receiving fifteen responses) to query them about their current and

planned activities in the coming years. Our sample covered institutions in the former East and West and also those in larger metropolitan centres like Berlin, Hamburg, and Munich, and smaller cities like Dortmund and Darmstadt. The sample included responses from a range of administrators at each university, from directors of international offices, to those leading smaller teams of personnel who were working directly with refugee students. Our email included an explanation of our interest in analyzing in detail how German universities were dealing with the “refugee crisis,” and also understanding how Germany was managing the latest migration challenge at a time when the political moods in both Europe and the United States appeared to be increasingly isolationist and anti-migrant. Our questions asked respondents to explain the current number of refugees, requirements for enrolment, services and programs provided, and anticipated enrolments in coming years.

In seeking to triangulate our comprehensive literature review and survey of institutions, we also looked at smaller recent studies. For example, our research was inspired in particular by a smaller, previous study conducted by Hannes Schammann and Christin Younso,<sup>47</sup> who had looked at the activities of seven universities in the winter semester between October 2015 and April 2016. We selected our universities on the following criteria: (1) geographic location representing diverse parts of the country, particularly the former East and West, (2) likelihood of having a large concentration of refugees, which encompasses both major metropolitan centres and smaller affected cities, and (3) level of engagement with refugees.

Our analysis of the fifteen universities was not intended as our sole data source but rather to further shed light on the “refugee crisis” as reported by the wide range of sources noted above. Finally, we also sought email feedback from the German Academic Exchange Service, which was facilitating educational integration of refugees in Germany's sixteen federal states. We believe the DAAD's response, along with the responses from our fifteen participating universities, helps to demonstrate the passion and dedication shown by the higher education sector at the time to addressing refugee integration challenges. Although the profiled universities represented only a small slice of Germany's more than 400 institutions of higher education, these data, in combination with the DAAD information and our literature review, provide a robust summary of the diverse range of universities and other key players who initiated services in 2015–16 to begin helping Germany's newest arrivals.

### **Findings**

From the research we found emerging fault lines in society as a reflection, or catalyst, of the “refugee crisis.” In the

following section we use the CCPEE framework as an organizational tool to structure our findings in the three overarching categories (cultural, political, economic) with the corresponding subcategories (for example, for the category “cultural,” we discuss universities as a civil society player addressing the “refugee crisis”). We look at these fault lines within the cultural, political, and economic factors and how education has influenced these three fields at play, by looking specifically at higher education institutions and how they have interacted within the three dimensions.

### ***Emerging Fault Lines***

In 2015–16 Germany’s response to the entry of a large number of refugees into the Federal Republic of Germany was increasingly complicated and influenced by the struggle between two extreme poles: the perception of the nation celebrating a *Willkommenskultur* and a bitter backlash developing against refugees.<sup>48</sup> As the German newspaper *Die Zeit* expressed in a 2015 editorial, “Two bitterly inimical mind sets are now working against each other here in Germany and in Europe: We are opening our arms because people are coming (Merkel) vs. Because we are opening our arms, people are coming.”<sup>49</sup> The social debate was being fought between two plainly irreconcilable positions: rejection, which might become violent, on the one hand, and a welcoming culture, which was based on active civil engagement, on the other. These opposing positions were also evident in Angela Merkel’s statement, “*Wir schaffen das*” (We will manage it) on the one hand,<sup>50</sup> and the extra-parliamentary opposition’s characterization of refugee supporters as *Ideologisch verblendete Gutmenschen* (ideologically blinded do-gooders) on the other hand.<sup>51</sup>

### ***Juxtapositions Challenging Germany***

The mass stream of refugees entering Germany in 2015 created a context influenced by juxtapositions of cultural, political, and economic factors. Without intending to artificially separate these dimensions, we discuss each separately for the sake of clarity in the sections that follow. The discussion is built around our broad review of the literature at the time and supported with examples from our fifteen case study universities. In doing so, we analyze how the higher education sector in particular has been affected by sharp conflicts between, on the one hand, an active civil society that was committed to providing crucial refugee support, and, on the other hand, the heightened nativist fears of a Germany overrun with refugees that began to gain strength.

While policy and governance activities traditionally have occurred in spheres separate from the everyday working lives of ordinary citizens, the “refugee crisis” brought out an extraordinarily engaged civil society. This civic engagement

played itself out in positive ways through volunteerism and the donation of material goods to help refugees, and in negative ways through public protests and new political movements that agitated against refugees. The “refugee crisis” catalyzed actions by different pockets of society and mobilized people of diverse backgrounds and persuasions who previously had not been as publicly willing to voice their sentiments. In the following section we address the components of what we saw as emerging fault lines that Germany will need to deal with in the coming years as the refugee integration question continues to evolve.

### ***Cultural Factors***

#### ***The Positive Face of Civil Society***

Images broadcast around the world of cheering crowds welcoming refugees at Munich’s central station in the summer of 2015 “seemed to shake off [Germany’s] image as a cold-hearted nation.”<sup>52</sup> According to a 2016 study by the Migration Policy Institute (MPI), in Germany there was outspoken support from the elites—comprising media, industry representatives, and trade associations, among others—for immigration prior to 2016, compared with more negative views in other European countries such as Spain, Italy, or the United Kingdom.<sup>53</sup> While basic supplies and housing were provided by the authorities, many workaday Germans also generously provided a broad range of additional services, from toys and clothing to ad hoc language classes and helping refugees navigate Germany’s dense bureaucracy.<sup>54</sup> This public outpouring of support—much heralded by the media at the time—helped to quickly mobilize civic engagement and contribute to supporting the bureaucratic system. For example, 120,000 volunteers from the German Protestant Church and 100,000 volunteers from the German Catholic Church, along with other faiths and secular organizations, and a wide range of organically formed smaller, ad hoc support groups quickly sprang into action to offer language classes, reading literacy courses, and assistance with government agencies and doctor’s visits. These support services were likened to being tantamount to a “life insurance of the [German] state.”<sup>55</sup> But this kind of volunteerism, while ramped up in response to the moment, was not entirely unprecedented. According to a study by the Berlin Institute for Empirical Research on Integration and Migration (BIM), the number of volunteers engaging in refugee work had already increased by 70 per cent over the past several years.<sup>56</sup> This level of civil society engagement became a critical bridge between overstretched authorities and refugees.<sup>57</sup> Even so, a study conducted by the Bertelsmann Foundation at the time also revealed that over the last two years the feeling of Germans that their state’s generosity was being stretched to the limit also grew from 40 per cent in 2015 to 54 per cent two years later.<sup>58</sup>

### *Public Backlash*

In order to make sense of the outpouring of student interest in helping refugees, it is important to make clear what was happening outside the proverbial gates of the university and in the streets, where refugee presence may have felt more overwhelming to the greater population of Germans. Thus, as refugee numbers steadily increased throughout 2015, the initial welcome culture also began to be tempered by more stark reality. With the spike of refugees entering in the autumn of that year—280,000 in September alone—the media coverage became more nuanced and also began to include reporting on the strain that refugees were starting to place on overburdened administrative agencies. By this time, however, the media's initial euphoric coverage had caused it to lose credibility among certain segments of the population, who went so far as to revive even the Nazi-era term “lying press” or *Lügenpresse*.<sup>59</sup> On top of that, some segments of the population who had not previously engaged in public protest began to express their distress at the influx of refugees and joined large protests pressuring Chancellor Merkel's Christian Democratic Union party (CDU) to abandon its open-border position.

The most unsavoury face of this pressure came through demonstrations by the Patriotic Europeans against the Islamization of the West, or Pegida, movement,<sup>60</sup> a group most active in Eastern Germany and whose ranks seemed to wax and wane in tandem with events involving refugees.<sup>61</sup> Attacks on refugee accommodations also quintupled from 199 in 2014 to 1,005 in 2015. Perhaps most worrisome, two-thirds of the attackers had never been criminally active before or involved with crimes linked to right-wing tendencies.<sup>62</sup> At regional elections, some Pegida supporters transitioned their protest voice to the voting booth in support of the newly emerged populist-nationalist party, Alternative for Germany (AfD), which made gains in state parliamentary elections and in the national elections by September of 2017, making it the third-largest party in the German parliament.<sup>63</sup> The requisitioning of gymnasiums and other public facilities as temporary refugee shelters further complicated public attitudes toward refugees, although they have all now been returned to their usual use. The event that most badly damaged the welcome culture occurred in Cologne during New Year's Eve 2016 when “mobs of ‘North African and Middle Eastern men’ sexually assaulted hundreds of women in the fireworks chaos.”<sup>64</sup> Even though a subsequent investigation found only three of the fifty-eight men to be recent asylum seekers, the damage to the refugee narrative had already been done.

### *Universities as Civil Society Players: “Third Mission”*

Universities throughout the country had the autonomy to respond as they chose to and were generally compelled by factors related to their proximity to refugee streams, available

funding, and pressure from students and concerned citizens. As a sector they became engaged through strengthening existing services or creating new ones, much in tandem with the civil society movement outside their walls. As of 2016, 170 universities were receiving DAAD “Integra” (Integrating Refugees in Degree Programs) funding to develop their own programming to advance the integration of more than 6,800 refugee students into higher education.<sup>65</sup> Much of this programming was driven by an active show of solidarity by faculty, staff, and students interested in helping refugees, acting as a beacon of hope to combat increasing demonstrations against refugees. They did so by going beyond the traditional functions of research and teaching, and allowing refugees to audit courses, take language classes (sometimes even student-led for refugees indifferent to their scholastic aptitude), receive counseling, and participate in sports and social events. This level of service is generally referred to as a university's “third mission,” a term used by many university websites and the Federal Ministry for Education and Research's materials.<sup>66</sup>

However, although well-meaning and beneficial, some of these university support services—for example, permitting the auditing of courses—also created two potential scenarios that set up unrealistic expectations for some refugee students: on the one hand, it gave the erroneous impression that they were already officially enrolled, and on the other it gave students who would be unable to meet enrolment requirements false hope that they would eventually be accepted into the university as regularly enrolled students. To their credit, as early as winter semester 2015–16, many universities appeared to realize this and began transitioning support services from embracing all refugees as a homogenous group with equal chances, to instead focusing primarily on helping those who were likely to have the necessary credentials to eventually succeed in enrolling.<sup>67</sup>

### *Political Factors*

The Merkel administration's efforts to address the refugee situation have been characterized by a “we will manage it” ethos in public messaging, and behind-the-scenes machinations to devise new regulations to control the tide of incoming refugees. As refugee numbers increased throughout 2015 and local governments began to work in crisis mode to provide services and accommodations before winter, Merkel faced growing criticism that she had invited the refugees in without sufficient forethought about what to do once they arrived.<sup>68</sup>

In early 2016, as the AfD party gained support and five state elections loomed between March and September,<sup>69</sup> Merkel not only needed to tighten asylum laws but also to devise a solution to the “refugee crisis” without having to concede to political failure. After the Balkan countries closed their borders, ending the main refugee route to Northern Europe, the

chancellor's strategy changed to officially still welcoming the perceived "deserving or real refugees"<sup>70</sup> but also making it nearly impossible for them to reach Europe in the first place. While still seen by Syrian refugees as the "compassionate mother,"<sup>71</sup> Merkel was also working out a deal with Turkish President Recep Tayyip Erdogan,<sup>72</sup> effective by March 2016, that restrained refugees from continuing their flight into Europe.<sup>73</sup> In this way, Merkel was able to maintain the illusion of welcoming refugees while simultaneously making deals to restrain them from reaching European shores.<sup>74</sup>

Both the European Union and Germany have attempted to limit further numbers of refugees from entering the EU. At the same time, state-led integration initiatives have provided support to help integrate refugees who are already in the country into society and the workforce. The education sector has been a critical player in this effort. The following sections examine the higher education sector's programming to meet that goal.

#### *Language and Entrance to the University*

Integration classes (Integrationskurse) aim to provide immigrants with knowledge of German history, culture, and social norms.<sup>75</sup> A new law stipulates that refugees who wish to seek any kind of residency status must take this course, or their social benefits can be reduced. Yet, according to figures from the Federal Ministry of the Interior, as of January to August 2016, only half—171,000 out of 366,000—who were issued with a voucher by the Federal Office for Migration and Refugees were able to access an integration and language class. They also seek to bring all immigrants up to B1 language competency level, which the EU defines as the ability to engage with a language on an everyday basis on familiar topics regularly encountered in school, work, and leisure, and understand and formulate simply connected texts.<sup>76</sup> However, integration classes end at the B1 level, which is not sufficient for study at university level. Therefore, C1 level German-language proficiency is required for university study, and all students must cross that hurdle before they can regularly matriculate as enrolled students within the German university system.

During the 2015–16 "refugee crisis," universities stepped in to help bridge that language gap, picking up refugees once they mastered the B1 language exam and helping them to progress to C1 proficiency. Between 2015 and 2019 the DAAD provided universities with €100 million in competitive grants to develop support programming over the next several years. In 2016 alone the DAAD made €27 million available to German universities through its "Integra" program to apply for grants funding to support the development of programming for refugees.<sup>77</sup>

With DAAD support and additional state and private foundation funding,<sup>78</sup> most German universities by 2016 were providing language preparatory courses. The distribution of

refugees across the academic sector and the means of supporting them, however, varied greatly. For example, according to our study of fifteen universities, the number of refugee students taking language courses ranged between 675 at the University of Hamburg, roughly 200 at the Technical University of Darmstadt, to just 20 at the University of Stuttgart, similar in size to TU Darmstadt.

These language and preparatory classes for refugees, however, are not equivalent to those subject-matter classes taken by matriculated students, and rather served merely as a stepping-stone to full enrolment once credentialing was verified and a department recognized a candidate's subject-specific competency. While the vast majority of universities required a minimum of B1 language proficiency to allow refugees into their language and preparatory classes, there were exceptions in both directions. For example, the Goethe University of Frankfurt required only an A2 level language proficiency—defined as the ability to "understand sentences and frequently use expressions related to areas of most immediate relevance"<sup>79</sup>—while the Heinrich Heine University (HHU) of Düsseldorf required a B2 level. The HHU provided *Deutsch-Intensivkurse* for twenty students to prepare them within one year to fully access German higher education. While most universities offered the language preparatory classes on campus, some universities, including the Technical University of Dortmund, used an off-campus service partner. The University of Duisburg-Essen collaborated with a private external language school but started to provide its own language preparatory classes in 2017.

Along with language courses, most of the universities in our study also provided special integration programs customized to the specific needs and requirements of refugees. However, the size of the general student body at these institutions was not a reliable indicator of the number of places available to refugees or the depth of programming that was being created for them. For example, in the 2015–16 winter semester, the Heinrich Heine University of Düsseldorf enrolled 33,000 students, but only 20 refugees, while the University of Hamburg enrolled 42,000 students but had 539 refugees. Yet each of these large universities offered substantial programming. In that regard, size did not appear to be an accurate indicator of the depth of programming.

In most cases the services for refugees offered by universities included some degree of the following: the opportunity for refugees who are not yet fully enrolled to participate in teaching events and lectures, but not for academic credit; regular informational events and campus and library tours to inform refugees about facilities and academic information; crash courses on subjects such as mathematics or additional online language courses to help prepare refugees to take entry examinations; buddy programs in which a domestic student

helps a refugee with events, activities, and lectures and even language issues (many universities give students credit points for voluntarily working with refugee students); regular gatherings where students, particularly women, can discuss traumatic experiences in confidence; and intercultural workshops with external coaches to discuss social issues of mutual understanding, acculturation, and society. In one particularly exciting program, refugee students were working on an app to make museums accessible for non-German speakers.

#### *Data and Forecast*

While the DAAD in 2016 predicted that 30,000–50,000 refugee students would become eligible to enrol in Germany's universities within the next two years, most of our case study universities were unable to estimate at the time how many students they expected. That assessment was borne out of a wider chronic problem: while universities register the students' country of origin, Germany's strict data privacy laws (*Datenschutz*) prohibit them from gathering additional data.

Therefore most universities had little knowledge of their actual numbers of fully matriculated refugee students because these figures are not recorded as part of general student demographics. Self-reported data can therefore be noted but are only anecdotal, locally available, and not fed into a national databank. Among our case study universities, self-disclosed data showed the following: At the University of Hamburg, seventy-two refugees applied for full enrolment but only nineteen were accepted; at the Humboldt University in Berlin, which created a special MA track for refugees, only eleven were enrolled by 2016; at Ludwig Maximilian University of Munich, fifteen refugee students passed the preparatory courses and became regularly matriculated students; at the Technical University of Munich, eight students who formerly audited courses became enrolled; and at the Free University of Berlin, the International Office admitted twenty-one refugees for full enrolment, and sixteen of them matriculated. However, passing the preparatory course exams did not (nor does it now) bypass the regular application procedure, which requires refugee students, along with all international students, to compete as international applicants. Still, because official data tracking is prohibited, it is unknown how many refugee students were simply not being recorded once they became mainstreamed as regular enrollees. For understandable reasons, once refugee students are fully matriculated, they may also be reluctant to continue to be tracked and identified as refugees in order to distance themselves from a label that could stigmatize them.<sup>80</sup>

#### *Economic Factors*

Early in 2015 Germany's top thirty DAX-listed corporations were celebrated for their public statements welcoming

refugees. In November 2015 these companies pledged, in an expensive print advertising campaign, to hire refugees and provide structured apprenticeship programs, even for those lacking the necessary qualifications. However, as of the middle of 2016, few of these grand promises had led to refugee employment. Although these companies referred to 500,000 vacancies they wanted to fill, as of the summer of 2016, only fifty-four refugees had received open-ended contracts from any of Germany's top thirty corporations, and fifty of those contracts were all with the postal service, the Deutsche Post. Companies cited a lack of German-language skills as the reason but then failed to offer an internal pathway for any on-the-job training.<sup>81</sup>

Essentially, most of the top thirty DAX-listed companies refused to put their money where their mouth was. While the leadership of the Deutsche Bank claimed in November 2015 that the influx of refugees was “the best that could happen to Germany,”<sup>82</sup> by July 2016 still not a single major bank or insurance company had created any jobs, vocational training spots, or internships for refugees.<sup>83</sup> While the federal minister of labour and social affairs, Andrea Nahles, had initially referred to refugees as a “labour force of tomorrow,” she later referred to them as one for “the day after tomorrow.”<sup>84</sup>

While available spots in Germany's top companies were few and far between for refugees because of a lack of immediately qualified applicants, Germany's *Mittelstand* of smaller, often family-run companies—historically touted as the backbone of Germany's economic success—appeared to be more receptive. In a study by the Bertelsmann Foundation, self-reported data from 600 *Mittelstand* companies employing more than 250 employees indicated that 62 per cent provided internships for asylum seekers, 48 per cent provided vocational training spots for young refugees, and 47 per cent provided regular workplaces for migrants.<sup>85</sup> It is notable that in 2016 Germany's well-established vocational training system appeared to be providing the most realistic pathway to employment for refugees.

According to a November 2016 report from the Federal Employment Agency,<sup>86</sup> there were 546,900 available vocational training spots in 2015–16, offering more options for refugees than universities, which have more rigorous entrance criteria. Refugees, therefore, needed to be made aware that their choices go beyond an academic education, particularly because 2016 was the ninth year running in which there were more open vocational training spots than applicants available to fill them.

Many refugees might have been making the erroneous assumption that only a university education would be respected, as may have been the case in their homelands, and not fully realized that in Germany vocational training has long been a very effective model for professional success and



an attractive alternative to a university education. While candidates need some German-language competency as well as nine to ten years of schooling to be eligible for a training spot, the requirements are not as rigorous as they are for a university degree. While vocational education in Germany includes classroom training at a vocational college and hands-on training at a workplace, the classroom training is not equivalent to university work. Even so, despite its promise, the vocational education track is also not an automatic solution for all refugees who are unable to enter or remain at the university. In 2016, of the 10,300 refugees who applied for a vocational training spot, a mere 3,600 were selected,<sup>87</sup> and in 2015, up to 70 per cent of refugees ended up aborting their training, according to the Chamber of Crafts and Trades of Bavaria.<sup>88</sup>

Our queries of fifteen universities in Germany indicated that the counselling and services offered to refugees were focused on informing them about different tracks within higher education, and assuming that aspiring students already knew about the other options available to them. Instead of merely rejecting refugees who lack the necessary credentials, universities must help productively redirect refugees into other viable pathways, such as vocational training.

### ***Policy Recommendations for Universities***

#### *Collaborative Counselling with Other Sectors*

If universities seek to fulfill their third mission as credible civil society actors, they will need to provide counselling to help successfully divert those who are not eligible for full university entrance to find an occupation that matches their competencies. To that end, we suggest that universities team up with relevant partners in the region such as the Jobcentre, the Chamber of Commerce, and the private sector. The Jobcentre helps refugees map out an alternative pathway within Germany's well-established dual system of vocational education and training.

#### *Make Sure Policies Work*

As a result of Germany's aforementioned strict data privacy laws, reliable data on how many refugees are fully enrolled in universities are not available, although such data could easily be collected. Our study found that because of these *Datenschutz* privacy protection barriers, universities were not tracking the pathways of asylum seekers once they became regularly enrolled. To investigate the implications, we contacted the DAAD directly to ask why, on a national level, refugees were not being tracked once they became officially enrolled, even though the DAAD and BMBF had pledged to invest €100 million through its Integra program in higher education for refugees over the next several years. The agency responded that it has a comprehensive monitoring system in place and is remedying the lack of data by

collaborating with an unnamed research institute to trace the future impact of their policies. In our view it seems imprudent, in light of the urgency of the "refugee crisis," to delay transparent data tracking through this arrangement when a quicker resolution would likely help refugees avoid the chronically high dropout rates that have plagued earlier groups of at-risk students.<sup>89</sup>

#### *Conduct More Comprehensive Analysis*

We argue that universities should register the "flight" status of refugee students in a national or state-level database so they can empirically monitor the impact and success of their programming for refugees and thereby justify the considerable effort and significant costs related to refugee integration. Budget flows should be clearly measured, and program impacts need to be systematically analyzed. As of 2017, this information still appeared to be mostly anecdotal or at best internally available in certain universities, such as the Free University of Berlin, only when they agreed to share it with researchers. However, such data are not centrally available for research purposes. This type of transparency is particularly important for assessing refugees' chances of success in German higher education in light of DAAD figures, which at the time of our study showed that 59 per cent of Latin American and 41 per cent of African students were discontinuing their BA studies in German universities, compared with only 28 twenty-eight of German students.<sup>90</sup> This alarmingly high attrition rate suggests that universities may not be sufficiently addressing problems associated with entrance criteria and support services for at-risk students. It seems counterproductive to lose track of refugees and the critical data necessary to adapt and customize policies, programs, and support measures to help them succeed.

#### *Appropriate Services to Stem the Tide of Dropouts*

The enrolments of refugees in higher education expected in the coming years present an opportunity for positive change that will also help domestic and foreign students. As noted previously, universities have reacted to mass enrolments by mainstreaming, standardizing, lowering student-professor ratios, and reducing contact hours. This has not been a positive development for students. If current data protection laws were loosened to allow for more robust collection of the data needed to assess attrition or success rates, universities would be able to immediately implement programs, such as academic writing or guidance for self-structured learning that could reduce refugee student dropout rates.

### ***Conclusion***

As Clark and Grandi<sup>91</sup> have rightfully argued, the time has come to "discard the clichéd image of refugees as passive

recipients of aid, sitting idly with outstretched hands.” Elements of the German example show that, with proper support, refugees can enrich Germany’s culture and economy,<sup>30</sup> but only if they become successfully integrated. The university sector, just as primary and secondary schooling and vocational training, is a key player in the integration process and could eventually reap the fruits of its success.

Our research looked at how universities, within a tense national environment of forces agitating for and also against refugees, worked to accommodate refugees and help them transition to full participation in German society. To make this transition, refugees will first need access to the knowledge, skills, and opportunities that education can provide. Our study of fifteen universities, couched within a broader look at the media and research discussion that was taking place in 2015–16, showed some of their programming and examined the broader German context of civil society efforts to address the “refugee crisis” and what the impact of cultural, political, and economic forces was on the higher education sector in particular.

Both our case study data and our review of the broader context showed that German universities were trying to respond positively to the “refugee crisis” through a variety of innovative programming and individualized support services, and doing so within a national atmosphere that was rife with tensions. As the period of the “refugee crisis” fades and the broader German effort to integrate new refugees takes shape, German universities stand to continue serving as positive role models of successful refugee integration, if they succeed. Returning to Gersick’s paradigm, the refugee influx is indeed a chance for qualitative, metamorphic change in Germany’s universities, but only if they seize the moment successfully in this renewed period of disequilibrium. That challenge is mighty, and Germany must carefully balance its heavy history with forward-looking policies that have the potential to maximize the great promise we believe its newest arrivals can bring.

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# “We” the Refugees: Reflections on Refugee Labels and Identities

YANERY NAVARRO VIGIL AND CATHERINE BAILLIE ABIDI

## Abstract

*In this article the authors present an auto-ethnographical analysis, describing their personal experiences with forced migration. Using narrative passages, the authors problematize the way in which refugee identities are entwined with socially constructed labels. The authors explore the points at which self-identification negotiates with labelling in order to create new spaces wherein individual and collective refugee experiences mutually shape and transform each other. These new spaces emerge from an inclusive participatory socio-cultural and political process where the idea of “us” and “them” merges into a “we.” This article represents the culmination of the authors’ sustained interactions (in conversation, in storytelling, in shared analyses, in writing) and serves as an example of putting a new space into action.*

## Résumé

*Les auteurs présentent dans cet article une analyse auto-ethnographique fondée sur la description de leurs vécus respectifs de la migration forcée. Par des extraits narratifs, ils problématisent la manière dont les identités de réfugiés sont liées à des catégories socialement construites. Ils explorent*

*les points de négociation entre l’auto-identification et la catégorisation pour créer de nouveaux espaces dans lesquels les expériences individuelles et collectives de réfugiés se façonnent mutuellement et se transforment les unes les autres. Ces nouveaux espaces se dégagent à partir d’un processus participatif et inclusif qui relève à la fois du politique et du socioculturel, dans lequel les concepts de « nous-mêmes » et « eux » se fondent en une seule entité, « nous ». Cet article, qui est l’aboutissement d’interactions approfondies entre les auteurs (sous la forme de conversations, d’histoires racontées, d’analyses partagées, de textes rédigés), constitue un exemple de mise en action d’un nouvel espace.*

## Our Stories

**Y**ANERY. I am a refugee. It is almost a decade since that event took place, the event that marked the beginning of the catastrophe that is intimately related with why I became a refugee—a catastrophe that violently forced me to leave my home. I came to Halifax (Nova Scotia, Canada) as an asylum-seeker and, after five years, gained refugee status in 2013. To situate my story, please accept the following poem, “The House That Was a Home.”

To F & H

*The house was empty. We were living for a week in the cottage. A turbulent dream woke me up, indicating he was there.*

They are moving the furniture, taking the paintings, destroying the art that for years lay resting on the walls, books on boxes, more and more boxes running and running everywhere. Simply dispossessing you from your toys, your dolls, your games, your rooms.

The garden in silence is the only witness. I decided to stop my dream and intended to sleep.

At six a.m. my instinct shook me again and sent me home. I drove for more than two hours. When I tried to open the garage door, it was disconnected. I forced the door and crossed the entrance. Are you here? I asked ... Silence ... the only witness replies, No! nobody is here.

You can continue ...

... with panic in my gloomy body, I asked again. Are you here?

I observe that no one is even resting in the custodian's room.

Can you hear me ...?

I can continue,... the house is totally empty.

He put us out.

Now is time; this imposed the reality; we are looking for shelter.

It was not a robbery; it was a predetermined act of eviction, a demolition.

The decision was forced. We left home.

From my experience, refugee is a status that, within the current panorama of world migration and immigration, is unique. Once this category or status is bestowed upon a person, it is never lost. Being a refugee is being part of a minority group within another minority group—that of immigrants. Being a refugee also means being in a factual struggle for freedom and dignity. This struggle is part of my past and current experiences and is carved in my personal and professional reality. It is this struggle that has informed my conviction that the figure of the refugee is the archetype of the twenty-first century—if not of humanity itself. This conviction stems from the historical and contemporary patterns of mass migration. My conviction hence points to the difficulties to find a place, in a moment in time in which people of all classes move around the world searching for “a better life.” Refugees are forced into this search for refuge, for a home they have lost, for there is no life without refuge. Thus, this conviction asserts that the search “for a better life” starts as a search for refuge, for a safe place, a home to belong.

CATHERINE. In the spring of 1999 I received a call to come to the Red Cross office in downtown Halifax to help prepare for the arrival of 5,000 Kosovar refugees in what was dubbed Operation Parasol.<sup>1</sup> Our team had extensive experience in domestic disaster response, but this kind of international response was unprecedented. Throughout the month of May,

over 2,500 Kosovars arrived in Nova Scotia, and it was this experience that marked the beginning of my work in forced migration. I have so many heartfelt memories of the resilience of the Kosovar people and the humanity demonstrated by those directly affected and those in *supporting* roles. In a crisis, humanity can shine.

Fast forward to 2016: 20 June World Refugee Day. I took my ten-year-old son to a presentation at the Halifax Central Library called “Fleeing Home: Poetry on Persecution.” A woman began to read her poetry, describing an extraordinary process of exile and identity formation. The poet was Yanery. A few months later, Yanery and I met during a participatory photography research project focused on the experiences of immigrant and refugee women.<sup>2</sup> Yanery was a research participant and I was a volunteer researcher. We spent months together learning how to use photography to reflect on and teach about migration and settlement journeys. One particular experience resonated with both of us. After an emotional public presentation, showcasing the women's photographs and stories, an audience member asked us if we (society) should continue to use the term *refugee*, or if we (society) should consider a new word altogether. I have observed resistance to the term *refugee*, by refugees, because there are assumptions of vulnerability and lack of recognition of the multiple identities and labels embraced by and embodied on refugees. However, one research participant shared how the term was interconnected with the opportunities that arose from being a refugee, such as a full scholarship to university, and therefore it was a term that we (society) should not disregard for something new. Yanery agreed, and shared how for her, the term *refugee* stands for *home*, a concept that links the past, present, and future with the notion of safety and belonging. Yanery elaborated on the importance of keeping the word *refugee*, while emphasizing how essential it is that we (society) challenge, critique, and deconstruct what it means. It was this experience that led Yanery and me to further reflect on and work together to develop a deeper understanding of how refugee identities and labels are entwined.

### **Our Approach**

YANERY and CATHERINE. Full disclosure, *we*<sup>3</sup> whole-heartedly agree with the UN argument that “migration is a fact of life in a globalized world, and the world is a better place because of it.”<sup>4</sup> Migration is part of the fabric of Canadian history and is intimately entwined in the evolution of national labels. People have been moving to, from and within Canada for hundreds of years, and the positive socio-economic and cultural impacts of migration are well documented.<sup>5</sup> This article focuses on those forced to migrate in an attempt to problematize the refugee label as a particular

feature within migration and identity construction. In this article we question the word *refugee* as a category to qualify this diverse group of people by using narratives to examine how labels are constructed and how identity processes happen *for*, *with*, and *in* refugees. We focus on the social aspect of the refugee label, while recognizing it is both distinct from and connected to the legal status. Our objective is to deepen conversations among and between refugees, settlement practitioners, and the general public to further consider the complexities of identity, labelling processes, and the interconnections between them.

In this article we use our narrative stories to investigate our individual and collective processes of self-identification and labelling. We delve into the points where self-identification negotiates with labelling in order to conceptualize the notion of *new spaces*, where individual and collective refugee experiences mutually shape and transform each other. These *new spaces* emerge from an inclusive participatory socio-cultural and political process where the idea of “us” and “them” merges into “we.” Our collaboration pushed our thinking about these concepts, and the following analysis is the culmination of this participation, which involved weekly conversations over the course of twelve months. We invite readers to respond to our reflections, stories, and questions and to further this important conversation.

### ***Social Complexities of the Refugee Label***<sup>6</sup>

CATHERINE and YANERY. *Refugee* is a socially constructed label with complex legal, ethical, and political connotations. Refugee, as a particular category, evolved in response to the mass displacement of people following the Second World War and stemmed from a state-centred mindset focused on population control.<sup>7</sup> Scalettaris argues that responses to mass displacement, such as the post-Second World War efforts, illustrate how “labels account more for the historical, institutional context in which they are produced” and how “the interests of hegemonic states are the most powerful factor in shaping the policy framework for the management of human mobility, and, accordingly, in producing labels.”<sup>8</sup> Within the *refugee regime*,<sup>9</sup> power is expressed in multiple ways, such as through policy and law, and these expressions of power influence how categories and labels are constructed.<sup>10</sup> The contemporary refugee label, which attempts to group together an extraordinarily heterogeneous population of people, fails to nuance the diverse historical, social, political, and cultural contexts that drive forced migration.<sup>11</sup> The contemporary refugee label also lacks an analysis of how power is expressed within the making and sustainment of that label. Malkki argues, “Involuntary or forced movements of people are always only one aspect of much larger constellations of sociopolitical and cultural processes and practices.”<sup>12</sup>

Understanding how power operates within the refugee regime, and particularly in terms of the construction of the refugee label, can expose the socio-political motivations for constructing this label, and the consequential impacts and opportunities that it produces.

Even though the refugee label is contentious, it binds the people constructed and labelled within it; as Kumsa shares, “I *am* a refugee! Others look at me and see a refugee. I look at my Self through Others’ eyes and become a refugee. The notorious cycle of Self is complete. The fact that I have been a Canadian citizen for over ten years matters little. Persecution and flight, asylum and resettlement, racialization and alienation, all woven into essentialist discourses of nationhood construct me as a refugee.”<sup>13</sup>

In this reflection, Kumsa captures how power is expressed in labelling and effectively articulates the interaction between individual (agency) and collective aspects of labelling. In a similar vein, Basch, Glick Schiller, and Szanton Blanc observe, “Once people find themselves conceptualized and come to conceptualize themselves as bound together with a common situation or identity, distinctiveness does indeed arise.”<sup>14</sup> This distinctiveness can manifest into *us*, *them*, and *other* categorizations based on the historical and cultural dimensions of the time. For example, in the context of Malischewski’s work in Northern Ireland, *other*, as a category, refers to refugees as a group of people with such diminished value that they are not legitimized as present or worthy of recognition in a social conflict.<sup>15</sup> In this context, the label of *other* and the label of refugee come together to illustrate distinctiveness from the mainstream society. The label of *other* often stems from contrived and discriminatory narratives, which privilege those in power.<sup>16</sup> Spivak named this process the “epistemic violence of othering” and emphasized the importance of exploring the politics embedded in processes of representation.<sup>17</sup>

Zetter takes up this notion of the politicization of representation and argues the refugee label has undergone significant transformations since the 1970s, when the “formation” of the refugee label focused on patterns of migration.<sup>18</sup> Impacted by globalization, this approach connected “the refugee” to the causes of forced migration, and NGOs played a primary role within this phase.<sup>19</sup> From its “formation,” the refugee label was “transformed” to take into consideration the increased complexity of migration patterns, and, in response, the refugee label became part of a state-led migration management system.<sup>20</sup> It was in this phase that Catherine entered the world of forced migration. Operation Parasol serves as an excellent example of the transformation from NGO-led to state-led responses to forced displacement. While NGOs played a prominent role in this response, it was the Canadian government, in partnership with other states, that *managed* the response.



The refugee label within this transformation stage is based on the norms and discourses of state leaders; norms and discourses that often change with the introduction of new leadership. Additionally, these state-centred responses to the plight of refugees often encompass contradictory nationalist notions of humanitarianism. For example, in the mid-1980s the Mulroney government promoted a humanitarian agenda stating, “If we err ... we will always err on the side of justice and on the side of compassion,”<sup>21</sup> while simultaneously implementing Bill C-84, the Refugee Deterrents and Detention Bill, granting Canadian authorities the ability to turn away ships suspected of carrying asylum seekers.<sup>22</sup> The arrival of two ships in 1986, one carrying Tamils and the other carrying Sikhs, resulted in an enhanced exclusionary state approach to forced migration and illustrates the kind of “fences and walls” being erected to prevent migration from sites of unrest and conflict in order to manage migration patterns.<sup>23</sup> Harrell-Bond describes how the building of “visa-walls” by states (both metaphorically and physically in the case of Greece and Israel) substantially contributes to precarious and unsafe migration and is fuelled by this Northern hegemonic ideology of humanitarianism.<sup>24</sup> These state-centred hegemonic ideologies of humanitarianism have led to diminished protections afforded to refugees.<sup>25</sup>

The UN<sup>26</sup> argues, “This is another time in which a toxic, xenophobic and often racist narrative is taking hold in many parts of the world.” This emerging “toxic” narrative is deeply intertwined with the politicization of the refugee label. The key features of this contemporary politicized refugee label include the source of the labelling process—states—as well as the efforts to disconnect refugees from the notion of international protection.<sup>27</sup> “Illegal migrants,” “bogus claimants,” and “queue jumpers” are the labels often used by states to dehumanize refugees and to garner support for securitized refugee policies. Chimni argues the transition from NGO to state-led intervention during times of large population movements, including the engagement of the UN Security Council and NATO, has contributed to the normalization of the “language of security” and the destruction of refugee rights.<sup>28</sup> These politicized and securitized processes are evident in the discrepancies between asylum policies and states’ promotion of human rights.<sup>29</sup> For example, Canadian prime minister Justin Trudeau failed to show a clear position and sound plan to process the cases of more than 10,000 asylum seekers moving from the United States and Haiti in the summer of 2017. This led to criticism from the Conservative Party, judging Trudeau’s response as too lax, while, on the other hand, the prime minister was criticized by the NDP for the exact opposite reasons, as his response was considered as not being humanitarian enough.<sup>30</sup> Kumsa contends that this politicized and securitized approach to forced migration,

“constructs ‘the refugee’ as a strong antithesis of the nation ... the dangerous roamer and unattached wanderer.”<sup>31</sup>

### ***Problematizing the Refugee Label***

CATHERINE. I have worked in forced migration for nearly two decades, learning from and with people who have come to Canada seeking safety and protection. My professional practice has involved supporting people to reconnect with family members separated by humanitarian crises, facilitating public education on migration issues, and establishing enhanced settlement practices and policies – largely based on the experiences of refugee women.<sup>32</sup> During this time, I have observed the increasingly politicized and securitized transformations of the refugee label within government, the media, and public discourse on migration. I have witnessed the transition of refugees as “thieves” (stealing jobs) to refugees as “terrorists” on a mission to destroy Canadian values.

I remember walking into a corner store with a family from Kosovo in 1999. An elderly gentleman approached us and under his breath he said, “We don’t have enough jobs for Canadians. We need to look after our own first. Tell them to go home.” Unfortunately, I continued to be inundated with similar messages about job security and the economy, despite the positive Canadian peacekeeping and humanitarian narratives being promoted at the time. At the time of writing this article, the labels seem to have become even more antagonistic and securitized. In fact, the value of the *other* (i.e., refugees) is no longer partial or less than the mainstream community; the *other* has become dangerous, and this danger narrative has been institutionalized within Canadian and international policies, often resulting in the failure to recognize the humanity of refugees. The 2012 reduction in health care afforded to refugees in Canada, and the subsequent ruling<sup>33</sup> that these reductions were “cruel and unusual,” serves as a stark example of the impact and reach of the danger narrative.<sup>34</sup> Even within Prime Minister Trudeau’s seemingly pro-refugee actions during the Syrian response in 2015–16,<sup>35</sup> the exclusion of single men from Canada’s resettlement program offers another illustration of how the *dangerous other* narrative filters into policy.

Beyond the danger (*harmer*) narrative, which focuses on the risks associated with forced migration in public safety and economic burden, there is another predominant forced migration narrative—the *helpers*. The *helpers* focus on the vulnerabilities of refugees and the importance of helping, of doing the right thing. Regardless which narrative one may align with the most (recognizing this duality is overly simplistic), each involves the objectification of refugees and a labelling in which those fleeing crises are seen as objects either requiring help or posing a threat, and not as subjects with agency and voice.<sup>36</sup>

### **Refugee Labels & Identities**

YANERY. I was eleven years old when I left my little hometown to go to school. This is how my story of migration started, a story that is deeply ingrained in my identity and in who I am today. Every dimension of my social life was touched by migration. I came of age during the perestroika, which marked ten brutal years in the identity of all those who, like me, were living the agony of a country petrified by fear. It was during this period that my desire to leave Cuba first emerged.

I remember leaving Cuba at five in the afternoon, the red dust shaking the palm crests around the Havana airstrip. I arrived in the evening to a sea of lights within which a city lay lost. I landed in Mexico. The fact that I left my family, my friends, and my land at the age of twenty, with no idea as to whether I would be able to come back to them, powerfully triggered my need to build and sustain spaces in Mexico to express my Cuban identity, or, as they call it back home, my *cubanía*. Soon after I arrived, I felt my *cubanía* everywhere I went; yet I felt a similar trigger to absorb and learn the Mexican identity and to make it part of my own. In this constant transformation, my transnationalism was born. I thus became a transmigrant. My life is shaped by the links I made through my transnational identity between Cuba and Mexico, going back and forth from one place to the other—and belonging in them both.

Conversely, my arrival in Canada in 2007 was accompanied by the realization that there was no going back. This realization informed a forced settlement. In those days, my identity fell behind my physical integrity, which was literally obstructed by the domestic violence and political persecution that eventually became the causes behind my asylum claim. Such obstruction exhausted my sense of personhood, my life as a citizen, and my sense of belonging. I was not able to appease a horror that I carried inside me at all times, which was separated only by a geographical distance. As the process of asylum seeking took root, and as I started to receive support (more or less effectively, but support nonetheless) from government, NGOs, civil society, and personal relations, my identity started to settle again. I lost interest in being from here or there. I rediscovered a world that was multifaceted, multi-faced, multilingual, diverse, and cosmopolitan. This world opened a space for me, that *new space*<sup>37</sup> to fix and save those parts of my identity that were still alive, my inborn *cubanía* and my more recently acquired *mexicaneidad*.

Since I presented my case to the Canadian authorities and became an asylum-seeker, I have never felt dishonoured to bear the label of refugee—even if I have met the barriers, stigma, and discrimination that this label bears. I am proud to be a refugee, as I have reconciled with what happened to me. Yet I have never experienced the emotion of hearing

from another refugee, “Oh! You are a refugee. I am a refugee too!”

Being a refugee means being in a contradiction: it means being vulnerable and having to show this vulnerability in order to receive protection, while, on the other hand, having to show resilience. Although I am proud of having received protection, I understand the complexities of the vulnerability-resiliency contradiction. There is no pride in being vulnerable, or in having to show it, particularly when everyone keeps stressing how resilient you are. And this is the essential contradiction that most refugees face.

Despite this contraction, as refugees and asylum seekers we carry our self-respect and the multiple causes that brought us to where we are today. Hence, we seek a platform to show our worth as human beings. And we seek it in our everyday lives, trying to find a balance between our private worth and the possibility of creating a *new space* to live in. This new space is not just physical; it is a space of reconciliation and identification that is constructed in each person and is shaped by mundane struggles throughout the socio-cultural and political processes that lie beneath the refugee label. This *new space* should foster a continuous updating of the refugee label.

### **Complexities, Opportunities, and Tensions**

YANERY and CATHERINE. The pronoun *we* plays a key role in what a refugee represents, regardless of who bears the label. We are all interconnected and affected by each other in this “we,” and thus we all need to know how the refugee label affects our human experience. We also need to understand how we respond to the values and interests that contribute to the formation of this label.

Bridget Hayden argues it is possible to understand this contentious term (*refugee*) by focusing on the converging point that the “we” opens for “us and them” (non-refugee and refugee), wherein “the recognition of refugees is the recognition of mutual bonds of humanity and need,”<sup>38</sup> as embraced, ideally, by everyone. This recognition stems more from the responsibility we bear to each other than from the rights we are entitled to or the duties we are compliant with as individuals. Framing forced migration as a co-responsibility allows us to realize the importance of observing, analyzing, and participating in the construction of the refugee label. The ways in which the term *refugee* is constructed, both as a legal status and a label, shows our social awareness, our political vision, and our moral values. However, when it is *exclusively* dictated and informed by “us” (non-refugees), this term fails to reflect the “we.” Thus, *we* propose that non-refugees need to engage with refugees in a mutual identification to learn together how labels and identities are constructed. And this can be done within the possibilities that the “we” opens for us.

When the “we” is used in labelling, there is an implicit link between structure and agency. This link is central in Roger Zetter’s work in refugee studies.<sup>39</sup> For Zetter, the structure corresponds to regulatory bodies upon which labels are institutionalized, while agency corresponds to the individual and the individual’s identities. When this link is dislocated, the label becomes more structure than agency, that is, the label is used as an *othering* factor that is externally attached to the refugee.<sup>40</sup> In this way, humanitarianism is the by-product of bureaucratic institutions exerting a label, and the label is hence at the service of these institutions, or, what Zetter calls “institutional agency.”<sup>41</sup> The protective blanket thrown over the refugee label ends up becoming a “curtailment of their rights.”<sup>42</sup> A label produced in this manner functions as an instrument of control, where institutionalization factors the assumptions and expectations that abrade the identity of those to whom the label “refugee” is attached—even before they acquire such status and/or arrive into their host countries.<sup>43</sup>

The balance between “us” and “them” is frail—even more so in the global world in which we live. Within our globalized world, each person, refugee or not, is able to assign or attach a label to a refugee. The legal status of the refugee, however, is granted or denied despite the fact that there may or may not be a label in place for this status. This is to say that the legal status always supersedes the label, even if the label is often applied by the authorities that grant or deny the status.<sup>44</sup> In this manner, structure keeps overriding the agency (i.e., identity) of those to whom the label is attached. For Zetter, this process is subjected to three axioms: formation, transformation, and politicization.<sup>45</sup> Yet, despite how oppressive or alien the label may be, we claim that agency is never completely lost.<sup>46</sup> Once refugees have acquired this status, there is the possibility of activating, for better or worse, a refugee identity that affirms their agency and, through it, their participation in the construction of this label.

In contrast to a label, identity is the possibility of imagining the “I” in the context of both individual and collective processes. Identity carries narrated processes of self-identification that vary significantly across multiple contexts, within which migration is a significant one. Stuart Hall refers to this variation as “cultural identities ... which are constantly producing and reproducing themselves anew, through transformation and difference.”<sup>47</sup> Identity-formation never points at one affixed identity, but rather outlines a developmental flow that evolves as a story does. We narrate our stories to illustrate the process of identity-formation from the perspective of being a refugee (“them”) and becoming a Canadian “we,” as well as from being a Canadian (“us”) and becoming a “we.”

Identity, and its fluid process of transformation, is subject to interact with previously established labels. This is the case

with the identity of the refugee. When those labels are externally attached to the person who is just arriving into the legal status, this person is entered into the story as the protagonist. Being situated in an alien story, as the protagonist, hinders the fluidity of the process of identity-formation. This obstruction leaves only a figurative, alien space to which the new refugee does not yet belong, despite having been attached to a literal label. Therefore, identity is a key piece in the adaptation and integration of a refugee, as it continuously strives against the previously established and attached label.

Change and transformation are central to identity-formation for refugees. This process goes hand-in-hand with the diversification of our national spaces and our spaces of self-identification. Our roots proliferate into different spaces as multiple stories converge into the main narrative of our lives. There is a sort of haven that opens in between this process of diversification, which allows for a different kind of space to take root—a *new space*. This new space can allow for an identity development that aligns with a cosmopolitan society, a self-identification that represents the kind of place where the “we” can emerge and engage in a collective dialogue from which an inclusive label can emancipate itself. It is close to what Sally Munt calls “temporary spaces [created to provide] a brief microcosm of home, and a strong sense of collective engagement.”<sup>48</sup> This space is thus the ground for transcultural and transnational integration. The space of the “we” exists both inside and outside of oneself. It is an imagined and internalized identity in a dialogical correspondence with conflicting ways of life, which simultaneously shapes one’s experiences. In this new space, refugees can be globalized and individualized all at once. However, for this space to open, it is necessary for the refugee to arrive in a plural place.

YANERY. This is what I am most appreciative about Canada. Since the beginning, it was a place that afforded me with the possibility of solving the innermost complexity of the refugee status: being forced to live in a place that you want to become a part of because you know there is no other option and there is no way back. It was in Canada that I lost my need to show my *cubania* and my *mexicaneidad* everywhere I went. Instead, the ability to be simultaneously from here and there enabled me to embrace a kind of world citizenship. And this I owe to Canada, a place that in its being *multi-* exempts me from the necessity of defining myself as *only-*. Often I feel my *cubania*, my *mexicanidad*, and my *canadianship* coming all in waves, all at once, and it is difficult to find where one ends and the other one begins. It is the proliferation of the one.

### ***We and Spaces: Discussion and Analysis***

YANERY and CATHERINE. Refugees share a history of surviving violence, embarking on a “dangerous journey,” and living

through “precarious arrivals and uncertain reception” in a new country;<sup>49</sup> and yet there is no singular formula that describes how refugee identities and labels are constructed. Narratives that describe refugee experiences, which are paramount to identity-formation, can become part of the analysis of how labelling operates. Thus, *we* frame our analysis on the predication that labelling is a socio-political process, which both influences and is influenced by refugee identities.

Refugee identities are extremely diverse and steeped in contradictions, which include the entangled relation between vulnerability and resiliency. Refugee identities are also characterized by a combination of fluidity and obtrusion, a combination that ideally culminates in an “identity stabilization.”<sup>50</sup> Labels, on the other hand, are the culmination of socio-political power that produces and sustains categorizations or groupings of people.<sup>51</sup> Refugee labels are constantly evolving and transforming within an increasingly politicized and securitized socio-political context, and they are informed as much by those who bear the label as by those who do not. Within this socio-political context, refugee identities and labels are imprinted onto one another and form a complex web of collective and individual transformations. It is in this process that identity and labelling can influence each other. Analyzing the intersections between refugee labels and refugee identity(ies) can enhance our understanding of broader forced migration processes, recognizing that they are neither exclusively individual nor solely collective. *We* suggest more research is needed to explore the relationship between labels and identity, especially recognizing there is not one narrative that embraces the complexity, diversity, and variability that human movement and mobility entail today.

Stuart Hall defines *cultural identity* as a matter of “becoming” as well as a matter of being.<sup>52</sup> Within this definition, identity formation is as much a process as it is something given. This is even more telling when identity is thought of as something that is given from a certain position, or, in Stuart Hall’s words, “We all write and speak from a particular place and time, from a history and a culture which is specific. What we say is always ‘in context,’ *positioned*.”<sup>53</sup> When positions are conceived of as something that is both a process (i.e., in context) and a given (i.e., place and time), then they can be approached as being fluid and mutable.<sup>54</sup> In this manner, refugees can be recognized and approached as having the capacity to activate and integrate a new space in the particular place and time they arrive in, hence opening a new position in their host country.

During the process of becoming and being, refugees evolve in new spaces, establishing new positions, locations and representations. In this way refugees can better adapt to and influence the contexts where they arrive as well as in the

social representations that predate them. This process delineates their participation in a global space that helps them to demystify the cultural isolation, extreme vulnerability, trauma, and victimization that often characterize the labels that are attached to them. Most of these characterizations owe much to the fact that refugees are perceived and positioned as being *new*, almost as though they were newborn beings. In spite of the specificities and unique aspects of each cultural group, refugees are not new to the world, even less so in a globalized one, and especially considering the extreme resiliency expected from refugees to persevere during and beyond their precarious journeys.<sup>55</sup> Thus, *we* have aimed to show that refugees need to be able to co-create a new space where they can exercise and share their agency, capacities, and vulnerabilities with those already living in the space that hosts them. Refugees hence must be co-creators of a new space where labels can be deconstructed and transformed to emphasize a shared humanity.

On the one hand, forced migration exposes horrendous injustices, our failure to live together peacefully, and our inability to respect difference. On the other hand, forced migration reveals tremendous resiliency and opens opportunities to build peaceful communities together. Creating new spaces within existing spaces opens the possibility for shared agency, allowing refugees to actively participate in determining possible actions and collective social norms. Typically, actors within existing spaces decide what is best for refugees and the broader community (*helpers* and *harmers*), instead of opening these spaces to co-decide their new position with all the participating actors. New spaces, where collaborative living is fostered, can reduce the constant sense of compromise endured by refugees as they encounter existing spaces, actors, and norms.

With this in mind, it is important to put *newness*, the refugee’s perennial companion in both identity and label, in proper perspective. This *newness* often inspires a sense of protection by states and is “not only marred with negative connotations but it also inflicts the violence and pain of exclusionary practices.”<sup>56</sup> Indeed, refugees are not new. This idea of newness stems from a place of disruption and discrimination in *helpers* and *harmers*, who, perhaps in different ways, equally objectify forced migrants. What is new is the context the refugee enters, and this context is not exclusive to the refugee; this context also includes the existing actors and receiving parties (refugee sponsors, for example), as the context is new for them as well. The new space is founded upon a layer of each member’s identity, refugee or not. Thus, this space requires neutrality where all members have opportunities to grow and where interconnectedness can be nurtured; where “*we*” are “*being*” and “*becoming*” together. This new space is not a utopia; it is a space where

“we,” as a society, embrace the responsibility for each other. Are “we” ready for that?

#### NOTES

- 1 In 1999 UNHCR asked several countries to provide a safe place for over 100,000 Kosovar refugees, and 5,000 Kosovars came to Canada.
- 2 The Women Speaking through Photography Collective is led by Dr. Susan Brigham at msu in Halifax, Nova Scotia. Susan Brigham and Women Speaking through Photography Collective, “Re-signifying to Engaging” (presentation at the Young Immigrant and Refugee Women Learning in Community to Adult Education Conference, University of New Brunswick, 14–16 October 2016).
- 3 We use an italicized *we* to signify collaboratively written portions of our article.
- 4 United Nations, New York Declaration for Refugees and Migrants, 2016, 3.
- 5 See Statistics Canada, *Immigrant Economic and Social Outcomes in Canada* (Ottawa: Government of Canada, 2011); United Nations General Assembly, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants* (New York: UN, 2016). Although the long-lasting effects of the forcible displacement of Indigenous peoples are also well documented, this article focuses on forced migration and immigration, which does not deal with the colonial figure of the settler. For further commentary on the effects of forcible displacement of indigenous peoples, see Daniel N. Paul, *We Were Not the Savages* (Halifax: Fernwood Publishing, 2008).
- 6 We intentionally chose to use the word *label*, for as Zetter explains, this word “recognizes both a process of identification and a mark of identity; implies something independently applied, but also something which can be chosen and amended.” Roger Zetter, “More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization,” *Journal of Refugee Studies* 20, no. 2 (June 2017): 172–92.
- 7 Audrey Macklin, “Historicizing Narratives of Arrival: The Other Indian Other,” University of Victoria, 2006.
- 8 Giulia Scalettaris, “Refuge Studies and the International Refugee Regime: A Reflection on a Desirable Separation,” *Refugee Survey Quarterly* 26, no. 3 (January 2007): 36–50.
- 9 The *refugee regime* refers to the creation of UNHCR and the 1951 Convention on the Status of Refugees and, in words of Betts, the “institutionalized cooperation in the area of human mobility.” Betts argues the *refugee regime complex* is a more comprehensive and contemporary term, given the increased institutional involvement in forced migration. Alexander Betts, “The Refugee Regime Complex,” *Refugee Survey Quarterly* 29, no. 1 (January 2010): 12–37.
- 10 James Milner and Krystyna Wojnarowicz, “Power in the Global Refugee Regime: Understanding Expressions and Experiences of Power in Global and Local Contexts,” *Refuge* 22, no. 1 (2017): 7–17.
- 11 Liisa Malkki, “Refugees and Exile: From ‘Refugee Studies’ to the National Order of Things,” *Annual Review of Anthropology* 24 (January 1995): 495–523.
- 12 Malkki, “Refugees and Exile,” 496.
- 13 Martha Kuwee Kumsa, “No! I’m Not a Refugee! The Poetics of Be-Longing among Young Oromos in Toronto,” *Journal of Refugee Studies* 19, no. 2 (June 2006): 230–55.
- 14 Linda Basch, Nina Glick Schiller, and Christina Szanton Blanc, “‘Transnational Project: A New Perspective’ and ‘Theoretical Premises,’” in *The Transnational Studies Reader*, ed. Sanjeev Khagram and Peggy Levitt, 261–72 (New York: Routledge, 2008).
- 15 Charlotte-Anne Malischewski, “Refugee at the Crossroads: Social and Territorial Dynamics of integration in Northern Ireland,” in *After the Flight: The Dynamics of Refugee Settlement and Integration*, ed. Morgan Poteet and Shiva Nourpanah, 21–42 (Newcastle: Cambridge Scholars Publishing, 2016).
- 16 Edward Said, *Orientalism* (New York: Random House, 1978); Audrey Macklin, “Historicizing Narratives of Arrival: The Other Indian Other,” University of Victoria, 2006.
- 17 Gayatri Spivak, *The Post-colonial Critic: Interviews, Strategies, Dialogues* (New York: Routledge, 1990).
- 18 Zetter, “More Labels, Fewer Refugees.”
- 19 Zetter, “More Labels, Fewer Refugees.”
- 20 Zetter, “More Labels, Fewer Refugees.”
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# In the Name of Humanitarianism: The Interim Federal Health Program and the Irregularization of Refugee Claimants

LAURA CONNOY<sup>1</sup>

## **Abstract**

*Since 1957 Canada's Interim Federal Health Program (IFHP) has provided health-care coverage to refugee populations. However, from June 2012 to April 2016 the program was drastically revised in ways that restricted or denied access to health-care coverage, specifically to refugee claimants—persons who have fled their country and made an asylum claim in another country. One of the main intentions of the revision was to protect the integrity of Canada's humanitarian refugee determination system. However, this had a major unintended consequence: within everyday health-care places like walk-in clinics, doctor's offices, and hospitals, IFHP recipients were denied access to services, regardless of actual levels of coverage. In this article I analyze how these program restrictions were experienced within Toronto's everyday health-care places through the concept of irregularization. I discuss how the IFHP, as a humanitarian health-care program, problematizes the presence of refugee claimants in ways that created experiences of vulnerability, insecurity, and anxiety. Building on this view, I conclude with a*

*discussion of how activists who sought to draw attention to the experiences of refugee claimants in the aftermath of the IFHP revisions closed off truly transformative pathways toward social justice.*

## **Résumé**

*De juin 2012 à avril 2016, les demandeurs d'asile ont été confrontés au Canada à une restriction d'accès à la couverture sanitaire par le Programme fédéral de santé intérimaire (PFSI). Ces restrictions visaient à protéger l'intégrité du système humanitaire du pays. J'analyse dans cet article la manière dont ont fonctionné ces restrictions et dont elles ont été vécues au quotidien à Toronto dans des lieux fournissant des soins de santé. J'étudie aussi comment le programme humanitaire PFSI peut être compris comme un assemblage favorisant la non-régularité des situations, qui cible et interroge de diverses manières la présence de demandeurs d'asile, et génère ainsi une vulnérabilité, une insécurité et une anxiété. Je conclus ensuite en examinant comment les activistes qui cherchaient à dégager les demandeurs d'asile*

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*de toute irrégularité au sein des établissements de santé ont en réalité fermé de véritables voies de transformation sur la route de la justice sociale.*

Humanitarianism is typically associated with ideas and practices that aim to alleviate suffering and injustice. However, as Fassin notes, humanitarianism is also founded on difference and inequality.<sup>2</sup> The actors, policies, practices, documents, and knowledges that constitute humanitarianism work to differentiate and categorize persons seeking access to humanitarian assistance and protection. In this article I analyze how Canada's humanitarian refugee system, and specifically its Interim Federal Health Program (IFHP), works to differentiate and problematize the presence and claims of refugee claimants.

Since 1957 Canada has offered health-care coverage to refugee populations through the IFHP. In 2012 the program was drastically revised in ways that aimed to protect the integrity of Canada's humanitarian refugee determination system, as well as ensure fairness to Canadians and contain financial costs.<sup>3</sup> Here the goal was to deny access to essential health-care coverage in order to deter refugee claimants from making a claim within the country and/or to force those within the country to leave more quickly.<sup>4</sup> The IFHP revision represented one of many moves adopted by the federal Conservative government to regulate refugee claimants. For example, in 2009 visa requirements for Mexican nationals were introduced in order to "reduce the burden" of Mexican claims on the refugee system,<sup>5</sup> and in 2010 the Designated Countries of Origin (DCO) list was introduced, which defines certain countries (including Mexico and Hungary) as respecting human rights, offering state protection, and therefore as less likely to produce refugees. Through this measure, persons claiming asylum from a DCO face stricter asylum measures<sup>6</sup> and an erosion of their rights.<sup>7</sup>

In order to justify the restrictive revisions to the IFHP, government officials relied upon a construction of refugee claimants as "different" subjects within the context of humanitarian assistance and refugee protection. Offering refugee protection is inherently humanitarian, however, as Casas-Cortés et al. note, protection and support is provided to those who "obey and behave as demanded by the protection regime."<sup>8</sup> One important behaviour is passivity or helplessness. According to Ticktin, "Humanitarianism often requires the suffering person to be represented in the passivity of their suffering,"<sup>9</sup> which effectively makes the act of seeking asylum problematic. To make a refugee claim requires moving (and claiming) on one's own volition rather than waiting to be resettled, which positions refugee claimants as practising an "unsavoury" and "dangerous" form of agency,<sup>10</sup> one that occurs outside regulated refugee pathways.

As a result, and as I discuss below, refugee claimants were targeted as greedy and rule-breaking "bogus" "queue jumpers" who were undeserving of accessing important finite health-care resources. I approach this targeting of presence (i.e., of "being here," or one's concrete locality within space<sup>11</sup>) and rights through the concept of irregularization.

Irregularization targets and questions the presence of certain persons as abnormal, out of place, or in other words irregular, regardless of legal status.<sup>12</sup> In this light, to be irregular, or to be attributed the status of irregularity, is not a legal (i.e., juridical) status, but a standing or positioning<sup>13</sup> that shapes lived experience by effecting one's ability to make claims, which produces insecurity, vulnerability, and anxiety. Here status (as standing or positioning) alerts us to the processes that hierarchically position persons/groups and attribute identities; it attends to the ways persons are (re)shaped/(re)fashioned in space that exceed the focus simply on law and policy. Irregularization emerges through a complex assemblage of heterogeneous elements (i.e., policies, practices, documents, actors, knowledges, encounters, etc.) that come together in unpredictable, inconsistent, and contradictory ways to problematize the presence of certain individuals/groups as irregular<sup>14</sup> and to effectively regulate movement and access to services. As stated by O'Connor and Ilcan, assemblages "create events and the possibility of events" and "make a difference or disclose different futures or the possibility of things being other than what they were" within "local sites and social settings."<sup>15</sup> As a status that emerges out of irregularizing assemblages, irregularity can be understood as constituted within everyday encounters and relations; it is contingently configured and enforced by state and non-state actors to limit access to social resources and to rights. To view irregularization as an assemblage captures well the messiness of the everyday and alerts us to the labour that goes into irregularization, and to the importance of how one's presence within space is encountered and (re)negotiated. As noted by Rygiel, presence is intricately connected with rights, which means targeting and questioning presence interrupts rights and claims to them.<sup>16</sup> Problematizing presence therefore challenges one's connections with and contributions to the surrounding community as well as their occupation and use of space, which work as foundations to rights and rights-claiming.<sup>17</sup> This is a key element of irregularization.

Analyzing the IFHP through the concept of irregularization draws attention to how refugee claimants were restricted or denied access to health-care coverage as a result of their irregularized status within the broader humanitarian realm and within the state. This irregularity was then interpreted, (re)produced, and experienced in contradictory and unpredictable ways within everyday health-care places, such as in Toronto's walk-in clinics, doctor's offices, and hospitals. Here,



health-care professionals were actively involved in the irregularization of refugee claimants, which in practice restricted or denied access to essential health-care services, regardless of actual levels of coverage. Perhaps the most affected were refugee claimant women, specifically pregnant women, because the IFHP revisions targeted prenatal and postnatal coverage. Women were also affected beyond the health-care context; as detailed below, their asylum claims do not reflect the existing definition of *refugee*, which compounds their irregularity. In this regard, I illustrate how refugee claimant women experience a gendered form of irregularity within and outside of health care.

In light of the above, I show how Canada's refugee system can be thought of as an irregularizing humanitarian assemblage. In addition to this analysis of regulation and restriction, I also draw attention to the friction and messiness that defines this assemblage<sup>18</sup> as evident in the forms of resistance that emerged in light of the IFHP cuts. Although this resistance is well-intentioned, I shed critical light on how it closed off transformative pathways to a more socially just health-care system. In light of the above, the key guiding question of this article is: how is Canada's refugee system irregularizing, and are there gendered effects? In addition, I also ask how are resistance strategies implicated in the maintenance of irregularity? Drawing on critical migration and humanitarianism literature,<sup>19</sup> this article calls more attention to how refugee claimants are irregularized in Canada and how this affects access to essential health-care services.

This article is organized into four sections. Following a brief explanation of the research methods deployed in this study, I offer an overview of my conceptual framework that connects humanitarianism and irregularization in order to better understand how refugee claimants, and others navigating Canada's humanitarian system, are targeted and questioned in ways that deny or restrict rights and entitlements. I then provide a review of the IFHP which is followed by an empirical analysis of the gendered experiences of irregularity among refugee claimant women, specifically in Toronto's everyday health-care places. I conclude with a discussion of how resistance efforts that sought to "liberate" refugee claimants in Toronto from irregularity affirmed, rather than transformed, existing irregularizing structures.

### ***Methods and Data***

Research data for this article comprise semi-structured interviews conducted with forty-three participants in Toronto, Ontario, from September 2015 to March 2016. Participants included doctors, nurses, lawyers, settlement workers, policy specialists, executive directors, and program managers of refugee agencies, ministry officials, city officials, and refugee claimants. The large majority of the participants

were contacted through email and cold-calling, while some were secured through referral. Interview questions focused largely on understandings, interpretations, and experiences of the IFHP and provincial and local initiatives, as well as access to health-care services in the city. I also inquired as to how participants thought barriers and challenges to health-care were produced, (re)negotiated, or transgressed. Interviews were audio recorded and transcribed; iterative analysis of transcripts continued until the emergence of clear themes and commonalities. In addition to the interviews, I also utilized discourse and policy analysis of relevant governmental and non-governmental statements, press releases, policy documents, position papers, and reports. Interpretive analysis followed whereby conceptual links were established and triangulated between participants and relevant documents. The research received approval from the University of Waterloo's Office of Research Ethics and received funding from a Social Sciences and Humanities Research Council (SSHRC) Doctoral Fellowship.

### ***The Irregularizing Assemblage of Humanitarianism***

Humanitarianism is generally understood as a response to injustice and suffering in times of crisis or emergency through the provision of relief, such as food aid, infrastructure development, medical assistance, training, education, and refugee resettlement. These actions are "taken in the name of a shared humanity"<sup>20</sup> that aims to save lives and respond to morally compelling crises. Humanitarian responses are informed by principles of neutrality, humanity, and universality<sup>21</sup> and are expressed in the language of duty, obligation, and responsibility.<sup>22</sup> However, this affiliation with human welfare tends to gloss over dysfunctional, ineffective, and counterproductive practices, actions, and frameworks that may in fact reproduce inequality and injustice and reduce the rights of refugees.<sup>23</sup> For example, while the humanitarian practice of self-reliance in Uganda's Nakivale refugee settlement aims to give refugees more control over their own lives, this decontextualized and managerial solution in fact violates the rights of refugees and forces them to participate in an environment where they face isolation, poverty, xenophobia, and inadequate access to social supports.<sup>24</sup> The development and implementation of humanitarian actions and solutions is largely founded upon de-politicizing and de-historicizing discourses that construct refugees as "victim," who lack "the authority to give credible narrative evidence or testimony about their own condition."<sup>25</sup> This political voicelessness therefore requires the intervention of experts who speak for refugee populations and find solutions for the problems they are fleeing.<sup>26</sup> "Refugee as victim" also positions human beings as having different degrees of power and worth.<sup>27</sup> Specifically, it creates distinctions between

“those who have the power to protect, and those who need protection—those who suffer, and those who recognise and address suffering.”<sup>28</sup> Scholars are demonstrating how humanitarian practices of differentiation effectively regulate refugees and other (forced) migrant groups.<sup>29</sup> For example, Walters highlights how zones of humanitarian government differentiate between and regulate racialized bodies to decipher whose life is to be fostered or abandoned.<sup>30</sup> This article speaks to this relationship between difference and regulation, particularly in relation to refugee claimants in Canada.

Refugee claimants represent one of many categories of persons who seek access to humanitarian protection and assistance provided through Canada’s refugee program. In contrast to the refugee, who has proven suffering or fear of persecution, and “refugeeness,” being “the institutional, international expectation of a certain kind of helplessness as a refugee characteristic,”<sup>31</sup> refugee claimants have yet to prove their suffering, fear, and helplessness. It is this element of “yet to prove” that is of vital importance to discussions of irregularization. The act of making a claim positions refugee claimants away from helplessness and victimhood. Rather, this population tends to be viewed as bypassing regulated pathways to refugee protection; as one lawyer stated, “Canada would like to be selecting its refugees ... and deciding who will be coming and is thereby getting out the message that anybody who arrives in a different way, who’s not sitting in a refugee camp hoping that they are going to be one of the chosen few, is somehow doing it wrong, is jumping a queue, is illegal, is bogus, etcetera.”<sup>32</sup> Refugee claimants represent an alternative status, something irregular in the context of “refugeeness.” This irregular status renders this population more susceptible to characterizations of “bogusness” “rule breaking” or “queue jumping” in addition to problematizations of presence within space, which interrupts rights-claims, such as health-care rights and more broadly rights to movement or asylum.<sup>33</sup> Drawing on Zetter, the label of “refugee claimant” establishes certain assumptions about the characteristics of this population (i.e., bogus queue jumpers), but also “certain assumptions and expectations about humanitarian treatment and responses.”<sup>34</sup> As I demonstrate below, the constructed irregularity of refugee claimants within the context of Canada’s refugee system worked to justifiably limit humanitarian actions and responses, such as restricted access to health-care coverage and services.

Irregularity is a status, or positioning, of an individual/group that does not reflect the norm; it is constituted by problematizations of one’s presence and emerges through irregularizing assemblages. This definition builds upon the work of Squire, who approaches irregularity as the targeting and control of migrants via “various processes of (ab)normalization and subjectification,”<sup>35</sup> and Hepworth who

defines irregularity as constituted through legislations, discourses, and encounters that question and render presence as illegitimate, regardless of legal entry and residence within the state.<sup>36</sup> To approach irregularity as a positioning produced through irregularizing assemblages speaks to the importance of heterogeneous elements (i.e., actors, documents, policies, practices, knowledges, encounters, etc.) that work to question, target, and/or construct the presence of populations as abnormal, out of place, or otherwise irregular, regardless of legal status. In line with O’Connor and Ilcan,<sup>37</sup> Villegas defines an assemblage as “the coming together of different processes, actors and practices organized through relations of power. Assemblages point to the contingency of how phenomenon, ... are organized.”<sup>38</sup> From this definition, assemblage, as it relates to irregularization, can be understood as an ambiguous and unstable form of regulation that emerges through a combination of elements that create inconsistency, unpredictability, and contradiction, in addition to friction and messiness. As Müller argues, assemblage highlights how and why exercises of power emerge and operate, are (precariously) held together, shape space and action, and “fall apart.”<sup>39</sup>

This conceptualization of irregularity is useful within the context of Canada’s humanitarian system because, although refugee claimants are legal temporary residents, they are subject to securitizing and criminalizing measures that problematize their presence, and rights claims and asylum claims, within the state and the everyday. Although not used explicitly, scholars are demonstrating how Canada’s humanitarian system “irregularizes” refugee populations, particularly the Roma.<sup>40</sup> In this article, I demonstrate how refugee claimants are irregularized within Canada’s everyday health-care places such as doctor’s offices, walk-in clinics, and hospitals. This is achieved through a specific focus on the IFHP.

### ***The Interim Federal Health Program and the Protection of Canada’s Humanitarian System***

Since 1957 refugees in Canada have received health-care coverage through the IFHP.<sup>41</sup> This is a federally administered program that was created as an emergency response to meet the needs of resettled refugees, refugee claimants, and other protected persons who were not eligible for provincial or territorial health insurance, or private health insurance. The IFHP pays for basic health-care, preventative/supplemental care, and prescription medications, as well as prenatal and obstetrical care. The coverage provided through the IFHP is equivalent to that provided to citizens and permanent residents on social assistance. However, through a combination of increased program expenses,<sup>42</sup> and a securitized environment, the federal government opted to reform the IFHP in ways that would modernize it, ensure fairness to Canadians,

protect public health and public safety, and defend Canada's refugee system while deterring its abuse.<sup>43</sup> In other words, the goal of the reform was to protect Canada's refugee system and safeguard finite health-care resources for citizens, permanent residents, and "legitimate" refugees. According to Conservative MP Scott Armstrong, "bogus" claimants "soak up our generous benefits and try to jump the queue because they did not want to wait in line and follow the rules like everyone else. While here, these bogus claimants have access to our generous taxpayer-funded health care system and our welfare benefits."<sup>44</sup> Chris Alexander, minister of citizenship and immigration from 2013 to 2015, similarly stated, "Bogus asylum seekers are not entitled to the same benefits as taxpaying Canadians or genuine refugees."<sup>45</sup> For him, "simply arriving on our shores and claiming hardship isn't good enough. This isn't a self-selection bonanza or a social program buffet."<sup>46</sup> In these quotes, refugee claimants are problematized as disingenuous, selfish, and threatening, and therefore as undeserving of services. These framings of refugee claimants, in direct contrast to citizens, permanent residents, and "legitimate" refugees, justified restricted access to health-care coverage offered through the IFHP. Arguably, the cuts to the IFHP also reinforced the imagined "otherness" of refugee claimants, as persons who do not necessarily fit within Canada's refugee program.

The aforementioned cuts to the IFHP were announced on 25 April 2012, executed through Order-in-Council P.C. 2012-433, the Order Respecting the Interim Federal Health Program, 2012. Alongside a 28 June 2012 Order-in-Council P.C. 2012-945, these orders repealed and replaced the original 1957 order and effectively instated a new IFHP on 30 June 2012 that would drastically reduce the amount of coverage provided to refugee claimants in the country.<sup>47</sup> The new IFHP introduced three hierarchical categories of health-care coverage: expanded health-care coverage, basic health-care coverage, and public health or public safety (PHPS) health-care coverage. Each category offered different types of coverage based upon one's status, country of origin, and mode of entry. Refugee claimants from a non-DCO country received basic health-care coverage, which includes medical services and access to diagnostic tests and hospital services "if they are of an urgent or essential nature" and no medication/immunizations except to prevent or treat a PHPS threat;<sup>48</sup> for pregnant women, consultation fees for the initial assessment and follow-ups, required tests, cost of delivery at a per diem rate, and post-partum follow-ups for twenty-eight days after delivery were covered, but medication was not covered unless it was for a PHPS risk.<sup>49</sup> PHPS coverage applied to refugee claimants from a DCO country and provided no services or medications unless to prevent or treat a PHPS threat or concern;<sup>50</sup> this included pregnant women.<sup>51</sup> These forms

of coverage could change, depending on where one was positioned within the claims process, meaning that refugee claimants could be eligible for different types of health-care coverage at different times. Compounded by the limited amount of information that was provided to health-care professionals, this confusing approach to refugee health-care coverage meant that doctors had to navigate a "complex matrix of impenetrable and incomprehensible degrees of coverage," leading many to "just throw up their hands and give up."<sup>52</sup> In practice this meant that even people with health-care coverage were sometimes denied health-care services or faced restrictions to services in unpredictable, contradictory, and inconsistent ways.

Facing the severity of the IFHP cuts, a group of activists and refugee claimants launched a Federal Court Charter challenge. The Canadian Doctors for Refugee Care, the Canadian Association of Refugee Lawyers, Justice for Children and Youth, and two refugee claimants, Daniel Garcia Rodriguez and Hanif Ayubi, requested a judicial review of the federal government's decision to reduce IFHP coverage, arguing it was inconsistent with Canada's international obligations to refugees and in violation of section 7 (the right to life and security of the person), section 12 (cruel and unusual treatment), and section 15 (discrimination) of the Canadian Charter of Rights and Freedoms<sup>53</sup>. On 4 July 2014, the Court ruled the cuts were in violation of sections 12 and 15 of the Charter and ordered the government to introduce a revised program within four months. On 4 November 2014 the government introduced the "temporary" IFHP, since the federal government appealed the court decision.

The "temporary" program restored full coverage to pregnant women and children and gave all refugee claimants, regardless of country of origin, coverage for medical care, diagnostics, hospital services, and prescriptions to treat PHPS threats.<sup>54</sup> However, the complexity of the program intensified through the introduction of six types of health-care coverage, with refugee claimants receiving "type three" coverage. This confusion led even more health-care professionals to problematize the presence of refugee claimants within everyday health-care places and to deny services to this population.

Below I offer an empirical analysis of the IFHP within Toronto's everyday health-care places from June 2012 to April 2016. Within these places, health-care professionals were forced to interpret the IFHP with limited information and within a national context that was working to irregularize refugee claimants. I pay specific attention to female refugee claimants who were actively navigating Canada's humanitarian system during this time to highlight the gender politics that define humanitarianism and forced migration<sup>55</sup> and demonstrate the specific gendered experiences of irregularity within everyday health-care places.

### ***A Gendered Approach to Irregularization: Female Refugee Claimants and Access to Health Care***

In Canada the most common reason women seek refuge is to escape gender persecution, which includes forced marriage, female genital cutting, and domestic abuse, the last of which accounted for more than half of the claims made by women between January 2013 and September 2017.<sup>56</sup> However, claims based on gender persecution do not necessarily reflect the definition of *refugee* set forth by international and national refugee systems.<sup>57</sup> An executive director of a women's organization in Toronto elaborates on women's experiences seeking refugee protection:

The refugee system is not the most advantageous for the most part for women who experience violence because ... the international definition of what makes a refugee is really based on a male definition of experiences of power, violence, state coercion. And statistically at the moment, the greatest number of women affected by violence are affected by domestic violence globally and it drives their migration ... what we traditionally think of as the refugee and what the legal system traditionally thinks of as the refugee which is the lone man of conscience against the state, most women don't meet that definition, so the women who come here, every aspect of their situation is irregular to that system.<sup>58</sup>

This mirrors the views of Salcido and Menjivar, who explain that many women are unable to obtain refugee protection because the fundamental need to prove persecution is "more in line with what are perceived to be men's experiences than with what are perceived to be women's experiences."<sup>59</sup> This irregularity of women results in denied refugee protection, increased vulnerability, and restricted rights, entitlements, and protections.<sup>60</sup> The gendered experience of irregularity is important to consider in the Canadian context, since there has been a steady increase in the number of women making refugee claims over the past decade.<sup>61</sup> As a result of not reflecting the definition of refugee, many women have to navigate the system through alternative streams such as the Humanitarian and Compassionate (H&C) claim. However, the H&C decision can take years, and applicants must meet requirements such as health standards in order to be successful.<sup>62</sup> It is important to note, however, that without IFHP coverage these health requirements may be difficult to meet.<sup>63</sup> While refugee claimant women are irregularized through established international and national definitions of *refugee*, their presence is also rendered problematic within everyday health-care places. For those women who are pregnant, which according to a doctor is "a common presentation,"<sup>64</sup> they are subject to increased targeting and questioning.

Within a couple of years, the coverage provided to pregnant claimants shifted from denied coverage for prenatal and postnatal care to DCO claimants, to increased coverage for prenatal and postnatal care services but restricted access to medication, regardless of country of origin. While this shift created confusion among health-care professionals, perhaps what was most problematic was the fact that coverage could still change as a result of a refugee hearing decision. For many obstetricians, they came to problematize the presence of women with IFHP coverage within their offices in ways that effectively rendered them as no longer eligible for services. For example, according to a program manager of a newcomer organization in Toronto, "We've had doctors say, 'Well, this person's a refugee claimant, they're going to have their claim heard while she's pregnant. I can't fire her as a patient once she's my patient, so if she ceases to be eligible for health care, I'm on the hook, so I won't take her to begin with.'"<sup>65</sup> One doctor stated that another important element of denied access to health-care services, including prenatal and postnatal services, was the indeterminacy that defined the 2014 "temporary" IFH program itself. As longer-term health-care professionals, many obstetricians perceived patients with the new "temporary" IFHP coverage as risky. As a doctor elaborated, "One of the interesting things this government did is they called it the *temporary* IFHP program. For many obstetricians, for example, if they pick you up now as a patient, they want to ensure that you'll still be covered thirty weeks later when you're delivering, and I think ... that terminology when you say it's temporary, is a problem.... So many obstetricians we hear just aren't touching the program whatsoever. So more and more we are seeing people who should be insured but are still being turned away from care."<sup>66</sup>

As humanitarian actors, doctors faced the decision of having to care for oneself (i.e., reimbursement or fees for services) or caring for the refugee victim (who may or may not have coverage).<sup>67</sup> This choice speaks to the unequal power relations between protectors and sufferers—in this case doctors and refugee claimant patients—as well as the power to discern between those who are deserving and less deserving of care, or rather, those who represent a normal presence within the space of the health-care centre, and those who do not. However, the difference that undergirds humanitarianism and irregularity leads not only to denied access to prenatal and postnatal care but also experiences of discrimination.

Discrimination, in the context of health care, can take the form of religious or cultural insensitivity, unfriendly behaviour, "racial slurs, stereotyping, and receipt of inferior care."<sup>68</sup> Speaking on the issue of discrimination among precarious status women, a midwife stated, "I feel like there is that kind of prejudice where somebody assumes like, 'Oh she doesn't

have OHIP, she's not going to be able to pay, she's here illegally, or without status.' So I think that's a lot of like social barriers [and] racism that people encounter in these situations."<sup>69</sup> A female refugee claimant shared a similar story of discrimination: "I need a family doctor, because the walk-in clinic that I used to go, they don't take care of me very well. The first that I went, the doctor that tend to me was very good on me. So the second time I went, he was not around, I went to another doctor, and was so harsh on me."<sup>70</sup> This case of discrimination occurs in the form of indifference; this woman's concerns about the effects of a medication she was prescribed were met with neglectful care by the second doctor. Discrimination is also evident in the targeted denial of IFHP recipients, whereby doctors may choose to not register with the program in order to not serve this population.<sup>71</sup>

Quite often, as noted above, irregularization leads to negative and discriminatory assumptions about one's character.<sup>72</sup> For example, many pregnant refugee claimant women (and other un[der]insured precarious status women), are perceived by medical professionals as "medical tourists" who deliver "anchor babies" and who abuse our already strained health-care system;<sup>73</sup> this complements broader national discourses of refugee claimants as greedy and potentially threatening to the health-care system.<sup>74</sup> Other professionals see pregnant refugee claimants as simply not belonging within the space of the health-care centre. Consider the case of a female refugee claimant from Mexico who was told by a hospital administrator to pay fees for the birth of her child, even though she had full health-care coverage through the IFHP. Upon learning the woman had full coverage, the administrator still required she sign a waiver rendering her responsible for any fees incurred, which created so much anxiety for the woman that she opted for a home birth, even though she felt uncomfortable with this decision.<sup>75</sup> Since Mexico is a DCO, the administrator was more influenced by this and its relation to "bogusness" than the actual coverage itself. As a result, the administrator inscribed an irregular status onto this woman, "fixing" her as not belonging to the space of the hospital and as therefore not eligible for services, even though she was a legal temporary resident who had full health-care coverage. Drawing on Willen, this condition of irregularity within the health-care setting not only produces insecurity, but also reflects an embodiment of bio-inequality.<sup>76</sup>

Although there are cases of health-care professionals denying health-care services to refugee claimants with IFHP coverage, some also worked to liberate refugee claimants from irregularity both in the doctor's office and on the streets. Although these acts were well intentioned, I discuss below how they unintentionally maintained irregularization and conditions of irregularity.

### ***Saving Refugee Claimants: Doctors as Humanitarian Actors in the Office and on the Streets***

According to Fassin, there are three different types of life at stake: "lives to be saved, lives to be exposed, and lives to be told."<sup>77</sup> Doctors and nurses in Toronto act as humanitarian agents who seek to save, expose, and witness the lives of refugee claimants and relay this information to governing authorities and the public in order to liberate refugee claimants from irregularity. But their position is a powerful one; health-care professionals wield the power to designate situations as (non)emergencies and determine who receives (and who does not receive) attention or concern. In these decisions, health-care professionals can improve the welfare of individuals or diminish it.<sup>78</sup> For those who seek to improve the welfare of refugee claimants, they are involved in saving lives as well as exposing experiences of refugee claimants, typically within doctors' offices and on the streets. However, despite these well-intentioned acts, the result did not directly challenge the irregularizing assemblage of humanitarianism, but rather sustained it, reflecting Fassin's argument that the politics of humanitarianism (saving, exposing, telling) "cannot restore equality." For him, "inequalities of lives and hierarchies of humanity surreptitiously reappear—in spite of the humanitarian agents and often without their knowing it—between the persons who intervene and the persons they assist."<sup>79</sup> As illustrated below, in their assessments of vulnerability and deservingness, doctors perpetuated a system that ranked and irregularized refugee claimants within everyday places—the very things they were fighting against.

#### ***In the Doctor's Office***

Although significant restrictions to health-care coverage were introduced through the IFHP, one exception was maintained. Under section 7, the minister of citizenship and immigration retained the discretion to provide coverage "in exceptional and compelling circumstances." For example, one refugee claimant involved in the Charter challenge, Mr. Ayubi, was granted discretionary coverage for his diabetes-related medical services, but not for his medication, because ministerial discretion does not cover the costs of medications or immunizations unless to treat a PHPS concern or threat.<sup>80</sup> However, as a low-income person he was unable to afford the cost of medications. Therefore, in order to survive, he had to rely on free samples of insulin provided through a community health centre.<sup>81</sup> In their attempts to determine exceptional cases, the state demonstrates how its humanitarian stance, which aims to save lives and reduce suffering, simultaneously undermines the well-being of refugee populations.

In order to receive section 7 coverage, doctors had to witness vulnerability and plead a person's case to the federal government. For example, Dr. Banerji of the pediatric clinic

at St. Michael's Hospital in downtown Toronto wrote a letter to the Immigration and Refugee Board (IRB) detailing the compelling and exceptional circumstances of a young mother who fled sexual abuse in Swaziland and needed access to health-care coverage to test for HIV and receive treatment for syphilis.<sup>82</sup> Doctors also sought compassion for Joseph Bernard, a failed refugee claimant from Pakistan who had no coverage for his terminal liver cancer treatments and medications but could not be deported because he was too sick.<sup>83</sup> Both cases were awarded exceptional medical coverage. Receiving humanitarian assistance through section 7 coverage relies upon the differentiation of some refugees as more deserving than others, and on the testimony of experts who provide an informative "rundown" of diseases and other physical ailments, which constructs a "pure helplessness."<sup>84</sup> In these cases, refugee claimants had to perform their "refugeeness" in order to be recognized as a legitimate subject who deserved coverage. As Ticktin notes, in this encounter between patient and doctor, "if one does not perform in the desired manner, one may be penalized and excluded."<sup>85</sup> Those deemed to be not deserving of assistance were re-irregularized in that they were again determined to be too abnormal or problematic within the health-care setting and were forced to continue to navigate a health-care system that problematized their presence and restricted their rights. In this light, the doctor's office can be thought of as a "humanitarian space" where doctors negotiate and shape the realities of humanitarian action and the lives of those enmeshed within the humanitarian system according to principles they uphold.<sup>86</sup> The humanitarian decision to "tell" the life of a refugee claimant—so as to "save" them—may therefore perpetuate the cleavage(s) it is trying to mend. As I discuss below, these cases were also shared in the streets to garner support from the public for the reinstatement of the IFHP.

### *On the Streets*

The encounters that doctors have with refugee claimants in the office make them first-hand witnesses to the violence that defines the lives of refugee populations. In their attempts to rectify the injustices created through the IFHP, doctors challenged the actions of the government through interruptions of government officials, occupations of government spaces, demonstrations, and campaigns. Some examples include the National Day of Action, the occupation of Conservative MP Joe Oliver's office in downtown Toronto, and the Non-Cooperation Campaign. The goal was to educate the general public on the implications of the IFHP cuts in order to gain their support for its reinstatement. According to one doctor, advocates engaged in these public actions because the numerous letters written by national health associations to the federal government went unanswered, and calls to meet with members of

the government were ignored or refused; with "nowhere else to have an engagement with them," doctors' response to this blatant disregard was to "go to the public terrain."<sup>87</sup> Here doctors utilized "moral sentiments"<sup>88</sup> to direct the attention of the public to the suffering of refugee claimants and to shame the government on its treatment of this population.<sup>89</sup>

Moral sentiments aim to make the experiences of refugee populations visible by humanizing this population, or rather, by transforming them into "subjects who matter," providing what Tyler and Marciniak call "affective technologies of the 'close up.'"<sup>90</sup> In speeches made at the National Day of Action in June 2014, activists shared stories of refugee claimants who were denied access to essential health-care services or coverage, "caus[ing] them to become ill and possibly die here."<sup>91</sup> In his analysis of the IFHP protests, Beatson argues that allies employed a "victim frame" that bestowed upon refugee claimants a "victim status" that asserted helplessness and passivity and involved "the forcible creation of identities to fit a certain narrative."<sup>92</sup> While attempts to humanize are well intentioned, they tend to occur at the expense of history, context, politics, and individuality. Yet, humanizing strategies can also be effective in establishing some element of concern among the public by "provok[ing] publics to recognize 'the human face' of specific migrants" and to "identify with migrants as 'human beings'"—"as subjects who matter, 'like us.'"<sup>93</sup> It can, however, "also exceptionalize the deservingness of specific categories of migrants."<sup>94</sup> This was particularly evident in the protests by activists.

Protestors emphasized refugee claimants' access to health care at the expense of other refugee and (forced) migrant groups, such as undocumented persons, failed refugee claimants, and H&C applicants, all of whom are also denied health-care coverage. For activists, the exceptionally irregularized presence and status of these populations could not be incorporated into advocacy efforts. According to a doctor involved in the National Day of Action in Toronto, "Our sole purpose was refugee claimants, and I think that's one of the reasons we were able to get the support of national health associations. If the goal was to ensure all the million people who are uninsured,<sup>95</sup> [they] wouldn't have gone near it. It would've worked only for refugees. So that was a strategic decision, and we stuck to it rigidly and inflexibly and it worked."<sup>96</sup>

While it may be argued that refugees were prioritized because their authorized presence and vulnerability are palatable for the masses—whereby other uninsured groups, such as undocumented persons and failed refugee claimants, are viewed in relation to illegality and rejection—perhaps this population was also prioritized because of the very specific manner in which the IFHP cuts were conceived. According to a doctor,

I think the way that that whole [IFHP] thing was framed was that we were all completely insured, and then one government took away coverage from this small group of people and we should give them that coverage back. But there was actually often no acknowledgment of the broader pre-existing issue because, you know, if you were non-status, the refugee health cuts don't impact you at all. You didn't have health coverage before, you don't have health coverage after. So I think there still isn't greater awareness of the fact that this is an ongoing issue and has always been an issue.<sup>97</sup>

In this regard, emphasis was placed on refugee claimants at the expense of other groups simply because the argument was fundamentally not about access to health-care coverage, but rather, the reinstatement of a program that provided coverage to a specific group of people. In doing this, activists were not only blind (or at least dismissive) to the very real issue of health-care coverage for all residents of Canada—an issue that could have complemented, and benefitted from, the IFHP discussion—but were also essentially calling for the reinstatement of a separate health-care coverage system that, even prior to the cuts, irregularized the presence of refugee claimants within everyday health-care places.<sup>98</sup> The acts performed by activists therefore reflect Fraser's concept of "affirmative" politics that contest boundaries by working within them.<sup>99</sup> What is needed instead is a "transformative" politics that would focus on all people affected by Canada's health-care system—what Fraser terms the "all-affected principle"<sup>100</sup>—in order to generate a mutually supportive solidarity across boundaries and a recognition of the presence<sup>101</sup> of all residents of Canada, to create a movement towards a truly universal form of social justice, and more specifically, a truly universal and equitable health-care system.

### Conclusion

As the result of activist resistance, and a change in federal leadership, the IFHP was fully reinstated to its pre-2012 levels in April 2016; it was further expanded to cover the health-care costs of refugees overseas in April 2017. However, the temporal effects of the IFHP cuts still linger. Caulford and Rahunathan,<sup>102</sup> for example, discuss how refugee populations continue to be denied health-care services in Toronto, and an Access Alliance<sup>103</sup> report claims the number of people seeking health-care services from their clinic for un(der)insured patients, including refugee claimants and patients requiring prenatal services, has significantly risen. Refugee allies have also stated their concerns regarding continued access to health care for refugee claimants.<sup>104</sup> Therefore more research is needed on the IFHP, specifically after its reinstatement in 2016.

Canada's humanitarian system aims to alleviate suffering and assist the most vulnerable. But to do this, hierarchies

are constructed to regulate and determine who deserves such forms of assistance. In this article I focus on the IFHP (from 2012 to 2016), a humanitarian health-care coverage program offered to refugee populations in Canada, to demonstrate how such hierarchies are created through irregularizing assemblages that shape how one's presence and rights are encountered and (re)negotiated, including health-care rights.<sup>105</sup> I draw specific attention to the gendered experiences of irregularity within everyday health-care places. My analysis concludes by detailing how resistance strategies inadvertently maintain a system that irregularizes refugee claimants.

Although the focus of this article is on refugee claimants, it is important to be aware that many other populations in Canada face restricted or denied access to basic primary health-care services as a result of their constructed irregularity within the space of the health-care centre, such as non-status persons, newcomer permanent residents, temporary foreign workers, homeless populations, and Indigenous populations.<sup>106</sup> Future research on irregularization would benefit from a focus on these populations so as to assist in the development of an "all-affected" ethos<sup>107</sup> within the health-care realm that would provide the foundation on which to build a mutual solidarity and a common voice.

### NOTES

- 1 As this article was developed as part of my PhD thesis, I wish to thank Suzan Ilcan and the rest of my dissertation committee for their guidance and support. I am indebted to the participants who shared their insight and experiences with me. I also wish to thank the two anonymous reviewers for their insightful feedback and the editorial team at *Refuge*. The research for this article was supported by a Social Sciences and Humanities Research Council (SSHRC) doctoral fellowship.
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# Temporary Protection Regimes and Refugees: What Works? Comparing the Kuwaiti, Bosnian, and Syrian Refugee Protection Regimes

JINAN BASTAKI

## **Abstract**

*Many states have responded to mass influxes of refugees fleeing generalized violence and war by setting up ad hoc and/or temporary protection regimes. These regimes have had various degrees of success, depending particularly on the length of stay of the refugees. This article will compare the approach of states to three separate refugee influxes—Kuwaiti refugees in the Gulf, Bosnian refugees in Germany, and Syrian refugees in Turkey—and will argue that efforts to harmonize temporary protection measures are desirable, but given that these situations tend to be prolonged, there must be greater responsibility sharing between states, in order to lead to greater integration of refugees in the host states.*

## **Résumé**

*Un grand nombre d'États ont riposté aux afflux massifs de réfugiés fuyant la violence ou la guerre généralisée en*

*mettant en place des régimes de protection spéciaux et/ou temporaires. Ces régimes ont été plus ou moins réussis, leur succès dépendant en particulier de la longueur du séjour des réfugiés. Cet article compare les approches étatiques devant trois afflux indépendants de réfugiés – réfugiés koweïtiens dans le Golfe, réfugiés bosniaques en Allemagne, et réfugiés syriens en Turquie – et affirme que des efforts d'harmonisation des mesures de protection temporaire sont souhaitables mais que, étant donné que les situations décrites ont tendance à se prolonger, une plus grande responsabilité doit être assumée entre les états, pour parvenir à une meilleure intégration des réfugiés dans les États hôtes.*

## **Introduction**

**T**he 1951 Convention Relating to the Status of Refugees (“Refugee Convention”) has been ratified by over 140 states and provides protections and rights for those who are recognized as refugees under its definition. Who is

entitled to the protections provided in the convention can depend on a state's interpretation of the convention's definition of a refugee, and some states can be hesitant to grant refugee status under the convention when there is a mass influx of refugees.<sup>1</sup> As the Syrian refugee crisis has shown, states have responded in a variety of ways: from providing the full protections of the 1951 Convention, to setting up ad hoc and/or temporary protection regimes, to outright rejection.

Indeed, prior to the Refugee Convention, in treaties and arrangements concluded under the auspices of the League of Nations, a group or category approach was adopted to manage new refugee situations. The search for a definition was mainly in response to the large-scale Armenian and Jewish refugee crises in the 1900s.<sup>2</sup> The 1938 Convention on German Refugees, in defining who fell under the provisions of the Convention, stated in article 1: "Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or fact, the protection of the German government."<sup>3</sup> The 1951 Refugee Convention, while being geographically and temporally bound at the time, included the definition of a refugee that was individualized as opposed to the previous group approach; in order to be considered a refugee, one had to show a well-founded fear of being persecuted on one of the five grounds enumerated in the convention.<sup>4</sup> This excludes groups of people who flee generalized violence and war, especially if they have not been *individually* targeted for persecuted.

However, there was a need to continue with this "group" approach, even after the adoption of the Refugee Convention. In 1957 the UN General Assembly in UNGA resolution 1167 first authorized the UNHCR to assist those who did not come fully within the statutory definition, but whose situation was "such as to be of concern to the international community." Though clearly outside the time frames contained in the 1951 Refugee Convention, the General Assembly also approved the UNHCR's assistance to Algerian refugees in Morocco and Tunisia in 1958, and to the Chinese who fled to Hong Kong in 1959.<sup>5</sup> Temporary rights to remain "are supported on the basis that groups of forced migrants have a *prima facie* claim to being in a 'refugee-like' situation."<sup>6</sup> Extensions of the UNHCR's mandate do not seem to have altered or expanded the convention's strict definition, because the assistance provided is qualitatively distinct from that given to "refugees" under the convention.<sup>7</sup> Some regional human rights treaties, such as the 1969 Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa, offer a much more expansive definition of a refugee, including "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public ... is compelled to leave his place of habitual residence in order to seek refuge in another place."<sup>8</sup> Indeed,

Ethiopia and Uganda, both states parties to the convention, have adopted a generally open-door policy towards refugees and granted them *prima facie* refugee recognition.<sup>9</sup>

As the affliction of war has not left, some states have also adopted formal or informal temporary protection measures in response to influxes of refugees in modern times.<sup>10</sup> There is great need for this, as some countries have not ratified the 1951 Refugee Convention or regional treaties relating to refugees, and others have been reluctant to apply the full protections of the Refugee Convention to large numbers of refugees; indeed, temporary protection measures may encourage otherwise apprehensive states to take in larger numbers of refugees.

However, these ad hoc protection regimes have had varying degrees of success, prompting the question, What works? And what factors contribute to the success or failure of these mechanisms? This article will compare the approach of states to three separate and very different refugee influxes—Kuwaiti refugees in the Gulf, Bosnian refugees in Germany, and Syrian refugees in Turkey. These examples were chosen as they present varied ways—both formal and informal—of implementing a temporary protection regime and include both positive and negative aspects. Moreover, the case of Kuwaiti refugees has seldom been looked at in the literature. Thus, these cases may help provide suggestions for what can be implemented in the future, and what should be avoided, considering that mass influxes of people cannot be said to be a temporary phenomenon. While adopting minimum standards for states is desirable, issues arise when temporary situations are prolonged. In these cases, there must not only be harmonization of standards for minimum protection, but provisions for greater responsibility sharing between states, as well as greater freedoms for refugees, which will be detailed in the article.

### ***What Is Temporary Protection? And What Can Be Considered a "Successful" Temporary Protection Regime?***

There are several differences between temporary protection and the granting of refugee status. In order to qualify as a refugee under the convention, refugee status determination (RSD) would have to take place in order to ensure that the asylum seeker fulfills the refugee definition, which is usually a lengthy process. Moreover, while the definition may apply to groups of people who fit the convention's definition, it becomes much more difficult in situations of mass influx of refugees.<sup>11</sup> Hence it becomes easier to apply temporary protection to the entire group. Although not stated explicitly, the domestic policies of many states equate recognition as a refugee under the 1951 Refugee Convention with a right to permanent residence.<sup>12</sup>

As a policy, “temporary protection” is more difficult to define, because it can involve and has involved legal and administrative changes in different countries that have adopted such measures and has also evolved in diverse ways.<sup>13</sup> Nevertheless, there are some common features. Under the UNHCR’s guidelines, temporary protection “would be based on categories, groups or scenarios, allowing for a flexible and immediate response to ... [a] crisis.”<sup>14</sup> Indeed, temporary protection serves as “a short-term strategy to secure the immediate physical safety of refugees.”<sup>15</sup> Temporary protection is usually also limited in time,<sup>16</sup> although, as we will see with the example of Kuwaiti refugees in the Gulf and Syrian refugees in Turkey, time limits may not always be set. Other common features of temporary protection include the expectation—and occasional enforcement—of repatriation once it is safe enough to return.<sup>17</sup> However, according to the UNHCR’s guidelines, “in cases of extended stay, or where transition to solutions is delayed, the standards of treatment would need to be gradually improved.”<sup>18</sup>

Because temporary protection has been applied in very different ways, depending on the country, for the purposes of this article, temporary protection will have the following basic features: (1) permission to stay (2) for mass influxes of people (3) who have crossed an international border (4) fleeing generalized violence or war (5) for a certain period of time (whether stated explicitly or not)<sup>19</sup> and (6) under arrangements outside of the 1951 Convention for those countries that have ratified it.

Furthermore, a successful temporary protection regime must also be defined. In essence, any response should ensure “full respect for international law and international human rights law”<sup>20</sup> as affirmed in the 2016 New York Declaration for Refugees and Migrants. Moreover, as also suggested by Ineli-Ciger, not only must temporary protection in particular not undermine customary and treaty-based human rights norms, these provisions should not undermine the 1951 Convention in states that are party to the convention.<sup>21</sup> Moreover, as suggested by the UNHCR’s Guidelines, the longer the stay, the greater the allowances that should be extended to the recipients of temporary protection, such as the permission to work, freedom of movement within the country, and the ability to pursue an education. This will help to avoid exploitation, as we will see that difficulties in working for Syrians in Turkey has led to exploitation, and increase self-sufficiency of refugees. This aids in protecting the dignity of refugees, as well as helping to pave the way to more durable solutions.

### ***Kuwaiti Refugees in the Gulf (1990–1991)***

Yemen is the only country in the Arabian Peninsula that has ratified the 1951 Refugee Convention, and Iraq had passed legislation to regulate the status of Palestinian refugees that

sought refuge in Iraq in 1948.<sup>22</sup> Yet the countries that make up the Gulf Cooperation Council (GCC)—Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates—have not passed any formal refugee laws.<sup>23</sup> Indeed, for this reason, it is difficult to know how many de facto refugees reside or have been granted leave to stay in these states under alternative arrangements, such as residency or work visas.<sup>24</sup>

In August 1990, Iraq’s Saddam Hussein invaded the neighbouring country of Kuwait. This caused the fleeing of hundreds of thousands of people who were living in Kuwait, both citizens and residents, such as Iraqis and Palestinians,<sup>25</sup> as well as *Bidoon* (stateless Kuwaitis). More than 1.5 million people fled Iraq, Kuwait, and other Gulf countries, including some 700,000 Egyptians, 250,000 Palestinians or Jordanians,<sup>26</sup> and more than 350,000 Asians, most of them from India, Sri Lanka, Pakistan, Bangladesh, and the Philippines.<sup>27</sup> Between 300,000 and 400,000 Kuwaitis became refugees,<sup>28</sup> mostly in the neighbouring countries. The focus here will be on the treatment of Kuwaitis, since they had the benefit of being allowed to stay within the borders of neighbouring Gulf states.

At least 200,000 of the Kuwaiti refugees sought refuge in Saudi Arabia, and the Saudi Kingdom sheltered the refugees in hotels and apartments, as well as provided food for them.<sup>29</sup> By late September 1990, approximately 35,000 Kuwaitis had fled to the UAE, who provided them with US\$500 to begin their lives, as well as free housing, free schooling, and free health care.<sup>30</sup> Smaller numbers fled to Bahrain and Qatar.<sup>31</sup> It is also estimated that 40,000 Kuwaiti refugees took refuge in Iran, with the Kuwaiti government-in-exile setting up special bureaus in three Iranian cities to look after the financial needs of their citizens.<sup>32</sup>

This “temporary regime” for Kuwaiti refugees does not appear to have been formalized, nor do there appear to have been laws or regulations passed to delineate the rights of Kuwaitis fleeing to Gulf countries, or minimum standards of treatment. Seeking refuge, however, was made easier by the fact that Kuwaiti citizens, like other Gulf nationals, were and are allowed visa-free travel within the GCC, and freedom to work there.<sup>33</sup> However, it appears that few Kuwaitis secured jobs, because it was unclear to employers whether they could depend on Kuwaitis to remain in the countries of refuge for the long term.<sup>34</sup> Additionally, as shown above, the governments of the GCC countries provided generous assistance to these refugees, which made their de facto status different from that of other Gulf nationals. Moreover, it was intended to be temporary. Hessa al-Ossaify, the UAE information minister at the time, responded to the question of the generosity of the UAE towards the Kuwaiti refugees: “We know they [the Kuwaitis] will be our guests for only a short time and we want to help, to show that they are our family.”<sup>35</sup> Furthermore, the Gulf states did not shoulder the financial responsibility

themselves; the emir of Kuwait paid around US\$500 million a month to sustain the Kuwaiti refugee population,<sup>36</sup> many of whom were students without a source of income;<sup>37</sup> indeed, the government-in-exile had announced in September 1990 that it would provide monthly allowances of up to US\$320 for its citizens living in exile.<sup>38</sup>

After the liberation of Kuwait in February 1991, most Kuwaiti refugees returned to their homes.<sup>39</sup> The return of the refugees was voluntary, with no Gulf state enforcing mandatory returns. However, it is unclear when the provision of free housing, schooling, and health care was ceased or reduced, if indeed it was, since most Kuwaitis had wanted to return home to rebuild their country.<sup>40</sup>

### ***Bosnian Refugees in Germany (1992–1995)***

The states that make up the European Union have all ratified the 1951 Refugee Convention, and some even have formal provisions for other forms of protection. Moreover, European Union Directive 2001/55/EC on Minimum Standards for Giving Temporary Protection<sup>41</sup> provides for “a procedure of exceptional character” that gives “immediate and temporary protection.” In order to encourage return, status under the directive continues for one year and may be renewable for up to three years.<sup>42</sup> However, it should be mentioned that the directive has not been implemented for a variety of reasons.<sup>43</sup>

Starting in 1992, shortly after Bosnia’s referendum for independence, Serbian forces from the former Yugoslavia began a campaign of war and ethnic cleansing, resulting in some 500,000 refugees from Bosnia and Herzegovina being displaced to every member state of the European Union—and some non-member states.<sup>44</sup> These states responded by implementing temporary protection measures and, at least initially, “avoiding grants of durable asylum.”<sup>45</sup> Temporary protection was set up partly because the arrival of Bosnians was impossible to stop, and partly in response to appeals by the UNHCR and human rights organizations.<sup>46</sup> The duration of these temporary protection regimes was to be subject to the satisfaction of certain “benchmarks” contained in the Repatriation Plan<sup>47</sup> of the UNHCR.<sup>48</sup>

Germany had the largest Bosnian refugee population of 320,000,<sup>49</sup> so their policies will be the main focus here. Moreover, in most countries where Bosnians fled, they were eventually granted permanent residence rights<sup>50</sup>—except for Germany. For example, Sweden, Norway, and Finland granted the majority of Bosnians permanent residence permits on humanitarian grounds, while Denmark amended its initial temporary protection regulations to enable all Bosnians who had been resident in Denmark for two years to be given the same rights as other refugees; they eventually received permanent residence permits.<sup>51</sup> On the other hand, Germany had not implemented any plans enabling Bosnians

to apply to a more permanent status.<sup>52</sup> Furthermore, by the end of 1996, Germany was the only European state to have initiated forced repatriation.<sup>53</sup>

Temporary protection for persons from Bosnia was based on a 22 May 1992 decision of the ministers of the interior and the federal government, which set out the principles for admission of persons from Bosnia Herzegovina and enacted a ban on the deportation of these persons to their country. The majority of Bosnians were given two main types of temporary permits, the *Duldung* (toleration permit) and *Aufenthaltsbefugnis* (short-term residence permit).<sup>54</sup> The *Aufenthaltsbefugnis*—which was valid for one or two years—was given to ex-detainees and other vulnerable persons, as well as to medical evacuees.<sup>55</sup> All other Bosnians were given the *Duldung*—which had to be renewed every six months and could theoretically be renewed indefinitely<sup>56</sup>—and enabled them to stay in Germany until return/deportation was possible.<sup>57</sup>

Holders of the *Aufenthaltsbefugnis* were in principle entitled to social aid on the same basis as German nationals, while persons with the *Duldung* fell in some federal states under the same regime applied to asylum seekers; this meant that assistance could be provided only in kind while a monetary stipend was limited to DM80 per month per person.<sup>58</sup> After three months, those under temporary protection had access to schools at the primary and secondary level. Holders of either permit were allowed to work if no German or EU national could be employed. The rights afforded to holders of these permits are fewer than the rights enshrined under the Refugee Convention.<sup>59</sup>

The General Framework Agreement for Peace in Bosnia and Herzegovina was signed on 14 December 1995 and brought a formal end to the war. The UNHCR’s Repatriation Plan was adopted on 8 March 1996 and contained minimum standards for voluntary repatriation. By October 1996, Germany insisted that temporary protection had to end and started forced repatriation.<sup>60</sup> According to UNHCR, around 100,000 Bosnians were repatriated from Germany in 1997,<sup>61</sup> and by March 2000 only 37,000 Bosnians remained in Germany, many of them who had suffered traumatic ordeals during the war.<sup>62</sup> Over 92 per cent of the Bosnians who returned between 1997 and 1999 were from Germany.<sup>63</sup> The return of the majority of Bosnians was despite the fact that, particularly in the years immediately following the official end of the war, the minimum conditions for repatriation—that the refugees could return freely to their homes and under conditions of safety—were not fulfilled.<sup>64</sup>

### ***Syrian Refugees in Turkey (2011–Present)***

Between 1934 and 2006, Turkey’s Law No. 2510 on Settlement regulated the formal settlement of foreigners in Turkey, and from 1994 to 2014, Regulation No. 1994/6169.<sup>65</sup> Article 3 of

Law No. 2510 defined refugees as those who came to Turkey for compelling reasons without the intention of permanent settlement; however, should they subsequently want to settle, article 4 bars “those who are not attached to Turkish culture” from settling permanently.<sup>66</sup> Law No. 5543 of 2006, which replaced Law No. 2510 on Settlement, did not change this admission policy. According to article 4, those who are not of Turkish descent and culture are not eligible for settlement. Turkey is also party to the 1951 Convention and its 1967 Protocol, but it made a reservation to the 1967 Protocol that it would not remove the geographical limitation. This means that Syrian refugees, by virtue of *not* being from Europe, are not eligible to apply for refugee status under the 1951 Convention in Turkey. However, under the Law on Foreigners and International Protection (2013—to be discussed in further detail below), non-European refugees are granted a limited form of protection—so-called conditional refugee status—which allows them to stay in Turkey until a long-term place of settlement outside Turkey is found for them or until they can return.<sup>67</sup>

The crisis in Syria began in March 2011 as a peaceful protest against the regime of Syrian president Bashar al-Assad. However, the conflict escalated and by mid-2012 larger numbers of people fled the war to neighbouring countries. In May 2011 the first camps for Syrian refugees opened in Turkey.<sup>68</sup> As of July 2017, there were over three million Syrian refugees in Turkey, and Turkey is currently the world's largest refugee-hosting country.<sup>69</sup>

In October 2011 the Turkish government introduced a temporary protection regime for all Syrians, Palestinian refugees, and stateless persons living in Syria who arrived in Turkey to seek refuge.<sup>70</sup> At this time, there were few details given about the nature of this temporary protection regime. For the most part, particularly initially, Turkey maintained an open-door policy with Syria,<sup>71</sup> and thus many refugees fleeing Syria were able to enter into Turkey. The Turkish government took responsibility for the refugees, and the UNHCR provided services through the Turkish government—it was not allowed to undertake RSD because Turkey did not consider them “refugees” within the meaning of the 1951 Convention.<sup>72</sup> As more refugees arrived in Turkey, the Turkish government clarified the temporary protection regime and adopted formal regulation regarding refugees from Syria.

Law No. 6458 on Foreigners and International Protection of April 2013, states in article 91 under provisional article 1,

The citizens of the Syrian Arab Republic, stateless persons and refugees who have arrived at or crossed our borders coming from Syrian Arab Republic as part of a mass influx or individually for temporary protection purposes due to the events that have taken place in Syrian Arab Republic since 28 April 2011 shall be covered

under temporary protection, even if they have filed an application for international protection. Individual applications for international protection shall not be processed during the implementation of temporary protection.<sup>73</sup>

This article also states, “Proceedings to be followed on reception into, stay in, rights and obligations in, exit from Turkey of such persons, along with measures to be taken against mass movements ... shall be governed by a regulation to be issued by the Council of Ministers.”<sup>74</sup>

In October 2014 the Turkish Council of Ministers adopted Regulation No. 29153 on temporary protection (the 2014 Regulation), which established “rules on registration and documentation procedures to be followed by temporarily protected persons, introduces a clear right to stay in Turkey until the temporary protection regime is over, and clarifies the set of rights and entitlements for the temporary protection beneficiaries.”<sup>75</sup> According to article 10 of the 2014 Regulation, the Council of Ministers has the power to set a maximum time limit, but the regulation does not oblige them to do so.<sup>76</sup> Article 38 of the 2014 Regulations provides temporary protection beneficiaries with access to shelter, food, health care, social assistance, education, and other services within temporary accommodation centres.<sup>77</sup> However, non-camp refugees constitute almost 88 per cent of all the Syrian refugee population in Turkey, and there are reports that their access to these services is uneven.<sup>78</sup>

More than seven years into the crisis, there are some downfalls to and gaps in the 2014 Regulation. There is no explicit *right* to work, education, and social assistance for Syrians.<sup>79</sup> Even with education, accessing schools can be more difficult because “the everyday realities of Syrian families in the face of poverty, where families cannot afford to clothe and pay for the transportation costs of sending their children to school.”<sup>80</sup>

Moreover, while Syrians who hold temporary protection beneficiary identity cards can apply for work permits under article 29(2), the access was to be determined later by the Council of Ministers.<sup>81</sup> In this regard, two regulations were passed in 2016; the first, on 15 January 2016, gave registered Syrian refugees living in Turkey for more than six months the ability to apply for a work permit in the province where they first registered. The limitations of this law are that that the individual's work permit is tied to a single place of employment, making it difficult or inconvenient to transfer, and that the proportion of refugees and asylum seekers cannot exceed 10 per cent of a company's workforce.<sup>82</sup> The second regulation, passed on 26 April 2016, gave the prospective employer the responsibility of submitting applications for work permits to the Ministry of Labour and Social Security.<sup>83</sup> However, it appears that many employers are unwilling

to comply with the regulations, which require them to pay the Syrian employees minimum wage; for some, the reason for employing Syrian refugees is precisely because they are easily exploited.<sup>84</sup> While Turkish law imposes heavy fines for employing individuals without work permits, employers seem not to be discouraged.<sup>85</sup> The longer the Syrian conflict continues, the more likely it will be that illegal labour will increase, unless the Turkish government finds a way to ensure that employers apply for work permits for the refugees. In the meantime, beneficiaries of temporary protection are more susceptible to exploitation and trafficking, as well as resentment from the host population, since employers have a “cheaper” option.

More refugees are pouring into Turkey, with greater numbers making the dangerous journey to Europe by boat; indeed, in 2015 alone, more than one million people arrived in the EU, around 885,000 of them through Greece.<sup>86</sup> The city of Izmir has become a transit city for those wanting to cross into Europe via Greece. In 2015 over 91,000 people were apprehended or rescued at sea by Turkish authorities in the Aegean Sea.<sup>87</sup> To respond to these growing numbers, in November 2015 the EU and Turkey agreed on the EU-Turkey Joint Action Plan, which was followed by the EU-Turkey statement (also known as the EU-Turkey Deal) on 8 March 2016. The EU-Turkey Deal stipulated that all new irregular migrants crossing from Turkey to the Greek islands as of 20 March 2016 would be returned to Turkey, and the EU would give Turkey €3 billion to support Syrians in Turkey, as well as give them legal pathways to seek asylum in Europe. Refugees who managed to arrive at one of the Greek islands would be put under an admissibility procedure to determine whether Turkey is a safe country for them to be returned to; if it is deemed that Turkey is safe, then the refugees are returned, and if it is deemed that Turkey is not safe, then the asylum seeker must proceed with the eligibility requirements in order to qualify for protection. There are exceptions made for vulnerable categories of people, who are permitted to make their asylum claim in Greece without going through the admissibility interview. Indeed, it seems that the EU-Turkey Deal has helped to curb the flow of refugees into Europe; according to the European Commission, from 10,000 in one day in October 2015 to an average of around 43 per day in March 2017, while the number of deaths at sea decreased from 1,145 in the year before the EU-Turkey Deal to 80 in the year that followed.<sup>88</sup> The Greek Council of State decided on 22 September 2017 that Turkey is a safe third country for two Syrians (cases 2348/2017 and 2348/2017).

### **What Works?**

As can be seen, temporary protection of refugees as a formal status gained prominence during the 1990s as a response to

forced migration, particularly due to the Bosnian and Kosovar refugee crises.<sup>89</sup> However, temporary protection has been criticized as an attempt to de-legalize refugee protection by placing it within the executive power of the state, rather than allowing it to remain subject to legal interpretation of the 1951 Refugee Convention.<sup>90</sup> Yet even refugee advocates recognize that informal protection can serve humanitarian objectives<sup>91</sup> and enables persons who fall outside the convention's definition to receive international protection. Thus, in asking, “What works?,” we need to be clear about the objectives of temporary protection for the purposes of this article: namely the protection of large influxes of refugees until they can be safe to return, guaranteeing their human rights, as well as increasing protection and integration in cases of protracted conflicts to ensure that refugees can live in dignity.

### *Short-Term Humanitarian Aid and Support*

In the Gulf case, the refugees were given shelter in private accommodation, as well as access to education. The Kuwaiti refugees, rarely discussed in those terms in academic literature, were perhaps the most “privileged” of the cases discussed in this article, with a wealthy government that could support them in exile, and a relatively swift return. Other factors contributed to the “success” of these temporary protection measures: the wealth of neighbouring countries, the shared cultural and linguistic ties, the relatively small numbers of refugees, the lack of historical grievances between Gulf states (at the time), and the support of Gulf countries for Kuwait and its people during the war. In this case, the circumstances were quite exceptional and difficult to replicate. Nevertheless, providing Kuwaitis with access to neighbouring states, shelter, and a stipend enabled them to live relatively normally in the months of the war. After seven months, their country was liberated, and it was safe for them to return.

In Germany many Bosnians lived in collective accommodation centres, while many others were privately accommodated. Recipients of temporary protection were allowed assistance in kind with a modest monthly stipend. For the first three months, while they were staying in reception centres, access to schools for children of asylum seekers was not guaranteed in all federal states. However, after three months, children of those receiving temporary protection had access to primary and secondary schooling. For the short term—a few months—these measures may be seen to be suited to large numbers of people fleeing and ensure that the national refugee system is not overwhelmed.

In the first year of the Syrian war, Turkey's measures were commendable and were in compliance with minimum international standards: no forcible return, no individual status determination, as well as accommodation and provision



of basic services in camps. The camps were also deemed of acceptable standard; Turkey's Ministry of Education opened schools within the camps, and those living in the camps were given access to health care in Turkish hospitals.<sup>92</sup>

While the examples above show that these countries were prepared and able to provide truly "temporary" and short-term protection, the real problems emerge when the refugee crisis lasts several years, with increasing numbers of people seeking refuge.

#### *Integration and Access to Employment and Services after Prolonged Stay*

Some scholars suggest that where refugees enjoy rights and expect to be able to obtain citizenship rights, irrespective of whether or not they are naturalized, they tend to remain in host countries "regardless of whether the factors that prompt displacement are eliminated."<sup>93</sup> This seems, of course, to be contrary to the term *temporary protection* and not what many host countries have in mind. However, this is not necessarily true, nor, even if it is true for some cases, does it need to be negative.

For Kuwaiti refugees, by virtue of being GCC citizens, they were already "integrated" in that they had the freedom to work if they wanted to and were given free access to government schools and other government services. While most Kuwaitis did not get jobs, had the war continued for another year or two, it can be assumed that they would have had to, as it is difficult to know whether Kuwaiti refugees would have continued to receive assistance from supporting governments (the host government as well as their government-in-exile) had the war been prolonged. The main point to consider is that close to all Kuwaiti refugees returned after the war, despite being well integrated into the host societies. Indeed the factor that may most influence the decision of refugees not to return to their homes of origin is economic consideration, and whether they would be able to survive and thrive once they return.<sup>94</sup> On 20 April 1991 the first post-liberation government was formed with the objective of "restoring daily life and developing a program leading up to national assembly elections scheduled for 5 October 1992."<sup>95</sup> This, as well as high nationalist feelings, ensured that most Kuwaitis returned home.

Of course some conflicts remain protracted, and recipients of temporary protection may remain for years in the host countries. In the case of Germany, it was the only EU country in 1997 that forcibly returned persons to areas where they may form ethnic minorities, in opposition to UNHCR guidelines, meaning that return was often under conditions in which security could not be guaranteed.<sup>96</sup> The types of documents the Bosnian refugees had determined their access to services in Germany. The majority of Bosnians were not provided access to language lessons, family unification, or travel documents; work permits were given only

for a specific job for which no Germans or EU citizens were available. In the rest of Europe, the integration solution for Bosnians was mainly contingent on their positive impact upon labour markets and the relative ease of their cultural assimilation.<sup>97</sup> The countries naturalizing Bosnians considered those who had "regular employment, or private accommodation, and/or had not been convicted of a crime in the host country."<sup>98</sup>

Recipients of temporary protection, if given legal channels to do so, can become integrated, productive, and self-reliant. Indeed, without "a comprehensive integration policy including an employment strategy, the risk for social exclusion and rising xenophobia [increases] in the host society."<sup>99</sup> As the Syrian crisis enters its seventh year and refugees' stay in Turkey is prolonged, discontent is increasing within Turkish society.<sup>100</sup> One of the reasons, as mentioned above, is their provision of cheap labour, and the barriers to accessing the labour market legally (such as requiring employers to apply for a work permit). Another reason, however, is their large number, which creates fear among the local population that the refugees are a burden on national resources, and that they would have to compete with them for jobs. One suggested solution to this problem is to give the government the right to regulate "the competition Syrians may create in the labor market,"<sup>101</sup> which is what the new employment laws have set out to do. This is a good first step but must be enforced in order to ensure that Syrians are not exploited.

#### *Long-term Cooperation and Shared Responsibility*

The previous points speak to the short and medium term of a conflict, and some positive and negative examples of temporary protection. In order to ensure that temporary protection of refugees is truly successful, I suggest that there must be regional as well as international harmonization of long-term outlooks when the temporary turns into a protracted situation.<sup>102</sup> When a situation that was meant to be "temporary" is prolonged, states may have to consider long-term or even permanent stay through citizenship or some form of permanent residence.<sup>103</sup> States are apprehensive about this possibility, particularly because during mass influxes of people, some states shoulder more responsibility than others, with resulting implications for national resources and capacity. With Bosnian refugees in Europe, three countries—Germany (59 per cent), Austria, and Sweden—received 89 per cent of all Bosnians.<sup>104</sup> In the Syrian case, as of June 2017, out of an approximate 5 million registered Syrian refugees, around 3.5 million are in Turkey (60 per cent), while almost 1 million are in Lebanon (20 per cent)—meaning that 80 per cent of refugees are in just two countries—and over 650,000 in Jordan, almost 250,000 in Iraq, and almost 130,000 in Egypt,<sup>105</sup> whose capacities are already stretched. During the

Bosnian crisis, a reason why the UNHCR accepted the compromise of “temporary protection” was that it was believed that it would encourage more EU countries to accept those who were fleeing ethnic cleansing.<sup>106</sup> However, this proved not to be the case and may explain why Germany is the only country to have embarked upon mandatory repatriation.

In the Gulf it is unclear whether Kuwaiti refugees would have been allowed to naturalize; while Gulf states are notorious for their restrictive nationality laws,<sup>107</sup> Kuwaiti citizens could have been an exception, as they also benefit from preferential treatment as Gulf nationals. At the same time, Gulf (and most Arab) states in general have refused to naturalize Palestinian refugees on the premise that they would lose their right to return, so Gulf countries could have taken the same route regarding Kuwaiti refugees, fearing that naturalizing them would mean that they would not return. At this point, however, this is mere speculation. The important point is that the Kuwaiti refugees had the main freedoms that allow for successful integration: freedom of movement, work, and residence; the right of ownership, inheritance, and bequest; and the freedom of exercising economic activity.<sup>108</sup> Their smaller numbers in each of the Gulf states also means that their permanent integration would have been easier; indeed, the largest country in the GCC—Saudi—with extensive resources had the largest number of Kuwaiti refugees (200,000), followed by the UAE, followed by the smaller GCC states. It appears that the numbers of refugees in each state were proportional to that state’s size and population. However, the Kuwaiti refugees in the Gulf are an exception because of all the points mentioned previously (wealth, cooperation, cultural and linguistic ties, etc), so the relative “success” of the measures taken at the time cannot be used as a blanket standard to apply. However, the freedoms mentioned are indeed useful as a model for incremental integration.

One suggestion would be that, in the event of a large refugee crisis that has continued for over a year, the UN or regional bodies (such as the EU) directly tackle the issue of shared responsibility, ensuring that a group of countries takes in refugees under temporary protection proportional to their population and resources. As within their sovereign right, states may decide whether or not to eventually naturalize the refugees, but the manageable size of the refugee population would make it easier for those states to extend certain rights necessary for to integrate refugees and avoid resentment among the local population. This has been the case for the European countries that eventually naturalized Bosnian refugees. The problem Turkey is facing now, for example, is that they host the vast majority of all Syrian refugees. Language barriers, the large number of urban refugees, and restrictive employment laws, which lead to illegal labour, also cause resentment with the host population, and so the

government must take extra measures to balance increasing xenophobia with the needs of a large number of refugees. Turkey amended its citizenship law in April 2018, making some Syrians eligible for citizenship (for example, one condition is that the applicant should be residing in Turkey for at least five years, which most Syrian refugees have been, yet they should also “have an income or profession to provide for his own livelihood and those of his/her dependents in Turkey,” which most do not).<sup>109</sup>

Yet with a system in place to more equitably manage the proportion of refugees taken in host states, the hope is that it would be easier to extend rights to recipients of temporary protection. Getting countries to agree to numbers would be a great feat, and the reality is that many countries avoid accepting large numbers of temporary refugees unless they are forced to by circumstance. However, many asylum seekers are using Turkey as a transit point to go to the European Union; indeed, the EU-Turkey Deal was meant to curb this by supplying Turkey with monetary resources to better manage the refugees, as well as allow these refugees a legal route to EU asylum via resettlement.<sup>110</sup> In theory, this is a good step, although it should be mentioned that there is much criticism of the EU-Turkey Deal and it still keeps most refugees in Turkey.<sup>111</sup> The point is that states must negotiate hosting refugees when conflicts are prolonged, to more equitably share responsibility for refugees. Otherwise, refugees themselves will attempt to move on from countries of first arrival, as they have been, resulting in the rise of smuggling rings and exposure to further danger.<sup>112</sup>

### **Conclusion**

Temporary protection seems to be a widely acceptable solution by many states for large influxes of refugees, particularly when it is difficult to undertake individual RSD and when states are reluctant to open their doors to large numbers of refugees. While many temporary protection measures are sufficient when the crisis is truly temporary and short term, problems arise when the causes of displacement are more extended. Thus there is something to learn from the positive aspects of past temporary protection regimes in order to apply today.

The example of Kuwaiti refugees in the Gulf, as well as Bosnian refugees in European countries other than Germany, showed that where numbers are manageable and refugees are given legal channels to work, this benefits the host community as well as the refugees. The problem that Turkey faces now is the high number of refugees and the issue of accessible and legal work. A possible solution is greater responsibility sharing between states for refugees so that no single state is over-capacitated, making the numbers more manageable and thereby enabling host governments to provide an incrementally more favourable situation for refugees.

In the face of wars that have no end in sight, this solution ensures that refugees are protected and neighbouring states are not left to absorb large numbers of refugees and exhausting national resources.

#### NOTES

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- 105 UNHCR, "Syrian Regional Refugee Response," <http://data.unhcr.org/syrianrefugees/regional.php>.
- 106 Koser and Black, "Limits to Harmonization," 533.
- 107 For example, articles 4 and 5 of Kuwait's Nationality Law, 1959, detail the ways in which non-Kuwaitis may acquire Kuwaiti citizenship, including living in the country for fifteen (for Arabs) to twenty years (non-Arabs), knowing the Arabic language, and possessing qualifications or rendering services needed in Kuwait. Under article 5(4), there is a yearly limit to how many non-citizens may be naturalized. However, only two thousand of the hundreds of thousands of Palestinians who had lived in Kuwait for decades prior to the 1990 Gulf War were naturalized. See Ann M. Lesch, "No Refuge for Refugees: The Insecure Exile of Palestinians in Kuwait," in *Exile and Return: Predicaments of Palestinians and Jews* (Philadelphia: University of Pennsylvania Press, 2005), 164. Under United Arab Emirates Federal Law No. 10 for 1975 Concerning Amendment of Certain Articles of the Nationality, and Passports Law No. 17 for 1972, article 8, a non-citizen may be granted citizenship after living continuously in the country for not less than thirty years, among other conditions. Nevertheless, the president of the state may issue a Decree of Nationality to any person without complying with the terms of residence. However, the process is still unclear and there are no clear numbers for those who have been naturalized.
- 108 Zahra Babar, "Free Mobility within the Gulf Cooperation Council," *Georgetown University School of Foreign Service in Qatar*, Occasional Paper No. 8, 2011, 3n8.
- 109 Turkish Citizenship Law (As Amended in 2018), Law No. 5901, April 2018, article 11 (b), (f), <http://www.refworld.org/docid/4496b0604.html>.
- 110 According to the EU Commission, 11,490 Syrian refugees had been resettled from Turkey to EU member states by December 2017. See EU Commission, "The Commission's Contributions to the Leaders' Agenda," December 2017, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171207\\_eu\\_turkey\\_statement\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171207_eu_turkey_statement_en.pdf). However, this constitutes only 15 per cent of the pledged number of Syrian resettlements. See Daily Sabah, "EU Resettled Only 15 Percent of Syrian Refugees It Pledged from Turkey, Report Says," 15 November 2017, <https://www.dailysabah.com/eu-affairs/2017/11/15/eu-resettled-only-15-percent-of-syrian-refugees-it-pledged-from-turkey-report-says>.
- 111 Kondylia Gogou, "The EU-Turkey Deal: Europe's Year of Shame." Amnesty International, 20 March 2017, <https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/>.
- 112 BBC News, "The Syrians Exploited by People-Smugglers in Turkey," 18 February 2018, <http://www.bbc.com/news/av/world-europe-34183454/migrant-crisis-the-syrians-exploited-by-people-smugglers-in-turkey>.

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# Stories for Asylum: Narrative and Credibility in the United States' Political Asylum Application

MADELINE HOLLAND

## Abstract

*This article examines the narrative demands placed on asylum seekers to the United States. Engaging with scholars from the fields of narratology and literature, this article argues that “telling a story” is an implicit requirement of the asylum application process to the United States, and that the stories of asylum seekers are evaluated for their truthfulness on the basis of criteria that align with literary standards of veracity. The article examines the implications of bringing these literary standards of veracity to bear on asylum seekers’ stories, and explores the ways in which a “true” story told by an asylum seeker may fail to be recognized as such.*

## Résumé

*Cet article examine les exposés des faits exigés des demandeurs d’asile aux États-Unis. Fondé sur la participation d’universitaires des domaines de la narratologie et de la littérature, cet article soutient que la « narration d’une histoire » constitue une exigence implicite du processus de demande d’asile aux États-Unis, et que les histoires des*

*demandeurs d’asile sont évaluées d’après leur véracité sur la base de critères conformes aux normes de véracité utilisées dans le domaine littéraire. Il examine les conséquences de l’application de normes littéraires de véracité à des histoires de demandeurs d’asile, et explore les différents cas de figure dans lesquels l’histoire « vraie » rapportée par un demandeur d’asile peut ne pas être reconnue comme telle.*

I will relate thee a story that shall,  
if it be the will of God,  
be the means of procuring deliverance.  
—Scheherazade, *The Thousand and One Nights*

To call a story a true story is an insult to both art and truth.  
—Vladimir Nabokov

## Introduction

I became interested in the application process for political asylum in the United States during several months I spent working for a refugee resettlement agency. Many

asylum seekers described the process of applying as the hardest experience of their lives, and yet also usually described the process by saying, “I had to tell them my story.” I became interested in this seeming contradiction; to tell one’s story—why should that constitute the hardest experience of one’s life? There is a suggestion in the phrase “tell your story” that the asylum application is an opportunity for self-expression; training materials for asylum officers stress the importance of allowing applicants to use “his or her own words” to make the claim in as “unrestricted” a manner as possible.<sup>1</sup> But these belie the fact that not just any telling of one’s story will do. The focus of my research is the application process for political asylum in the United States and the unique narrative demands it places upon applicants.

Those who have written most extensively on the process of applying for asylum have been lawyers and anthropologists, and I have drawn thoroughly on their findings. This article has drawn especially on the work of folklorist Amy Schuman and attorney Carol Bohmer, and anthropologist Marita Eastmond, who have written on the profound disconnects in understanding between American bureaucracies and the people who must navigate them. However, in contrast to these approaches, this study engages closely with the defining characteristics of narrative and of credibility in narrative, and draws on the work of scholars including Elaine Scarry and others in the field of law and literature to theorize about the tacit literary standards to which we hold asylum applicants accountable. This article argues that, rather than a colloquial approximation of what is required of asylum seekers, “telling a story” is an implicit requirement of the application process for political asylum in the United States. I argue that Western literary standards shape our understanding of what a “true story” should sound like; this conflation of *literary* story-telling and *truthful* story-telling in the context of asylum proceedings can result in the failure to recognize “true” stories told by asylum seekers.

### **Stories for Asylum**

Today applicants for political asylum must fill out the I-589 Application for Asylum, distributed by the United States Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security (DHS).<sup>2</sup> The instructions attached to the I-589 explicitly direct applicants that all information provided must be true: “All statements in response to questions contained in this application are declared to be true and correct under penalty of perjury.”<sup>3</sup> Beyond this, the instructions require that an applicant must “establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for your persecution or why you fear persecution.”<sup>4</sup> The instructions also state, “You are strongly urged to attach additional

written statements ... that support your claim. Your written statements should include events, dates, and details of your experiences that relate to your claim for asylum.”<sup>5</sup>

The I-589 form itself first solicits biographical information in fill-in-the-blank boxes, before soliciting information about the applicant’s arrival in the United States. Then, above a larger box, it asks:

- A. *Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone? If “Yes,” explain in detail:*
1. What happened;
  2. When the harm or mistreatment or threats occurred;
  3. Who caused the harm or mistreatment or threats; and
  4. Why you believe the harm or mistreatment or threats occurred.
- B. *Do you fear harm or mistreatment if you return to your home country? If “Yes,” explain in detail:*
1. What harm or mistreatment you fear;
  2. Who you believe would harm or mistreat you; and
  3. Why you believe you would or could be harmed or mistreated.<sup>6</sup>

After filling out this form and its attachments, applicants must appear before an asylum officer or immigration judge to testify to the contents. Persuasive completion of this form, and repetition of its contents to an asylum officer or immigration judge: for asylum seekers today, this is the key that unlocks a new life, or fails to.<sup>7</sup>

It is clear upon first glance that this is a linguistic key: only through constructing something out of language can an applicant gain entrance. But just what kind of linguistic construction is it? Though official materials do not use the word *story*, in advocacy materials and in conversation amongst applicants, lawyers, or asylum officers, it is common enough to explain the application process for asylum as an imperative or an opportunity for the applicant to “tell her story.” What is a story? How is it different from a list, a poem, a cry for help? While there is no singular consensus on the formal elements of a story, and it is still common to debate whether particular texts qualify or not, narratologists, from Aristotle to Roland Barthes to David Herman, have identified certain standard elements.<sup>8</sup>

Four characteristics reoccur in narratologists’ appraisals of the necessary components of stories: (1) Stories are particular; they are built around particular entities and events, as opposed to abstract trends or general explanations. (2) Stories take place in time, recording the movements of a particular being or beings, which we call a character or characters. (3) Stories create a link between one event and the next; they have a “plot.” The earliest student of narrative,



Aristotle, explains that “of all plots ... the episodic are the worst ... in which the episodes or acts succeed one another without probable or necessary sequence.”<sup>9</sup> In other words, stories should have clear sequences, the beginning giving rise to the middle, and the middle in turn leading inexorably to the end. (4) Finally, though this criterion is slightly more flexible, most stories contain the internal, subjective component of human or human-like perceptions, of whatever or whoever is the focus of the story, as well as description of the outer world. They do not only link one event to the next, but can create a link between the inner world of characters and the outer world of events. Incorporating internal experiences of characters, stories offer a sense of, as Herman puts it, “what’s it like to live through ... disruption.”<sup>10</sup> By creating “a nexus or link between the experiencing self and the world experienced,” stories give a sense of how characters respond to or influence the world beyond themselves.<sup>11</sup>

The I-589 form asks applicants to describe experiences, to place those experiences in time, to give name to the persons involved, as well as assign motives to those persons. In other words, applicants are asked to create detailed cause-and-effect accounts of their lives’ most disruptive experiences and integrate their internal, felt experience insofar as “fear” is concerned. These elements—(1) particularity, (2) movement through time, (3) causality or plot, and (4) felt human experience—are precisely the defining characteristics of stories. “Tell your story” is not just a colloquial approximation of what is asked of applicants in the asylum process—rather, it is an implicit requirement.

### ***How to Tell a True Story: Detailed, Plausible, Consistent***

The I-589 application demands stories; the written narrative of an applicant’s experiences, usually attached to the form in an affidavit or declaration, is the “central evidence” in her case.<sup>12</sup> There are two important caveats about stories in a legal context that differentiate them from the literary context. First, in law, storytelling functions as an argument. Second, the consequences of legal storytelling are inherently concrete. Stories told in a legal setting may follow some of conventions of stories told elsewhere but are subject to additional pressures and expectations. Paul Gewirtz, a scholar of law and literature, clarifies that “virtually everyone in the legal culture ... is explicitly or implicitly making an argument and trying to persuade. Storytelling is, or is made to function as, argument. The goal of telling stories in law is not to entertain, or to terrify, or to illuminate life, as it usually is with storytelling outside the legal culture. The goal of storytelling in law is to persuade an official decision-maker that one’s story is true, to win the case, and thus to invoke the coercive force of the state on one’s behalf.”<sup>13</sup>

What Gewirtz calls “the coercive force of the state,” in the case of the asylum seeker, will be enacted to ensure her protection in the United States, or to order her removal and return to country she has fled.

This disproportion between the apparent insubstantiality of a story and the enormity of the decision based upon it is powerfully evoked by Scheherazade from the well-known medieval tale that frames *The Thousand and One Nights*. The text’s King Shariyar, an unhappy ruler with an insatiable appetite for power and women, sleeps with a virgin each night and slays her in the morning. When Scheherazade is called forth for her fateful turn with the king, she devises a plan to save her life. Each night, she recites to him a story; as long as he is caught up in her tale, Shariyar spares Scheherazade’s life for one more day. Scheherazade intuits that stories can be used to direct the “coercive force of the state”; asylum seekers, too, must tell stories to such an end. In an interview a U.S. asylum officer commented on what high-stakes storytelling means in the asylum context: “My supervisor said, ‘How are you going to feel if [the applicant] goes back and [someone] puts a bullet in his head?’ And I said, ‘I’m gonna feel terrible about it, obviously.’ But I have to make a decision and I have to live with it. That’s what this job is about. You make a decision about people’s lives.”<sup>14</sup> Decisions based upon stories alter the lives of the tellers. In the case of both Scheherazade and asylum seekers, it may quite literally be the difference between life and death.

Given the critical role of an applicant’s story, there is a peculiar absence of official advice on how to provide it. The I-589 offers little formal instruction beyond the reminder that an applicant must prove his persecution was on the basis of one or more of the five protected grounds, and a strong urging to include “events, dates, and details of your experiences that relate to your claim for asylum.”<sup>15</sup> The text recorded on the form, or attached in a written statement, known as a declaration or affidavit, may be any length or style so long as it is submitted to USCIS in English.<sup>16</sup> In the absence of detailed official guidance, advocacy groups and asylum lawyers have created a small corpus of advice on how to make this story the best, most persuasive piece of evidence.<sup>17</sup>

In her discussion of the ideal application story, Stacy Caplow, a professor of asylum law and director of the Safe Harbor Project, which offers legal representation to asylum seekers, stresses that the story must, at the very minimum, “meet the legal standard for eligibility and ... establish credibility.”<sup>18</sup> In other words, it is essential that an applicant’s story (1) meet the established criteria for the definition of refugee and (2) appear to be true. Asylum lawyers agree that if an applicant does indeed meet the criteria for refugee status, her credibility—her ability to convince the asylum officer or immigration judge in writing and in person that

what she says is true—is the determining factor of her case. Applicants must tell the truth and must tell a story; credibility is the factor that ostensibly allows them to do both. An adverse credibility finding undermines an application and is precisely what government officials are trained to listen for. As one asylum officer said when interviewed in the documentary *Well-Founded Fear*, in many cases “you have to just go for them in terms of their credibility, and usually you can get them. And I realize that sounds kinda sinister—you gotta get ‘em—but, that’s what you gotta do. It’s usually not too difficult. They’re not too sophisticated.”<sup>19</sup>

Interestingly, many legal practitioners and literary critics agree in their assessments of what constitutes “truth” in a story. These assessments point to requirements that both complement and exceed the requirements of stories more generally. Caplow claims that for a story to be found credible by an asylum officer or an immigration judge, “the facts need to be detailed, plausible, and consistent, and the applicant must relate them convincingly in writing and orally.”<sup>20</sup> In this respect, the canons of literature and law align; these same criteria—detail, plausibility, and consistency—are acknowledged by theorists to be hallmarks of truth as defined by literary standards.

An effective asylum story, one that is credible, should be “detailed.” According to Caplow, in a legal context, details are desirable because “detailed testimony seems more truthful,” and furthermore, details help to “attract the reader to the individuality of [the applicant] and the particularity of his story.”<sup>21</sup> She is referring to details like times or locations that ground a story in the past, but she is also referring to other, seemingly less relevant details. Details can help “bring to life” the situation described and as a result “produce understanding, sympathy, and compassion” in a reader, she writes.<sup>22</sup> Asylum officers reiterate that detail is necessary to convince them an applicant is telling the truth. “They have to give me detail,” said one officer. “He could answer my questions. He could give me details ... if you lived it you can give me the answers.”<sup>23</sup> Another expressed his skepticism of those who did not differentiate their stories through detail. “I don’t know, they’re so identical,” he said. “So boilerplate, there’s not even anything unique about the claims, it makes you wonder.”<sup>24</sup>

Echoing Caplow’s and other asylum officer’s comments, critic and semiotician Roland Barthes, in his seminal essay, “The Reality Effect,” claims that details that are “superfluous” to the structure or movement of a narrative, which might be discarded as “useless details,” actually do the important work of making the narrative seem “real.”<sup>25</sup> He explains that in antiquity, picturesque or vivid description (*hypotyposis*) was appreciated for its beauty. Its goal was to “put things before the hearer’s eyes” in a manner that was aesthetically

remarkable.<sup>26</sup> While aesthetic preference may still be in play, he claims that in modern literary realism, inclusion of detail is an attempt to create the illusion, in both historical writing and fiction, of a “pure encounter between an object and its expression,” or of unmediated truth.<sup>27</sup> Though literary critic and professor James Wood is concerned strictly with fiction, he, too, writes about the relationship between details and truth by drawing on the medieval concept of *haecceitas*, or “thisness.” A detail with “thisness” is one that “draws abstraction towards itself and seems to kill that abstraction with a puff of palpability, any detail that centres our attention with its concretion.”<sup>28</sup> A detail with “thisness,” he writes, “seems really true.”<sup>29</sup>

After “detailed,” Caplow’s second criterion is “plausible”: could it have happened in the real world? To have certainty about the events in question, government officers, ideally, would like to see material evidence: certificates, photographs, threat notices, injuries, scars. But often, even if there is concrete evidence, applicants are not able to gather it before fleeing, or it is not conclusive. In the absence of certainty about an applicant’s story, adjudicators settle for plausibility, the suggestion that what happened is reasonable and probable, that it indeed might have happened. Plausibility can be bolstered by testimonies from academics or State Department reports on human rights conditions in the country from which an applicant comes, but largely it falls to the story to satisfy.

Effective use of narrative structure helps an applicant satisfy this criterion of plausibility. Aristotle writes that stories should have “causal necessity,” meaning each event is a plausible, or even necessary successor to the previous one.<sup>30</sup> In contrast to an episodic plot, in which no event is logically linked to the previous one, a plausible plot should make clear the connection between each action and its successor. Psychologist Jerome Bruner writes that one strategy that stories can employ to establish plausibility is “narrative banalization,” the production of a narrative so “socially conventional,” so “in keeping with the canon” that a reader scarcely questions it.<sup>31</sup> Asylum lawyers, in their advice to those who represent asylum seekers, draw on both causal necessity and narrative banalization as tools for asserting the plausibility of a case. Kirsten Schlenger, an asylum attorney, implicitly invokes causal necessity: “By the end of the [applicant’s] declaration,” she writes, “the reader should feel that there is no choice but to grant asylum.”<sup>32</sup> In other words, it should be clear that the next necessary chain in the sequence of events is the grant of asylum. Caplow, on the other hand, in her advice, draws on narrative banalization as a possible tool for making stories plausible: “The David and Goliath parable in modern terms of the brave individual struggling for freedom and democracy against a vicious tyrant is often at the heart of the claim.

Valiant, despised groups fighting for identity and survival offer another familiar plot. Resistance to or suffering at the hands of authorities are other possible themes.”<sup>33</sup>

Asylum officers and immigration judges likely have developed expectations of how archetypal stories should end. By drawing on these “familiar” plots, an applicant bolsters the plausibility and persuasiveness of his own tale.

The last vital criterion the applicant’s story must satisfy is “consistency.” True stories are certainly expected to be internally consistent, but this criterion becomes a more pressing concern for an applicant when he is, inevitably, asked to repeat his story. Most applicants will tell their stories at least two times, and often three: once in writing, once in an interview, and/or once in front of a judge. For most applicants, the written version of the story is the most thorough and complete, while the interview with an asylum officer or an examination in front of an immigration judge is used to fact check, or to test the story. Dates, numbers, locations, and relationships are expected to stay the same through the multiple iterations of the claim; if they do not, an applicant will not be found credible. This premium on consistency is common across most legal proceedings. It is mimicked, like the other criteria, in standard expectations of literary narrators as well. Non-fiction writer Vivian Gornick puts it succinctly when she says, “The narrator of a non-fiction narrative must be trustworthy ... you must believe that I am really honest.”<sup>34</sup> In narrative conventions, consistency is a foundation for trustworthiness. We believe that what is true should remain a fixed feature of a story, regardless of how many times it is told.

Caplow’s last reminder about telling a credible story is that even a detailed, plausible, and consistent story ought be “[related] convincingly, in writing and orally,” which is to say that it must both satisfy formal criteria and be relayed articulately.<sup>35</sup> Scarry, in her work on human pain, forcibly points out, “To have great pain is to have certainty; to hear that another person has pain is to have doubt.”<sup>36</sup> She also states that a key assumption underlying anti-torture advocacy work, medicine, and law is that “verbally expressing pain is a necessary prelude to the collective task of diminishing pain.”<sup>37</sup> Taking these together, Scarry claims (1) the more effective your language is in conveying your pain, the more effectively we are able to overcome our doubt, and (2) if you cannot tell us your pain, we cannot fix it. Below is an excerpt of a conversation between two asylum officers:

ASYLUM OFFICER 1: When I get somebody from China who I know is a PhD, I’m much more generous with them than I am with some guy who I may think is cooking in the back of some kitchen. And it’s not because—it’s not—that’s not how I’m thinking either. But I’m thinking that oh, this person is very articulate. Their claim is very—

ASYLUM OFFICER 2: Well of course, it makes it easier to understand it.<sup>38</sup>

The conversation suggests that asylum officers are not immune to the language in which a claim is made and may carry biases against those who are less “articulate,” who relay their present fear or past suffering less effectively. In other words, asylum officers and immigration judges, like most people, are more able to believe the suffering of those who express their suffering well.

At first glance, it may seem appropriate that the appearance of truth in an asylum application resembles so closely the appearance of veracity in literature. One might imagine that true stories, regardless of the context in which they are told, tend to sound the same. I argue rather that this alignment in our legal and literary expectations is deeply problematic; though the legal system is intensely suspicious of storytellers, in the most pejorative sense of the word, the requirements of the asylum application, which so closely resemble the dictates of literary truth, blur the distinction between truth and artful storytelling.

### *Incredible Truths*

Review your application for asylum just so that you’re comfortable when you go in for your interview and you don’t get nervous about your facts. Because even though it’s your story sometimes under the circumstances ...

—Asylum lawyer to asylum applicant<sup>39</sup>

Undeniably some of the stories told in asylum applications are patently not true. Such applications, ones in which any “material elements” are “deliberately fabricated” are termed “frivolous.”<sup>40</sup> For some applicants, political asylum is an alternative to standard immigration proceedings to which they may not have access. Others who arrive in the United States without understanding the channels to legal status and no English language skills may be easy prey for “preparers” who charge them large sums of money and file applications on their behalf. These “preparers” might submit a standardized story and provide the applicant with a script to follow.<sup>41</sup> The instructions on the I-589 form, likely in recognition of this phenomenon, state, “You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application.”<sup>42</sup> Others, even without “preparers,” may be under the impression that they “have to furnish horror stories” in order to compete with the stories others are likely to tell.<sup>43</sup>

But it would be too simple to suggest that most applications are either entirely true or entirely false. As one asylum officer explained, “The most skeletal application for asylum

could have lots of great stuff and three inches of bullshit.”<sup>44</sup> A 2013 article written for the *New Yorker* illustrated such a case: Caroline, whose family members were chased out of their homes and beaten on account of their political beliefs, told asylum officers she had been raped, convinced this was the claim more likely to win her asylum. Caroline felt she had to tell the story that she thought her asylum officer wanted to hear. According to the article, “The system demanded a certain kind of narrative if she was to be allowed to stay here, and she furnished it. She had read the expected symptoms of persecution, and repeated them upon command.”<sup>45</sup> Some of the events in her claim were true. Others were fabricated. If this binary between the true and the false suffices to understand Caroline’s case, it is too limited a system to understand all cases.

Evaluating asylum stories for their truthfulness requires a greater sensitivity to gradations of reality. Anthropologist Marita Eastmond writes, “Narratives are not transparent renditions of ‘truth,’ but reflect a dynamic interplay between life, experience, and story.”<sup>46</sup> Psychologist Bruner, whose work is important to Eastmond, outlines useful distinctions for grappling with the relationship between truth and communication. There is “life as lived, the flow of events that touch on a person’s life; life as experienced, how the person perceives and ascribes meaning to what happens, drawing on previous experience and cultural repertoires; and life as told, how experience is framed and articulated in a particular context to a particular audience.”<sup>47</sup>

Eastmond writes, “Put simply, narrative is a form in which activities and events are described as having a meaningful and coherent order, imposing on reality a unity which it does not inherently possess.”<sup>48</sup> Stories usually have beginnings, middles, ends, and a clear sense of direction; “life as lived” has no such clear-cut pattern. Bruner’s and Eastmond’s concepts help establish that there is necessarily change, editing, shaping, and mediating in the transition from lived experience to the rendering of a story.

Given that the application process for asylum attempts to reconstruct “life as lived” from “life as told,” it is necessary not only to recognize how great a gap lies between them, but also that the asylum application process’s stipulations for how asylum seekers must bridge that gap are not inevitable and can even be artificial.

When asked for the story of their lives, applicants may naturally assume they may tell it the way they understand it, the way they want to tell it, rather than the way the asylum system requires it. Many applicants simply do not know what the American bureaucracy wants to hear. While the hallmarks of credibility are clear to literary scholars and legal practitioners, those metrics may be unknown and unfamiliar to applicants. Sometimes this a matter of benign

over-sharing; Caplow writes that often applicants tell you things that “may be very important to them but tangential to the claim.”<sup>49</sup> In other cases, it is a matter of different cultural norms surrounding “true stories.” A young Iatmul man in New Guinea, anthropologist Eastmond writes, when asked to describe his life, began with birth and ended far in the future with his own old age; his culture did not distinguish between the facts of an individual’s past and the model of what the future would someday hold.<sup>50</sup> A Somalian applicant for asylum, cited by folklorist Shumam and attorney Bohmer, always related the story of his persecution as a group history rather than an individual one.<sup>51</sup> Commonly applicants from countries with less focus on calendar time tell their stories on what sound to American audiences like faulty timelines. For example, one applicant explained, “In rural Kenya, you don’t refer to the day by the date,” but rather by the season.<sup>52</sup> Shumam and Bohmer draw attention to the fact that individuals who are familiar with bureaucracies tend to have a more developed sense of how American officials will expect application stories to be presented. But those with no such experience are ill-prepared to put on what Shumam and Bohmer call the “cultural performance” the asylum process requires.<sup>53</sup>

Crafting the right story out of the truth can be an arduous task for asylum seekers. Many do not recognize at first that legal representation would help them craft such a story. Others cannot afford or cannot find such representation, and the U.S. government, though granting asylum seekers the right to representation, offers no public defence or financial aid to indigent applicants. If a lawyer or volunteer does meet with an applicant for asylum to help her write a narrative, the story is usually compiled over the course of multiple interviews and many hours. In such a case, the story finally presented in the application is a combination of the applicant’s voice and the lawyer’s. In 2007, applicants with legal representation were three times as likely to be granted asylum (45.6 per cent of applicants) than those without (16.3 per cent of applicants).<sup>54</sup> While other factors that correlate with legal representation also affect such a disparity, it is surely in large part a result of aid during the story-telling process.

Though law and literature have settled on detail, plausibility, and consistency as indicators of “truth” in stories, there is little evidence to suggest that “true” asylum stories have any of these characteristics. The demands of a credible story are in many cases profoundly incompatible with the truths of asylum seekers. Common barriers arise as applicants, aided and unaided alike, try to create stories that sound credible to the American legal system. Many of those barriers take considerable effort to overcome.

For example, research has shown that memory, especially of detail, is neither complete nor stable. People from all

cultures, in all circumstances, are quick to forget the times, dates, frequency, duration, and sequence of the events of their lives, and the consistency of memory only deteriorates over time.<sup>55</sup> While considerable variation in an account of the past is often overlooked in informal settings, in the asylum setting, one inconsistency in dates has been known to be the difference between acceptance and rejection.<sup>56</sup> Preparation is useful because details can become fixed in our memory through “deliberate, repeated attention,” the same kind of conscientious memorization we use to remember multiplication tables.<sup>57</sup> One asylum officer said, “It’s funny, sometimes the cases that are real, that aren’t fabricated, often have more inconsistencies. You know, usually—sometimes a story that’s fabricated and that’s rehearsed is gonna be tighter. So that’s kind of the irony of all this, you know.”<sup>58</sup>

Unstable memory can speak not only to the effects of time, but also to the consequences of trauma. Asylum stories are often stories of trauma, or trauma narrowly escaped. But trauma complicates a person’s ability to tell stories about the past. Dori Laub, who collected testimony from multiple Holocaust survivors, asserts that “massive trauma precludes its registration.”<sup>59</sup> Laub suggests that any interviewer of a survivor must respect that there exists a “subtle balance between what the [survivor] knew and what she did not, or could not, know.”<sup>60</sup> The impulse to shy away from detail when recounting one’s story, to avoid what James Wood calls details with “thisness,” characterized by “concretion” and “palpability,” is not always a reflection of a will to deceive; it may also be an act of self-protection, a necessary means of preventing past trauma from becoming concrete and palpable.<sup>61</sup>

Laub points out that while in some contexts, especially therapeutic ones, a listener is there to hear “what [the survivor] was there to tell,” to comprehend “life as experienced,” in other contexts, including the legal one, listeners take a radically different approach.<sup>62</sup> Laub cites the example of a survivor telling the story of watching three chimneys burst into flame on the day of her release from a concentration camp. A historian comparing her account to material evidence found that only one chimney had exploded. For Laub, a psychoanalyst, the testimony authentically reflected the enormity of the occurrence in the mind of the testifier.<sup>63</sup> The historian, or legal adjudicator for that matter, whose concern is empirical accuracy, often assumes that even one “false” claim—one that does not align with the observable historical record—discredits the validity of all claims or indicates a will to deceive. The story told by the survivor may well have been her truth and yet simultaneously discarded by an external reviewer as false.<sup>64</sup>

Applicants also experience difficulty presenting their claims in a manner that seems plausible to American audiences. By *plausible* I mean coherent and believable; events

follow each other by “causal necessity” and fall within the realm of verisimilitude. By their very nature, in that they contain violations of human rights, asylum stories upend common assumptions of how people will or should act and thus often seem unbelievable. One lawyer, the son of Holocaust survivors and the defender of Haitian applicants for asylum, noted that for each group a “recurrent refrain” when speaking of their experiences was, “No one would ever believe this if they did not know it already to be true.”<sup>65</sup> And indeed, both communities have been consistently met with disbelief by those far removed from the conflicts narrated, including by immigration judges. Bruner’s term, “narrative banalization,” the act of turning a story into one that is familiar and recognizable to its listener, may simply not be an option for those fleeing from great danger and complex political situations that they themselves may not fully understand.<sup>66</sup>

### Conclusion

The Refugee Act of 1980 acknowledged that we needed greater “equity” in our treatment of asylum seekers, and while it has brought about a considerable shift in the geographic origins of asylum seekers, it has not yet lived up to its goal. Instead, it has created a system in which, for asylum seekers, a particular kind of story is the key to the door of the United States. It is a key to which the bureaucratically savvy, the well represented, and those familiar with our narrative conventions have special access, and to which the most “tempest-tost” of all may have the least access. When our notions of what a “true story” sounds like are so profoundly influenced by what a *good* story sounds like, as defined by literary standards, we risk conflating the two; we risk becoming confused about the distinction between a true story and a story well told, and perhaps increasingly unlikely to believe the stories of those who do not express their suffering “well.” Furthermore, asylum applicants may be among the least able to produce a “true story” as the American asylum application process has defined it. Asylum seekers to the United States, eligible for asylum under the international definition, could easily speak their truth and fail to tell a “true story.”

### NOTES

- 1 United States Citizenship and Immigration Service, Asylum Division, “Interviewing Part I: Overview of Nonadversarial Asylum Interview,” 2006, 6.
- 2 All I-589 forms must be submitted in English in order to be considered eligible for review. USCIS does not offer translation services.
- 3 United States Department of Homeland Security, U.S. Citizenship and Immigration Service, I-589, Application for Asylum and for Withholding of Removal, “Instructions,” (2014) 6.

- 4 United States Department of Homeland Security. U.S. Citizenship and Immigration Service. I-589, Application for Asylum and for Withholding of Removal. 2014.
- 5 I-589 Application for Asylum and for Withholding of Removal, 2.
- 6 I-589 Application for Asylum and for Withholding of Removal, 2.
- 7 In short, there are two basic paths to political asylum in the United States: affirmative and defensive. In an affirmative case, an applicant is already in the United States and can file an I-589 form with USCIS. He will be called in for an interview with a member of the Asylum Officer Corp., an asylum officer, in a “non-adversarial” hearing. No government lawyer will argue against him; instead, the asylum officer will solicit information and decide his case. If the asylum officer grants his case, he is an “asylee.” If the asylum officer denies his case, the applicant is sent to immigration court and his case is decided upon in a “defensive,” “adversarial” manner, with a government lawyer arguing against him and an immigration judge deciding on his case. If the judge rules favourably, he is an asylee. If not, he is deported. If an applicant requests asylum when attempting to enter the country, he will be put straight into defensive proceedings before an immigration judge. At every point in both processes, an applicant has the right to have representation at no cost to the government. Many applicants do not have access to legal services and represent themselves. For a more thorough treatment of these policies and their multiple caveats, see Regina Germain, *Asylum Primer: A Practical Guide to U.S. Asylum Law and Procedure* (Washington, DC: American Immigration Lawyers Association, 2010).
- 8 Throughout this article, I will be using *story* and *narrative* synonymously. Some, including most famously, E.M. Forster, have made a distinction between *story*, a list of events without causality, and *plot*, which links events. In this case, I am considering stories to have plots.
- 9 Aristotle, *Poetics*, The Internet Classics Archive, <http://classics.mit.edu/Aristotle/poetics.1.1.html>.
- 10 Herman, “Introduction,” *The Cambridge Companion to Narrative* (Cambridge: Cambridge University Press, 2007), 9.
- 11 Herman, “Introduction,” 7.
- 12 Stacy Caplow, “Putting the ‘I’ in Wr\*t\*ng: Drafting an A/Effective Personal Statement to Tell a Winning Refugee Story,” *Journal of the Legal Writing Institute*, 14 (2008): 249.
- 13 Peter Brooks and Paul D. Gewirtz, *Law’s Stories: Narrative and Rhetoric in the Law* (New Haven, CT: Yale University Press, 1996), 5.
- 14 *Well-Founded Fear*, Shari Robertson and Michael Camerini, dir., Epidavros Project, 2000.
- 15 I-589 Application for Asylum, 2.
- 16 An affidavit is a “voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths,” which is usually a notary public. A declaration is also a written statement but is not notarized. Applicants may submit either.
- 17 See, for example, Caplow, “Putting the ‘I’ in Wr\*t\*ng”; Kristen Schlenger, “The Nuts and Bolts of Representing an Asylum Claim” (PLI Corp. Law and Practice Course, Handbook Series No. 108, October 1998); or HealTorture.org for examples.
- 18 Caplow, “Putting the ‘I’ in Wr\*t\*ng,” 252.
- 19 *Well-Founded Fear*.
- 20 Caplow, “Putting the ‘I’ in Wr\*t\*ng,” 252.
- 21 Caplow, “Putting the ‘I’ in Wr\*t\*ng,” 280.
- 22 Caplow, “Putting the ‘I’ in Wr\*t\*ng,” 280–1.
- 23 *Well-Founded Fear*.
- 24 *Well-Founded Fear*.
- 25 Roland Barthes, *The Rustle of Language* (New York: Hill and Wang, 1986), 141–2.
- 26 Barthes, *Rustle of Language*, 148.
- 27 Barthes, *Rustle of Language*, 148.
- 28 James Wood, *How Fiction Works* (New York: Farrar, Straus and Giroux, 2008), 54.
- 29 Wood, *How Fiction Works*, 54.
- 30 Aristotle, *Poetics*.
- 31 Jerome Bruner, “The Narrative Construction of Reality,” *Critical Inquiry* 18, no. 1 (1991): 9.
- 32 Schlenger, “Nuts and Bolts of Representing an Asylum Applicant,” 8.
- 33 Caplow, “Putting the ‘I’ in Wr\*t\*ng,” 286.
- 34 Vivian Gornick, “The Reliable Reporter and the Untrustworthy Narrator.” *Soundings: An Interdisciplinary Journal* 76, no. 2/3 (1993): 280.
- 35 Caplow, “Putting the ‘I’ in Wr\*t\*ng,” 286.
- 36 Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985), 49.
- 37 Scarry, *Body in Pain*, 9.
- 38 *Well-Founded Fear*.
- 39 *Well-Founded Fear*.
- 40 I-589, Application for Asylum or Withholding of Removal, 2. USCIS does not publish statistics on the number of “frivolous” findings.
- 41 *Well-Founded Fear*.
- 42 I-589, Application for Asylum or Withholding of Removal.
- 43 Suketu Mehta, “The Asylum Seeker,” *New Yorker*, 1 August 2011, <http://www.newyorker.com/magazine/2011/08/01/the-asylum-seeker>.
- 44 *Well-Founded Fear*.
- 45 Mehta, “Asylum Seeker.”
- 46 Marita Eastmond. “Stories as Lived Experience: Narratives in Forced Migration Research,” *Journal of Refugee Studies* 20, no. 2 (2007): 249.
- 47 Eastmond, “Stories as Lived Experience,” 249.
- 48 Eastmond, “Stories as Lived Experience,” 250.
- 49 Caplow, “Putting the ‘I’ in Wr\*t\*ng,” 272.
- 50 Eastmond, “Narrative as Lived Experience,” 252.

- 51 Amy Shuman and Carol Bohmer, "Representing Trauma: Political Asylum Narrative," *Journal of American Folklore* 117, no. 466 (2004): 410.
- 52 David Ngaruri Kenney and Philip G. Schrag, *Asylum Denied: A Refugee's Struggle for Safety in America* (Berkeley: University of California Press, 2008), 118.
- 53 Shumam and Bohmer, "Representing Trauma," 410.
- 54 Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Phillip G. Schrag, "Refugee Roulette: Disparities in Asylum Adjudication," *Stanford Law Review* 60, no. 2 (2007): 341.
- 55 H.E. Cameron, "Refugee Status Determinations and the Limits of Memory," *International Journal of Refugee Law* 22, no. 4 (2010): 470.
- 56 Cameron, "Refugee Status Determinations," 472.
- 57 Cameron, "Refugee Status Determinations," 472.
- 58 *Well-Founded Fear*.
- 59 Shoshana Felman and Dori Laub, *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History* (New York: Routledge, 1991), 58.
- 60 Felman and Laub, *Testimony*, 58.
- 61 Wood, *How Fiction Works*, 9.
- 62 Felman and Laub, *Testimony*, 62–3.
- 63 Felman and Laub, *Testimony*, 63.
- 64 Another important component to consider with the applications of trauma survivors is that in order to be successful applicants, they must frame their story as politically motivated. Even if they understood what happened to them as a personal attack, to make their claim eligible, it must be told as part of a larger political disruption. Shumam and Bohmer claim that this is a requirement closely related to Western historical examples of dissent and persecution, and not easily comprehensible to those from other historical and political traditions.
- 65 Peter Margulies, "Difference and Distrust in Asylum Law: Haitian and Holocaust Refugee Narratives." *Saint Thomas Law Review* 6 (1993): 135.
- 66 Bruner, "Narrative Construction of Reality," 9.

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# “A Legacy of Confusion”: An Exploratory Study of Service Provision under the Reinstated Interim Federal Health Program

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## Abstract

*After years of cuts, Canada's refugee health-care program, the Interim Federal Health Program (IFHP), was fully restored in 2016. In this exploratory study, eleven semi-structured qualitative interviews were conducted with refugee service providers in the City of Ottawa to learn about their experience with the restored IFHP to date. Five themes emerged from the interviews: service provision challenges during the years of IFHP cuts; support for IFHP restoration; entitlement gaps in the current IFHP; ongoing confusion about the IFHP; and administrative barriers deterring health professionals from IFHP participation. More research is needed to determine whether the identified challenges with the reinstated IFHP arise on a national scale.*

## Résumé

*Après des années de réductions budgétaires, le programme canadien de soins de santé aux réfugiés, ou Programme fédéral de santé intérimaire (PFSI), a été pleinement réhabilité en 2016. Dans cette étude exploratoire ont été menés*

*onze entretiens qualitatifs semi-structurés avec des fournisseurs de services aux réfugiés de la Ville d'Ottawa pour en savoir plus sur l'expérience qu'ils ont à ce jour du PFSI réhabilité. De ces entretiens se sont dégagés cinq thèmes : les défis en matière de fourniture de services au cours des années de réductions budgétaires du PFSI, l'appui à la réhabilitation du PFSI, les lacunes de statut dans le PFSI actuel, la confusion actuelle concernant le PFSI, et les obstacles administratifs décourageant les professionnels de la santé de participer au PFSI. Des travaux de recherche sont encore nécessaires pour établir si les défis qui accompagnent la réhabilitation du PFSI se situent à l'échelle nationale.*

## Introduction

A legacy of confusion plagues the Interim Federal Health Program (IFHP), Canada's health-care program for refugees, refugee claimants, and certain other protected persons who are not eligible for provincial or territorial health insurance. Between 2012 and 2016 the IFHP endured extensive cuts. Despite its full restoration in

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2016, these cuts have left an indelible mark on the system; many eligible persons are still not able to access and receive the health care they need.

When the IFHP was reinstated in 2016, the Canadian federal government contended that the program would “help ... to protect the health and safety of [IFHP] beneficiaries and Canadians.”<sup>2</sup> This article presents findings from an exploratory study into how the restored IFHP is meeting its stated objective. It begins with an overview of the changes made to the IFHP between 2012 and 2016 to set the stage for our study. This policy overview is followed by a description of our research methods and findings. Results from interviews conducted with refugee service providers in the City of Ottawa suggest a continued misunderstanding among eligible persons and service providers alike concerning health-care entitlement under the IFHP, which adversely affects people’s access to necessary services. These findings point to the need for further research into the performance of the IFHP, as well as additional policy measures beyond mere reinstatement of the program to safeguard the health and safety of refugees and refugee claimants.

### ***Changes to the IFHP since 2012***

In 2012 the federal government passed two orders-in-council changing who is eligible to receive medical benefits under the IFHP and reducing the level of coverage to certain individuals.<sup>3</sup> These changes were supposedly designed to contain public spending, ensure fairness for Canadians, and discourage foreign nationals from filing “unfounded” refugee claims only to take advantage of Canada’s public health-care system.<sup>4</sup> However, they were widely condemned by the public and notably by twenty-one national health-care organizations.<sup>5</sup>

Under the IFHP that was in place before 30 June 2012, all refugee claimants received basic health-care coverage, which consisted of hospital services; services from doctors, nurses, and other health-care professionals, including prenatal and postnatal care; and laboratory, diagnostic, and ambulance services. All resettled refugees and refugee claimants were also entitled to supplemental coverage, which provided, among other things, limited vision and dental care, home- and long-term care, certain mental health services, physiotherapy, medical supplies and equipment, and prescription drug coverage.<sup>6</sup> Resettled refugees typically would receive the IFHP coverage during the first year of their arrival in Canada. In contrast, refugee claimants were covered by the IFHP from the day they submitted their refugee application until they either obtained protection and permanent residency—at which point they would become eligible for provincial health care—or were set to be removed from the country in the event that their claims were unsuccessful.<sup>7</sup>

On 30 June 2012 the IFHP was changed to provide four categories of health-care coverage: (1) expanded health-care coverage; (2) health-care coverage; (3) public health or public safety coverage; and (4) detainee coverage.<sup>8</sup>

The first category provided the highest level of health-care coverage and was available only to government-assisted refugees and those privately sponsored refugees who received resettlement assistance. Much like the health-care coverage that was previously available to all refugees and refugee claimants, the “expanded health-care coverage” under the 2012 IFHP included coverage of a broad range of medical, diagnostic, and hospital services akin to those normally covered by provincial health insurance programs, as well as supplemental services and products. The cost of language translation in limited health-care settings was also covered.<sup>9</sup>

The second category, “health care coverage,” provided help to refugee claimants who were not from certain designated countries of origin believed unlikely to produce “genuine refugees,” from the time that they were declared eligible to submit a refugee claim—which could take several weeks—until they were deemed a refugee or as long as an appeal or judicial review of their claim was pending. Resettled refugees who did not receive resettlement assistance from government and individuals who received a positive pre-removal risk assessment, hence a protected person, also fell into this category.<sup>10</sup> Individuals in this category received hospital care, medical services, and diagnostic tests that were considered urgent or essential. Elective surgery, rehabilitation, and long-term care, as well as services provided by health professionals other than doctors and nurses, such as psychologists and midwives, were not covered. Medication and vaccines were also not covered, save for those needed for the prevention or treatment of a disease posing a risk to public health or public safety (i.e., a communicable disease or a psychiatric condition where a person could pose a danger to others).<sup>11</sup>

When refugee claimants were unsuccessful in obtaining refugee protection, they would receive the “public health or public safety coverage” until the date set for their removal from Canada. Beyond that date, they would receive no public health care coverage at all. This third category under the 2012 IFHP also included refused refugee claimants whose removal from Canada was suspended, and refugee claimants from a designated country of origin even when the outcome of their refugee applications was still pending. The scope of health-care coverage under this category was quite narrow. No health-care services or medications were provided except for treating diseases or conditions posing a risk to public health or public safety.<sup>12</sup> Consequently, pregnant women belonging to this category no longer had publicly funded maternity care, and persons with mental illnesses would

receive treatment only if they were considered a threat to the general public but not if they manifested suicidal ideations.<sup>13</sup>

The fourth category covered persons in immigration detention. It provided medical, hospital, and diagnostic services as well as medications and other medical products when such services and products were deemed necessary by a medical professional.<sup>14</sup>

Outside of these four categories, several groups of migrants found themselves without any health-care coverage whatsoever under the 2012 IFHP. They included individuals who submitted a refugee claim but were waiting for their eligibility determination; persons who submitted a pre-removal risk assessment and were waiting for a decision; persons who withdrew or abandoned their refugee claim or those found ineligible for a refugee claim; and refused refugee claimants who received a removal order but did not show up for removal. The first two of these groups were entitled to the IFHP prior to the 2012 cuts, whereas the latter two were not covered by the previous version of the program, either.<sup>15</sup>

Broadly speaking, all IFHP beneficiaries except government-assisted resettled refugees, victims of human trafficking, and immigration detainees lost some health-care coverage under the 2012 scheme. As such, the 2012 IFHP harmed an already vulnerable population who have unique health-care needs.<sup>16</sup> Many refugee claimants and protected persons were “simply unable to afford” required health care without public coverage.<sup>17</sup> For a significant portion of them, vital services including immunizations for children, maternity care, and prevention and early diagnosis of chronic conditions became out of reach.<sup>18</sup> As well, the elimination of supplemental benefits barred some from accessing essential medications for chronic illnesses such as diabetes, hypertension, and asthma.<sup>19</sup> Evidence suggests that these cuts, instead of saving costs as purported by the federal government, likely downloaded costs to provinces and health-care institutions.<sup>20</sup>

Even before 2012, health-care professionals were already known to deny services to refugees because of unfamiliarity with the IFHP and frustration with its reimbursement process.<sup>21</sup> The added complexity of the new IFHP exacerbated the level of confusion,<sup>22</sup> leading to “an increase in the number of private practices and walk-in clinics [to refuse serving] anyone covered under the IFHP.”<sup>23</sup> The cuts also caused misunderstanding amongst refugees, refugee claimants, protected persons, and their advocates; many were unaware of whether they were eligible for IFHP and how to navigate the system.<sup>24</sup>

In 2014 Justice Mactavish of the Federal Court, in finding the 2012 IFHP violated the Canadian Charter of Rights and Freedoms, confirmed there was “considerable confusion on the part of health care providers in processing the health care claims of refugee claimants in the wake of the 2012 changes to the IFHP with the result that health care [was] denied to

patients who were in fact eligible.”<sup>25</sup> Further, “Doctors have demanded that patients pay the cost of medical treatment ‘up front’” and “some doctors have found the new system too confusing, and are now simply refusing to see any IFHP patients.”<sup>26</sup>

The IFHP was fully restored to its pre-2012 form in April 2016. However, there is very little information on how well the reinstated IFHP is meeting its intended objective of protecting the health and safety of its beneficiaries. It is also unclear whether some of the program’s shortcomings that predated the 2012 cuts have resurfaced. This study is a preliminary attempt to explore how the IFHP’s reinstatement has affected refugee health care since. Specifically, this study aims to (1) examine practitioners’ experience with providing, and assisting clients with receiving, health-care services under the restored IFHP; and (2) identify mechanisms to support practitioners so they can better serve IFHP patients.

### **Research Method**

Eleven semi-structured qualitative interviews were conducted in the winter of 2017 with service providers in Ottawa who work with refugees or refugee claimants in health-related contexts. Interviewees were recruited through purposeful sampling.<sup>27</sup> A list of thirty-seven key informants consisting of relevant health-care practitioners and administrators, refugee and settlement services providers, and IFHP administrators was compiled upon consultation with a doctor and a health navigator who are acquainted with refugee health-care provision in Ottawa. Upon receiving our invitation, eleven of the key informants agreed to take part in the study. They included one primary care physician, two nurse practitioners, one social worker, three mental health counsellors, two health-care administrators, and two settlement agency workers. Despite repeated invitations, no informants from walk-in clinics, optometric clinics, dental office, or the IFHP administrator (Medavie Blue Cross) agreed to be interviewed.

Interviews with participants averaged sixty minutes and explored participants’ experiences with the IFHP prior to the 2012 policy change, during the years of cuts and after the 2016 reinstatement. Content analysis of interview transcripts was conducted to identify common themes. For the purpose of member checking, approximately one month after the interviews, research participants were invited to attend a presentation to review and respond to our findings. Additional information about participants’ experience with the IFHP was also solicited at this presentation to complement interview data.

### **Results**

Five themes emerged from the interviews: (1) service provision challenges during the years of IFHP cuts; (2) support for IFHP restoration; (3) entitlement gaps in the current

IFHP; (4) ongoing confusion about the IFHP; and (5) administrative barriers deterring health professionals from IFHP participation.

### *Service Provision Challenges during the Years of Curtailment*

When asked about their experience with the IFHP between 2012 and 2016, a large majority of participants spoke of confusion and frustration as a result of the cuts. Settlement-worker and social-worker participants reported encountering health-care providers who mistakenly turned away IFHP-entitled clients, as well as providers who stopped seeing refugee patients altogether. One health-care administrator recounted an incident where the scheduled cataract surgery of an eligible refugee claimant whose vision was decreasing in both eyes did not proceed because the eye-care specialist decided to no longer accept IFHP patients.

Both health-care practitioners and administrators complained about the complexity and uncertainty of the 2012 IFHP forcing them to take time away from service provision to determine refugee patients' health-care coverage. In the event of non-coverage, some health-care providers lamented the need to absorb treatment costs to maintain compliance with practice guidelines and medical ethics.

### *Support for IFHP Reinstatement*

The reinstatement of IFHP was welcomed by all interviewees, with many reporting improved health-care access for refugees and refugee claimants. One settlement worker felt relieved when her clients finally received eyeglasses after years of forgoing vision care for lack of coverage. Two interviewees reported knowing new practitioners who came forward to take on refugee patients following the IFHP's restoration.

Along with restoring the IFHP's scope of coverage to the pre-2012 level, the policy change in 2016 removed the need for refugee claimants to renew their IFHP certificates annually, ensuring the validity of such certificates throughout the asylum application process. Several interviewees praised this policy change, noting that in the past, failure and/or inability to renew IFHP certificates had been a common impediment to refugee claimants' health-care access.

Health-care practitioners further observed the IFHP reinstatement improving their work. They noted greater ability to refer IFHP beneficiaries to specialists. They also welcomed the ability to focus more energy on treating patients. As one nurse practitioner explained, "I don't have to do as much system-level personal advocacy for my patients."

### *Gaps in IFHP Entitlement*

Despite support for the program's reinstatement, interviewees identified several issues with the current IFHP that

continue to hamper refugees' and refugee claimants' health-care access. Notably, there are gaps in what and whom the IFHP covers. A regular complaint of interviewees was the inadequacy of medical interpretation for IFHP beneficiaries. The IFHP covers only the cost of interpretation and translation if it is associated with mental health care and, specifically for resettled refugees, post-arrival health assessment. Interpretation for other health-related services are not covered. This, as one nurse practitioner pointed out, could deter patients' service access notwithstanding their legal entitlement. She explained language barriers affect one's ability to not only understand important medical information such as how to take medications properly, but also to book an appointment in the first place. She observed that many of her clients did not get their eyes checked until their children were old enough to understand eye-care practitioners' instructions, but noted that "some eye clinics aren't comfortable having a parent that can't really consent."

Further, interviewees cautioned that the current rate of reimbursement to interpreters, at \$28.95 per hour, falls well below the market standard. As another nurse practitioner concluded, "It is not a meaningful coverage." This was underscored by an administrator of a community health centre, whose clients included a group of deaf refugees. She noted that for each doctor's visit, the cost of interpretation for these clients amounted to \$300, much of which had to be assumed by the health centre.

Coverage for mental health services was raised as another weakness. The IFHP covers certain counselling provided by clinical psychologists, registered psychotherapists, and counselling therapists. For beneficiaries who do not have provincial health care, the program also pays for mental health service delivered by psychiatrists and family physicians.<sup>28</sup> At the time of our study, counselling services provided by registered social workers and nurses were not covered. Multiple interviewees argued that this should be changed to alleviate long waiting lists.

One health-care administrator also noted children born in Canada to refugee parents do not qualify for IFHP. Although they are supposed to be included in provincial health-care plans, many of these plans lack supplemental benefits like prescription drug coverage. If the parents of these children are government-assisted or privately sponsored refugees, they are also not eligible for drug coverage that some provincial social assistance programs offer, because their parents are prohibited from receiving welfare for at least one year. The interviewee asked, "If the child is born with any kind of illnesses ... who is going to pay for the prescription for that child? Mother? Let's say it's a single mother with [income support from the federal government], it's not enough.... The child falls through the crack. They cannot get [provincial

coverage], they don't have IFH, so who's paying for that? ... That's a huge gap."

#### *Confusion about IFHP*

Clear and accessible information about the IFHP appears to be lacking for patients and service providers alike. One nurse practitioner described the IFHP as being mired in "a legacy of confusion," suggesting the instability and complexity of the program during the years of cuts continue to cloud people's understanding.

Several interviewees admitted to being unsure about the eligibility criteria and the scope of service coverage of the reinstated IFHP. Providers' unfamiliarity with the IFHP, in turn, could become a barrier to access. Interviewees noted that, despite the program's reinstatement, some providers continued to deny services to IFHP patients in the mistaken belief about their health care coverage. Our family physician participant reported having her IFHP patients turned away by a local pharmacy. Another nurse practitioner shared that his client encountered problems at a private laboratory that assumed a test was not covered because the client had IFHP.

Interviewees emphasized the need for better education for service providers. They stressed that most health-care providers are open to learning more about the program, but the available information is not user friendly or accessible. Of particular confusion are the benefit grids, which detail the services and treatments covered by the IFHP. Interviewees complained that the grids were complicated. One nurse practitioner confessed, "I'm honestly still not clear if an eye exam is covered for a child or not. Sometimes it seems to be and sometimes it's not, and I don't understand why."

The confusion is reportedly compounded by service providers' inability to seek clarification from Medavie Blue Cross (Medavie), the insurance company contracted by government to administer the IFHP. While Medavie has a telephone number that service providers can call to ask questions, the company responds only to inquiries from health professionals already registered in the IFHP. One settlement worker observed, "For us ... we don't have access to Medavie. We have to encourage the medical community to check with Medavie [for information] because we can't talk to them ourselves.... There is very little we can do to clarify anything [for our clients]."

#### *Administrative Barriers to Service Provision*

Multiple interviewees described the IFHP as "bureaucratic," which they believed contributed to some practitioners' reluctance to partake in the program. They pointed to the registration, preapproval, and reimbursement processes as particularly burdensome. If health-care providers wish to be reimbursed for services rendered to IFHP beneficiaries,

they must first register with Medavie. This, according to our family physician participant, could discourage practitioners' involvement in the IFHP, especially when many already found the program complex. A nurse practitioner likewise considered registration a barrier "for busy providers" who may come across IFHP patients only occasionally.

Once registered, health-care providers are further required by Medavie to obtain preapproval before certain services or products are delivered. This preapproval process can sometimes be time consuming. One health-care administrator recounted having to wait more than three months to obtain approval for counselling support for a client's immigration-related trauma.

Interviewees pointed to the IFHP's reimbursement process as another source of frustration. Some complained the procedure for submitting reimbursement claims was "complicated" and involved "too much paperwork." Moreover, requests for reimbursement were sometimes denied without adequate explanation from Medavie. As one health centre manager lamented, "Twenty to 25 per cent of the claims that we billed come back denied" with no explanation. The same interviewee noted that, even when the claims were accepted, it could take thirty to ninety days to receive payments and as a result, some service providers stopped caring for IFHP patients. By contrast, our family physician participant reported having positive experiences, describing the billing process as "easy" and faster than its counterpart under Ontario's health insurance plans. These diverging experiences require further study and may suggest inconsistency in the current IFHP reimbursement practice.

## **Discussion**

### *Evaluation of the IFHP*

This study found that while there have been significant improvements to refugees' and refugee claimants' access to health care following the restoration of IFHP, there are also ongoing problems with the program. First, there are several gaps in coverage. Medical interpretation and mental health counselling receive inadequate coverage. In particular, medical interpreters and translators receive insufficient compensation. Also, for some Canadian-born children of IFHP beneficiaries, despite qualifying for provincial health care, their ineligibility for the IFHP threatens access to supplemental services and products that may not be covered by provincial health insurance plans, such as dental care, vision care, and medication.

These coverage gaps are not unique to the IFHP. Similar criticisms about deficient coverage of medical interpretation and mental health services have commonly been laid against provincial health-care programs.<sup>29</sup> However, inadequate public coverage of these services can have particularly serious health ramifications for refugees and refugee claimants.

Research consistently shows that refugees and refugee claimants encounter stressors both before and after migration that compromise their mental health.<sup>30</sup> Poor English or French proficiency is also a well-documented barrier to refugees' health-care access.<sup>31</sup> Therefore, insufficient coverage of these services under the IFHP presents a very real risk of further undermining refugees' and refugee claimants' well-being and impeding their search for necessary care.

Likewise, inadequate coverage for supplemental services is a problem that many Canadians, not just Canadian-born children of IFHP beneficiaries, struggle with.<sup>32</sup> Nevertheless, important considerations make the exclusion of these Canadian-born children from the IFHP especially concerning. Statistics show that newcomers to Canada, including refugees, are more likely than their Canadian-born counterparts to be unemployed and to live in poverty.<sup>33</sup> Thus, for children of refugees, being left out of the IFHP represents a significant financial barrier to accessing supplemental services. The access challenge is all the more acute for Canadian-born children of resettled refugees, who are prohibited from receiving provincial social assistance and the attendant supplemental health benefits during their first year in Canada.<sup>34</sup> Furthermore, some evidence suggests the health-care coverage gap facing Canadian-born children of refugees and refugee claimants may be broader than the lack of entitlement to supplemental services and products. A study published in 2014 revealed that in parts of Atlantic Canada, Canadian-born children of refugee claimants were being excluded from provincial health-care programs altogether as a result of their parents' non-resident status in the respective provinces.<sup>35</sup> Conversations of our research team with refugee service providers in these provinces suggest that the situation persists. In these situations, Canadian-born children fall through the crack between the IFHP and provincial health care, leaving them with no public health-care coverage at all. More research is urgently needed to flesh out the implications of IFHP ineligibility for Canadian-born children of refugees and refugee claimants.

Beyond entitlement gaps, our findings indicate IFHP beneficiaries' access to health care may be hampered by how the program's reinstatement has been communicated and by administrative hurdles embedded in the program. At least for practitioners working in the city of Ottawa, a legacy of confusion persists. Most of the confusion arises about whom and what the current IFHP covers. There is a concern that service providers like pharmacists and some specialists continue to mistakenly deny care to eligible recipients. There is further confusion associated with navigating the benefit grids, which are seen as complicated and at the same time devoid of specificity.

Additionally, the administration of the IFHP is perceived as burdensome. The registration process for prospective health-care providers is considered too demanding by some. Further, the reimbursement process appears to be uneven. While some reported timely reimbursement, others complained of long delays. Some of the IFHP billing codes are reportedly vague, and denial of coverage is not clearly explained. These administrative challenges are aggravated by reportedly poor communication on the part of Medavie.

These complaints about confusion surrounding the IFHP and its administration echo other evaluations of the program conducted before and during the years of cuts.<sup>36</sup> The persistence of these issues shows that the reinstatement of the IFHP by itself is likely insufficient to achieve the stated objective of protecting beneficiaries' health and safety. Research in and outside Canada consistently observes that laws and policies that ostensibly stipulate robust health-care entitlement do not singlehandedly guarantee migrants' access to health-care services.<sup>37</sup> For example, during the years of the IFHP cuts, many refugee claimants in Quebec reported experiencing significant difficulties accessing health care in spite of the province having introduced a temporary program soon after 2012 to help them maintain much of their health-care entitlement.<sup>38</sup>

If misinformation about the program and administrative hurdles discourage service providers from taking on IFHP beneficiaries as clients, they threaten to limit the range of health care that is available and accessible to refugees and refugee claimants who are legally entitled to receive such care. Moreover, literature shows patients commonly modify their perceived health-care entitlement on the basis of information received from service providers, assuming service providers would know better.<sup>39</sup> As such, when incorrect information about IFHP eligibility and coverage harboured by service providers is communicated to patients, this could cause patients to refrain from seeking health-care services in the future to which they are in fact entitled. Even when patients do question the accuracy of service providers' understanding of their health-care eligibility, research finds these patients sometimes interpret providers' misinformation as an act of discrimination, which also deters them from seeking further help.<sup>40</sup>

#### *Recommendations for Improvement*

The small sample size of this study reflects its exploratory nature. At a minimum, the consistency between our results and those from previous studies about the IFHP points to the need for the government to take additional measures beyond simply reinstating its pre-2012 policies in order to truly ensure the health and safety of refugees and

refugee claimants. Accordingly, several recommendations are warranted.

First, and building on similar calls from others who have examined the subject,<sup>41</sup> more informational materials about the IFHP must be made accessible to all stakeholders, including health-care providers, refugees, and their settlement support workers. Such materials should explain whom and what the IFHP covers and the registration and reimbursement processes. Further, better communication with Medavie is greatly needed. Non-health providers working with refugees and refugee claimants should be able to speak to Medavie representatives to have questions answered. This opportunity could lessen health-care providers' misinformation about eligibility.

Second, several changes are needed to improve the administration of the IFHP. If the program runs smoothly and efficiently, more practitioners may be expected to register as IFHP providers, thus improving service access for refugees and refugee claimants. Key administrative changes should include streamlining the registration, preapproval, and reimbursement processes, and making the benefit grids more user-friendly. Notably, since the completion of our interviews, Medavie has introduced a new web portal that enables service providers to more easily submit their reimbursement claims electronically.<sup>42</sup> Future research should assess how this new portal is meeting the needs of service providers and whether it alleviates some of the administrative challenges identified in this study.

Third, on the basis of what we heard from interviewees, benefit coverage of the IFHP should be expanded to meet the unique needs of refugees and refugee claimants. To the extent that IFHP beneficiaries' access to mental health counselling is hindered by long wait times, a potential solution is to extend IFHP coverage to counselling done by allied health professionals. We applaud the government's decision in May 2018 to start covering counselling delivered by licensed social workers.<sup>43</sup> The effect of this change on IFHP beneficiaries' access to mental health care must be studied, and so must the need to further broaden IFHP coverage to include nurse-performed counselling. Greater coverage and a higher rate of compensation for medical interpretation is also needed. The possibility of including Canadian-born children of beneficiaries in the IFHP should be explored, particularly if it is confirmed that some of these children are being left completely without public health care coverage.

### **Conclusion and Next Steps**

This exploratory study sought to shed light on the performance of the reinstated IFHP in meeting the health-care needs of refugees and refugee claimants. Refugee service providers reported that the current IFHP, despite significant

improvements from the years of cuts, falls short in several respects in facilitating refugees' and refugee claimants' access to high-quality health care. However, the scope and design of the present study limits our ability to provide a conclusive assessment. To more fully understand the gaps articulated by our research participants and the need to reform the current program, further research is required. Foremost, it will be critical to hear directly from refugees and refugee claimants. Additionally, the perspectives of a broader range of service providers, including dentists, eye-care providers, and pharmacists should be gathered. Importantly, future studies should also explore potential challenges facing service providers who do not work with IFHP beneficiaries but wish to do so. It is possible that interviewing practitioners who are already serving IFHP beneficiaries, as we did, will lead to under-reporting of the confusion around the IFHP, given providers' greater familiarity with the program. Moreover, efforts must be made to canvass the experiences of service-seeking and provision outside Ottawa to determine whether the challenges identified in this study arise on a national scale.

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# “We Can’t Paint Them with One Brush”: Creating Opportunities for Learning about Refugee Integration

MICHELLE LAM

## **Abstract**

*This article presents the process of creation and initial outcomes of a pedagogical tool called Refugee Journeys: Identity, Intersectionality and Integration, which allows players the opportunity to experience settlement and integration from the identity of a refugee. The purpose of the tool is to educate players about the need for intersectional approaches to refugee service provision, to foster a sense of admiration and respect for refugees’ experiences, and to interact with public policies from the perspective of the least privileged. Outcomes involve recognitions that individual identities affect integration experiences and meaningful discussions about refugee integration, identity, and discrimination.*

## **Résumé**

*Cet article présente le processus de création et les premiers résultats d’un outil pédagogique appelé Refugee Journeys: Identity, Intersectionality and Integration [Parcours de réfugié: identité, intersectionnalité et intégration] qui donne aux joueurs la possibilité de vivre un établissement et une*

*intégration sous l’identité d’un réfugié. L’objectif de l’outil est d’instruire les joueurs quant à la nécessité des approches intersectionnelles pour fournir des services aux réfugiés, de favoriser le sens de l’admiration et du respect vis-à-vis des expériences des réfugiés et d’interagir avec les politiques publiques à partir de la perspective du moins privilégié. Les résultats se traduisent par une reconnaissance de l’influence des identités propres sur les expériences d’intégration et par des discussions constructives sur l’intégration, l’identité et la discrimination des réfugiés.*

## **The Assumptions of Integration**

Ivan<sup>1</sup> arrived in Canada with a background as an electrician. Although eager to work, he learned after arrival that his qualifications were not recognized. He could retrain at the local community college at his own expense, but to register for classes he needed a higher English level. With a family to support, he chose to work at a well-known company doing menial labour. To this day, he continues to work menial labour despite his professional background.

Alyia attended her first English class eighteen years after arriving in Canada. Upon arriving in Canada, she could not attend classes because she was at home with small children and there was no child care available. Later she had already established a network within her own ethnic community and was able to meet most of her needs in her own language. On those rare occasions when she needed to use English, her husband and her children interpreted for her. After eighteen years, she decided it was time for her to learn. She was placed in a level one beginner class but found most of the content focused almost exclusively on getting a job, finding an apartment, or accessing the health-care system. She continued to attend classes for the social benefit but did not continue the following year.

The policies and programs that make up settlement and integration services are built on assumptions that are not always accurate, as demonstrated in the cases above. One assumption is that low-level language learners are new arrivals in the country. Other assumptions may be that all refugees are eager to find employment or adopt “Canadian values” and “Canadian soft skills.”<sup>2</sup> As in the case of Ivan and Alyia, refugees do not always progress towards a goal in the same way as others. In fact, refugees may have different goals entirely. Were an outside source to decide that Ivan’s goal ought to be economic integration, he would have arrived immediately integrated, since he began working upon arrival in Canada. Yet if the goal was high language proficiency, or finding work in his professional field, he may still be considered in need of further integration, despite living and working in Canada for many years. Similarly, Alyia felt comfortable and confident in Canada despite very low language level and was able to contribute to society through her own social network. If the definition of integration is focused solely on language skills and employment, Alyia would be considered poorly integrated.

As these stories demonstrate, integration programs and policies need to consider the multi-faceted, intersectional realities of refugees’ lives. Integration is not linear, but multi-directional.<sup>3</sup> It is for this purpose that I created the board game *Refugee Journeys*. I wanted to make the realities of intersectionality vivid and visceral for teachers, service providers, and sponsoring groups to inspire empathy and experiential learning.

The *Refugee Journeys* game draws heavily from Anthias’s notion of intersectionality,<sup>4</sup> which emphasizes the multi-directional and layered nature of identity and belonging. In relation to refugee journeys, the journey is not unilateral, from “impoverished refugee camp” to “happy, productive Canadian.” Rather, there are layers of identity and belonging that can form differently in different contexts and along different timelines. The relationship between intersectionality and student outcomes is explored by Grant and Zweir:

“Policies and practices that do not take into account students’ intertwining identity axes risk reproducing patterns of privilege and oppression, perpetuating stereotypes, and failing at the task we care most deeply about: supporting all students’ learning across a holistic range of academic, personal, and justice-oriented outcomes.”<sup>5</sup>

### ***The Need for a Community Engagement Tool***

Beyond the goal of emphasizing intersectionality and inspiring empathy, I also wanted the tool to educate “mainstream” Canadians about refugee experiences. Educating the public about refugee journeys may be a way to counteract prejudice and discrimination. As Esses et al. describe it, “Campaigns that elicit admiration and respect for group members, perhaps by demonstrating the hardships that they have successfully overcome, may prevent negative attitudes and behavior toward refugees in general. As attitudes become more favourable, it will be easier to promote more just behavior on our part and fulfill our commitment to the protection of refugees.”<sup>6</sup>

It is not only public opinion that needs to shift, however. Policy-makers also need to be aware of potential unforeseen consequences of their decisions, and of the people such as Ivan and Alyia described earlier, who fall outside the typical path of integration. Apple describes the importance of this approach: “The framework politically and educationally progressive educators have employed to understand this is grounded in what in cultural theory is called the act of repositioning. It in essence says that the best way to understand what any set of institutions, policies, and practices does is to see it from the standpoint of those who have the least power.”<sup>7</sup>

For these reasons, the board game tool places the participant in the vantage point of the refugee. As players move around the board from start to finish, they do so from the perspective of a refugee.

### ***Community Context***

#### *Position of Researcher*

I approach this study as a Canadian English as an Additional Language teacher. As such, I have been hearing stories of discrimination and marginalization from my students for many years. I have also heard stories of success, resilience, and strength. While I understand that there are practical considerations and constraints for policy-makers and decision-makers, I am influenced by the many stories I have heard from my students throughout the years. I am not an outside observer analyzing immigration policy and settlement decisions in an abstract way, but I am someone for whom theory and policy has very real impact. For example, if policies become increasingly employment-focused and pragmatic, that causes real impact in the classroom, particularly for those students who are not attending classes in order to find a job. Such students

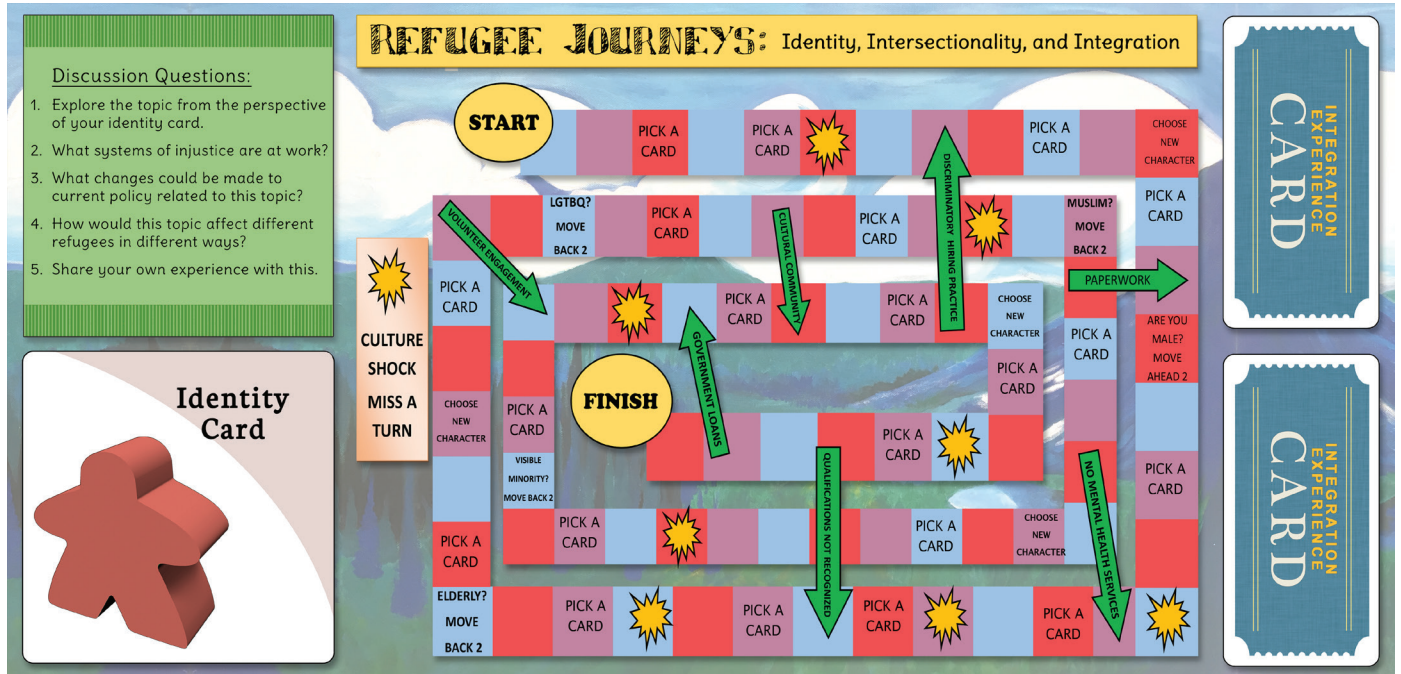


Figure 1: Refugee Journeys Board Game

find their needs less and less addressed by the curriculum, as it shifts to follow economically driven policies.

It is not pleasant, as a “mainstream” Canadian, and one currently employed in the EAL profession, to take a long and hard look at my own role and participation in a system that places the EAL teacher as the knower, the helper, and the cultural guide. Yet the antidote to this hegemonic system is not to stop helping. As Paulo Freire described in a video interview, the teacher has a duty to teach just as the student has a right to learn.<sup>8</sup> The antidote to the proliferation of the hegemonic system is for teachers, educators, policy-makers, and other invested parties to recognize the value of alternate, often marginalized realities and competing narratives. If we want to help, we must first learn to listen. In progressing towards the creation of a space for alternate narratives, the *Refugee Journeys* tool plays an important role.

*Target Communities*

This project is aimed at pre-service teachers, current teachers, language teachers, teacher educators, settlement agency staff, community organizations, and any others who work with or have contact with refugees, or whose mandate it is to educate the wider public about refugee experiences. The board game may also be useful for university instructors desiring to facilitate conversations about integration, barriers, identity and belonging or to inspire reflections about refugee experiences in Canada.

*Why a Board Game?*

I wanted to create a tool that would demonstrate the differentiated way individual refugees integrate, depending on their identity. I also wanted my research to be mobilized and interacted with in spheres beyond the “hermetically sealed circle of research being only available in academic journals ... read almost solely by other academics.”<sup>9</sup>

A board game could move the discussion of refugee integration, identity, and intersectionality from academic journals into everyday life. According to Jones, Procter, and Younie, “Knowledge mobilization is about reducing the gap between research and practice and simultaneously strengthening the link between research and practice.”<sup>10</sup> In seeking to critically engage with the issues of refugee integration at the community level, a participatory tool that brings research findings forward, while simultaneously allowing for dynamic engagement and feedback from practitioners results in a partnership-based “feedback loop.”<sup>11</sup> Thus, community practitioners could connect with refugee integration research, engage with it in a discussion-based, collaborative process, and in turn add their own voices, expertise, and experience to the ongoing discourse.

*How to Play the Game*

Players begin by drawing an identity card. Using that identity, they take turns rolling a die and progressing around the board, drawing experience cards when they land on an

experience square. After they read the experience card to the group, they discuss the experience together using discussion questions on the board, keeping their identity card in mind.

### **Guiding Assumptions**

Several guiding assumptions were made in creating this tool. It was assumed that the bulk of participants using the tool would have a basic knowledge of Canada's position as a refugee destination. I recognize that this is not always the case, and I imagine this board game taking place within a larger educational framework focused on both criticality and background information about the Canadian immigration system. It was assumed that using a board game as an educational tool would be a task familiar to most participants.

In mitigating the assumptions that participants would understand the different intake streams of refugees (e.g., privately sponsored, blended, government sponsored), the meaning of the term *culture shock*, and some of the terms used in the identity cards (e.g., *sexual orientations*, *religions*), a glossary of terms was created for participants to reference as needed.

It was initially assumed that most participants would understand that refugees arrive in Canada for a variety of reasons (war, environmental factors, discrimination, political upheaval, and so on) and from many different countries, but after reflection, it was decided to include a background sheet emphasizing the variability of refugee journeys, with a document called "Building Hope: Refugee Learner Narratives," from Manitoba Education and Training (2015).

In building this tool, it was assumed that many teachers and pre-service teachers have chosen the profession out of a desire to help, to improve the lives of their students, or to make a social contribution.<sup>12</sup> However, it was this assumption that fuelled the desire to challenge the "saviour narrative" and call for a tool which would explore refugee experiences and spark discussion. Part of teacher preparation and ongoing professional development must be focused on how to develop respectful and equitable relationships with the families and communities of their students.<sup>13</sup> As Zeichner describes it, there is a "dominance of a discourse of 'helperism,' where the emphasis is to save students from their broken communities rather than recognizing and building on the strengths and funds of knowledge that exist in these communities."<sup>14</sup>

### **Critically Defining Integration**

Although the term *integration* is used often in the media and scholarly writings, finding an agreed-upon definition is difficult. It is sometimes defined broadly to mean adaptation, adjustment, or acculturation.<sup>15</sup> It is often applied to employment and language learning, as Achim Dercks of the Association of German Chambers of Commerce and Industry

(DIHK) said succinctly, "What is integration? It's a job, and speaking German."<sup>16</sup>

Integration has also been argued to mean nothing more than slow assimilation.<sup>17</sup> Canada's Immigration and Citizenship defines *integration* as an "ongoing process of mutual accommodation between an individual and society,"<sup>18</sup> yet in the very same document the word *integration* appears in problematic phrases such as "greater integration," and "successful settlement and integration." It is not clear what part of the process-based definition is determined to be "greater" or "successful," nor is it clear who is responsible for this success. This type of language points to the underlying belief that although integration is a process, it is still a process towards a goal. The problem arises when the goal remains undefined.

A second problem with the uses of *integration* arise from the tendency to use binary language. For example, we see positive language such as "successful integration,"<sup>19</sup> "effective integration,"<sup>20</sup> or "proper integration,"<sup>21</sup> as well as negative language such as "failure to integrate"<sup>22</sup> or "poorly integrated."<sup>23</sup> Integration discourse lacks the language to talk about integration in an appropriately nuanced way, notably because "failure to integrate" is almost always a criticism levelled at the refugee, not the host society.

Within this problematic environment, once those refugees who do not integrate "well" are labelled negatively, dehumanization of refugees becomes possible and flourishes.<sup>24</sup> Not only is dehumanization of refugees seen in areas such as media and news reporting,<sup>25</sup> but it can also be identified in the very systems and policies that are tasked with serving refugees themselves.

Integration is "the ability to contribute, free of barriers, to every dimension of Canadian life, that is, economic, social, cultural and political. The goal of settlement is for every immigrant to have full freedom of choice regarding her/his level of participation in the society. If the immigrant wants to participate actively in the society, there are no systematic barriers preventing her/him from doing so, and there are mechanisms in place to positively facilitate this process."<sup>26</sup> However, when viewed critically, integration is a multidimensional project underwritten by power-holders in the host society, influenced by racism, discrimination, and fear, and fuelled by global capitalism. "Acting white," a minoritized individual told me, "isn't my first choice, but it helps other people feel more comfortable with me."<sup>27</sup>

The term *integration* is used as though it is a constructivist process, with both sides accommodating and learning from each other, but the policies, programs, and funding decision-makers operate with a uniform, positivist trajectory based on a static notion of success. Despite equitable definitions highlighting the accommodations required for both sides,

and the emphasis on process, host society groups and agencies still determine milestones for refugees to reach and attach weighty rewards to those refugees who reach those predetermined milestones.

A notable example of these conflicting definitions is the October 2012 change to the Canadian citizenship requirements to include a higher level of charter language ability.<sup>28</sup> The predetermined path of integration thus involves learning language and then acquiring citizenship. The Canadian government writes it this way: “The acquisition of citizenship is a significant step in the integration of newcomers.”<sup>29</sup> Conversely, this means that refugees who choose not to pursue Canadian citizenship are missing an important step in integration.

Language skills, employment, and social connection are important, but they are not the only factors involved in integration, and even these do not always unfold in a linear fashion. A student may stop and start language study for various reasons, and employment may change, stop, or begin at different times and for different causes. Social connection and a sense of belonging are also important, but cannot be easily quantified, and do not always mean a connection with the white majority.

Teasing apart these multi-faceted definitions and uses of the word *integration* reveal that there are layers of integration, much in the same way that identity and belonging can be experienced differently in different spheres.<sup>30</sup> A refugee may be very comfortable in one sphere and feel completely alienated in another. And just as identity can change, so also integration is not static, but changes.

### ***The Process of Creating the Game***

In creating the game, I was drawn to the activity called the “Walk of Privilege,”<sup>31</sup> where different life experiences are highlighted and participants move either forwards or backwards, depending on their individual experiences. I wanted to create a research-based tool where integration experiences are highlighted, and participants feel their effects. My hope was that, in playing the game, participants would find the exploration such issues as integration, identity, and belonging more tangible and visceral.

The initial design of the game was based on a common children’s game, Snakes and Ladders. In this game, players either climb ladders or slid down snakes to reach their goal. The game is moved along with a die, and players land on snakes or ladders by chance. I liked the random aspect to the game and thought it fit well with refugee integration, since much of the external forces of integration are outside the locus of refugees’ control. For example, refugees cannot control whether their paperwork moves slowly or quickly, or whether their qualifications are recognized, whether mental

health services will be available in their language, or whether they will face discrimination when looking for a job. This is not to say that all refugees are powerless, which would be a dangerous assumption, resulting, in Freire’s terminology, in “a lack of confidence in the people’s ability to think, to want, and to know.”<sup>32</sup> Refugees are not powerless, but in the journey of integration, some experiences happen *to* them, and not *from* them. For this reason I chose to design a board game design included a random aspect, such as the roll of a die.

The next question I needed to answer was what to label the *start* and *finish* of the game. If the path of the game board represents the path of refugee integration experiences, where does it begin, and where does it end? The goal is not always clear, and it may change, depending on the individual. For this reason I chose to leave the start and finish of the game board labelled with the words “Start” and “Finish,” and to include a question for group discussion following the game: “If you had to label the ‘Finish’ button of the game, what would you label it?” This way the discussion will spark conversation around the topic, fostering deeper engagement and critical thinking about the issue.

In creating the game board, I chose a design that spirals inward. While I initially chose this purely for aesthetic and practical reasons (I needed a long path to represent the long journey of integration, but needed it to fit on a game board), during a trial of the game it was pointed out that the spiral path could represent the way that integration may seem to go round and round, but not always in a unidirectional way. So the design of the game remains a spiral. Also, changing the integration metaphor from a line drawn from start to finish to a more multi-directional metaphor such as a spiral allows for a more accurate representation of lived integration experiences.

As mentioned, I chose a path that is very long. The game takes a long time to play to the end and players seldom finish. This is initially frustrating for players, as they want to move forward quickly. Yet the design is intentional, to symbolize the long journey of integration, and the frustration of feeling close to a goal yet not quite there. This is also symbolic of the fact that even after many years refugees can still experience discrimination and racism and may never reach the benchmarks of integration as defined by governments and other external sources.

An early decision was to include multiple sources of data for the refugee experience cards, because it mitigates against arguments that the game is based entirely on relative experiences. In seeking to make informed statements without universalizing or over-generalizing, I collected experiences from multiple data sources over several months. As I have been an EAL teacher for over a decade, some of the experience cards were taken from refugee students I have taught.

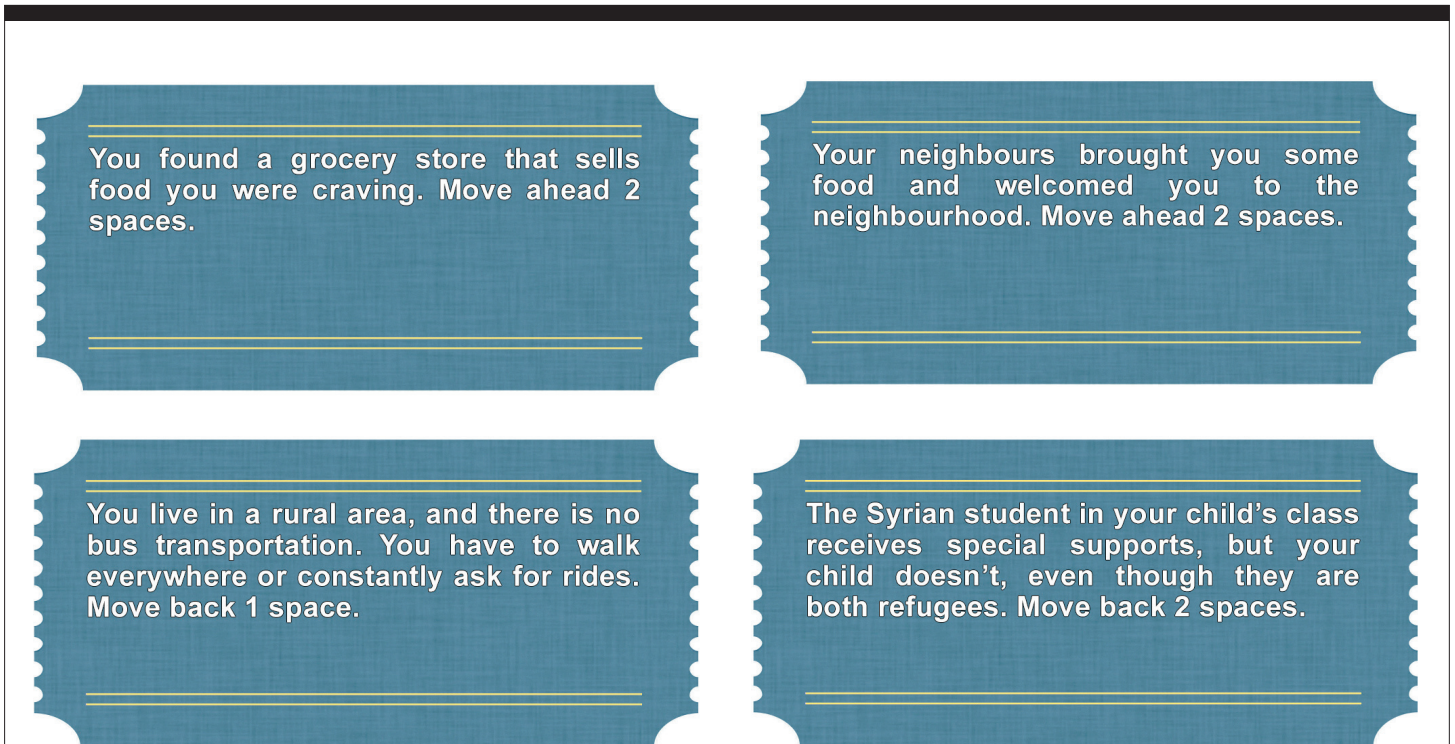


Figure 2: Sample Experience Cards

Other experiences are from refugees I read about in media accounts or journal articles.

I initially included only negative experiences because I wanted to critically highlight the barriers that must be overcome, but the resulting game was impossible to play, with players moving only backwards or missing turns. I also felt that this did not accurately represent life journeys, as both positive and negative experiences happen. Since not all experiences can be categorized simply as either positive or negative, and because some experiences may cause different responses, depending on the individual, after each experience card is drawn there is a discussion that focuses on the way identity would affect that experience. For example, in one discussion card, the children are learning English, and this may be seen as a positive trajectory. However, the parent who told me this story was very upset that her children would no longer know their home language. This highlights the conflicting emotions surrounding integration and how different people experience integration in different ways. The discussion also highlights how some of the experiences, although initially positive (e.g., "Your family had a baby! Move forward 2 spaces") may also encounter further barriers (e.g., "No child care").

I also included more positives to the game board (e.g., "Cultural community") after a trial run in which by random chance very few positive experience cards were drawn. The

game board is always visible during the game, allowing players to see both positive and negative experiences.

In my early drafts of the game, I did not include any identity cards or discussion questions. The game moved much more quickly, but it was possible for people to flip through the experiences and play the game without engaging the experiences at any deep level. After discussion with early participants I decided to include identity cards and conversation questions. This made it impossible to play the game without engaging in discussion and it also allowed for deeper exploration of the ways in which identity affects integration.

In creating the identity cards, I listed different aspects of identity. To avoid stereotypes or caricatures I created the identities randomly, checking only at the end for consistency. I created a table with the categories on the cards, and then assigned random ages, genders, and so on. To generate occupations and educational background I read media accounts of refugee stories. For countries of origin I used the most recent refugee arrivals to choose countries that were represented in Canada. Once all the categories were completed, I ensured that all were consistent (for example, I could not have a border-crossing asylum-seeker from Pakistan). In the end I had sixteen different identity cards.

I needed to acknowledge that identity is multi-faceted and intersects with many aspects of integration,<sup>33</sup> yet not every aspect of identity could fit into the cards. I initially

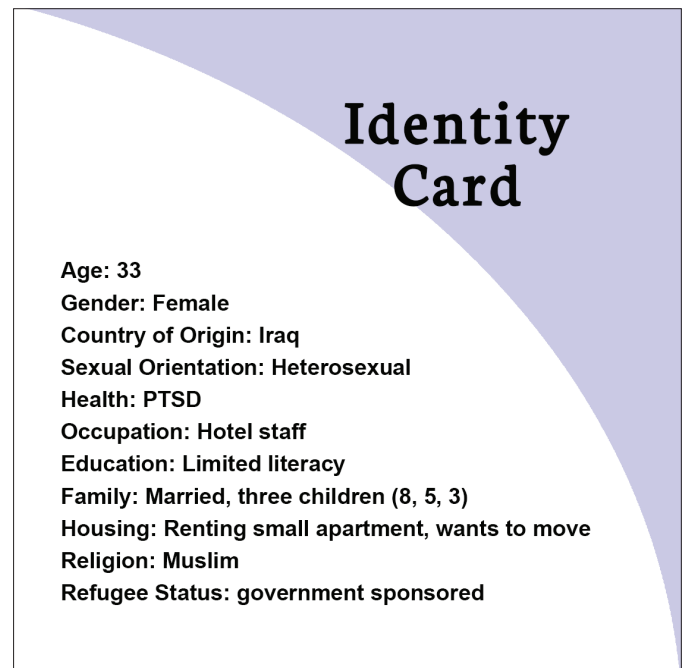
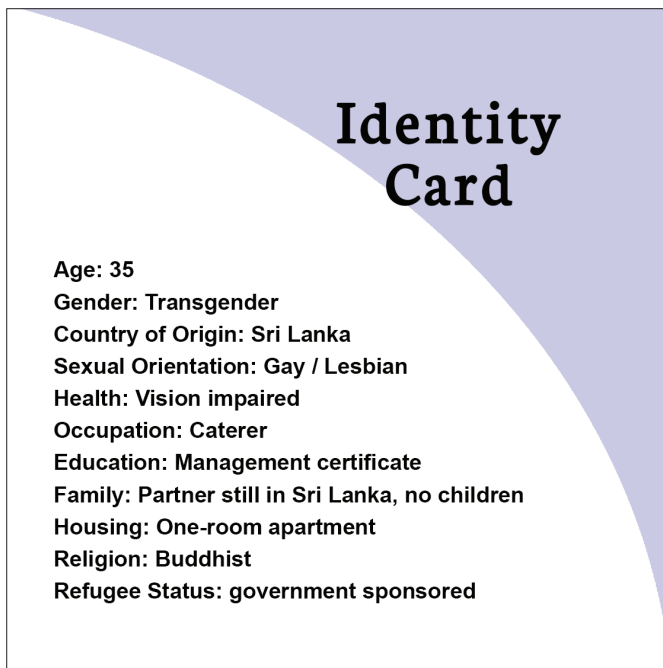
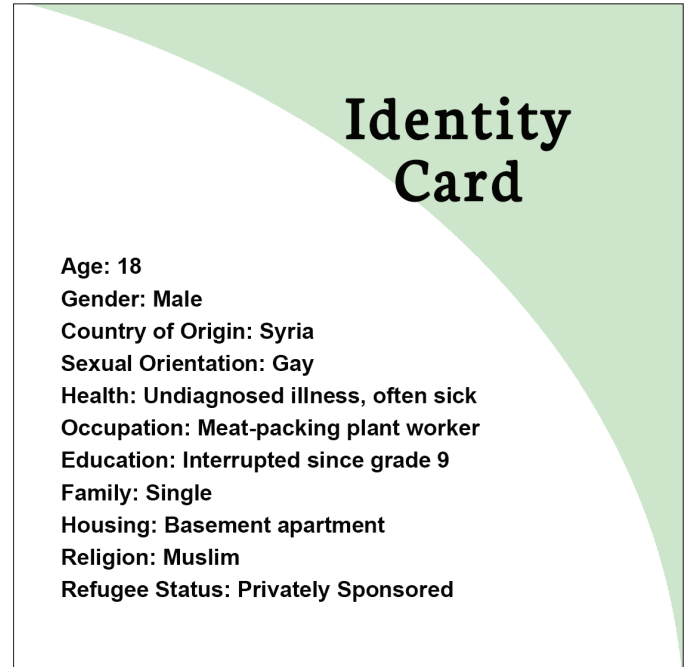
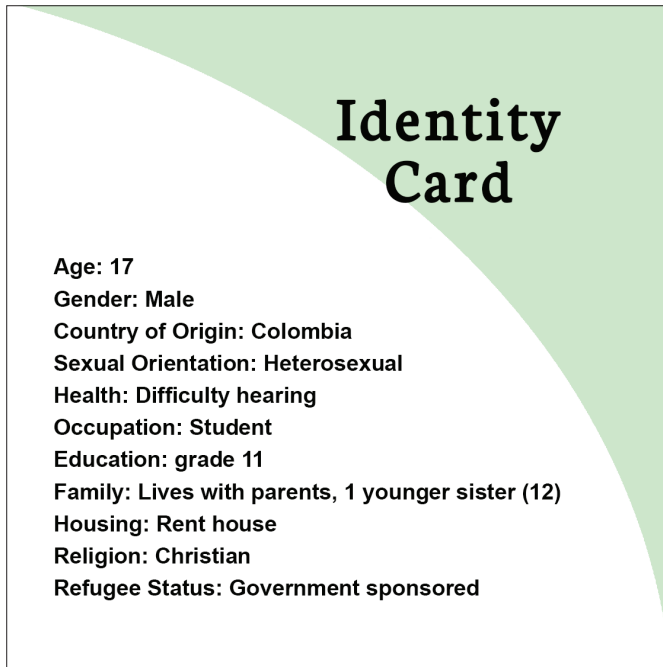


Figure 3: Sample Identity Cards

included age, gender, country of origin, sexual orientation, occupation, education, family, housing, religion, and refugee status. After more trial runs of the game, I added health, since health and level of (dis)ability is a very significant aspect of integration. I also added several places in the journey where players may choose a new identity card. This

is to represent the fluid aspect of identity, which may change over time whereby certain identity markers (e.g., employment) that seemed stable and not an issue of concern can suddenly move to the forefront of refugees' lived experience if they suddenly lose their job, for example. In the introduction to the game, I included a statement about how not every

aspect of identity could be used, yet other identity markers significantly affect integration, such as language ability, skin colour, geographic location, social status, and so on.

A key component to the game is discussion. After each experience card is played, the player launches a discussion around the topic. This prevents the game from becoming simplistic or from reinforcing stereotypes. Instead, through discussion, players are encouraged to think about how their identity card would relate to the experience, furthering understanding of intersectionality. Discussion questions focus on issues of identity (e.g., “Explore the topic from the perspective of your identity.” “How would this topic affect different refugees in different ways?”), criticality (e.g., “What systems of injustice are at work?”), and critical policy analysis (e.g., “What changes could be made to current policy related to this topic?”). I also included the option to share personal experiences (e.g., “Share your own experience with this topic”), as many participants may have been refugees or immigrants themselves, or travelled abroad, or have had relatable experiences in Canada. By revealing personal experience, participants can join their expertise to the topic, yet it is optional and not forced.

The context for the use of this game has shifted considerably since its inception. I developed this game for a class project in a graduate course on criticality in education. Yet as the game progressed, I began to envision a wider audience for this tool. This game could be used in pre-service teacher education classrooms, as well as for ongoing professional development for current teachers. This game could also have application for preparing private sponsor groups, and within the settlement sphere, helping English as an Additional Language teachers, settlement facilitators, volunteers, and other staff have a deeper appreciation for the experiences of refugees.

### ***Ethical Issues***

Some participants may feel uncomfortable with the issues brought forward. They may experience trauma and not wish to participate. In order to address these ethical issues, a statement in the introduction to the board game assures participants that participation is optional, and they are free to participate at whatever level they feel comfortable. Resources for support are also listed at the end of the presentation as well as in the board game instructions.

### ***What Does the Game Teach?***

The game emphasizes the connection between identity and experience, bringing intersectionality into a tangible space. It highlights the unique quality of each journey, with no two players following the same path. It points out the many parts of life that can affect integration. It teaches that there may not be a clear “end” when all refugees are integrated. It highlights

areas of systemic discrimination, but also emphasizes that individuals can experience the same thing in different ways. And it creates space for discussion, relating personal experiences to the topic, and engaging with integration in a deep and meaningful way.

### ***The Game in Use***

The game has been used with pre-service teachers, graduate students, post-secondary educators, and researchers. It was a privilege to observe the discussions that ensued and to hear the personal connections to the experience cards. One player did not understand why one experience was problematic for another player (“You had to mop the floor in your English class. Why is that a problem?”) and other players were able to explain from the perspective of their identity cards. In other cases, the game highlighted areas of discrimination, and players responded indignantly (“Why do I have to move backward just because I am a woman!”) The discussion was rich and meaningful.

One early group needed encouragement to discuss each experience. Perhaps they were accustomed to playing board games where the purpose is to get to the end quickly, and they wanted to move forward without including discussion. But the discussion is where meaningful engagement happens, and without it, the game becomes simplistic. I needed to remind them that the purpose of the game was not to “win” but rather to learn.

After receiving approval from the research ethics board, I began collecting responses from participants. Responses included comments such as, “I liked the scenarios. It was very informative to learn about all these cases.” “Refugee experiences are very diverse and we can’t paint them with one brush. The game encompasses the values of empathy and social consciousness.” “As players you discuss these issues not merely as concepts but as human realities.”

### ***Next Steps***

Now that the initial trial uses of the game have been well received, I would like to continue with a before-and-after survey process to measure empathy and to see if the game can be used to increase empathy towards refugee experiences. I would also like to develop a website for the game, which would allow players to submit ideas for further experience cards, which could be developed into an “expansion pack” for the game.

I envision the game as a pedagogical tool that could be used or adapted in broad contexts. In its current iteration, the game is specifically Canadian. For example, the identity cards specify the sponsorship stream, and some of the experience cards relate to policies within Canada. However, as a tool, the game is highly adaptable and could be reworked for use in other contexts. The game can be ordered online at <https://www.thegamecrafter.com/games/refugee-journeys>.



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# Examining the Intersection of Race, Gender, Class, and Age on Post-Secondary Education and Career Trajectories of Refugees

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AYTAK AKBARI-DIBAVAR, AND KWAME MCKENZIE

## Abstract

*This study examines the role of demographics on education and career trajectories of refugees in Canada from an intersectional perspective. It implemented a fourteen-week unique educational program that was completed by forty-one refugees, over two cohorts with the goal to overcome barriers, bridge gaps, and facilitate their transition into higher education. The data collected using a semi-structured interview guide were analyzed using a constant comparative method. The findings suggest that a supportive educational model that promotes safety, sense of belonging, and empowerment are critical to combat the structural racism, sexism, and other discriminatory factors in accessing higher education.*

## Résumé

*Cette étude examine, dans une perspective croisée, le rôle des facteurs démographiques sur les parcours d'apprentissage et de carrière de réfugiés au Canada. Elle a consisté à mettre en*

*place un programme unique d'enseignement sur une durée de 14 semaines, qui a été suivi intégralement par un total de 41 réfugiés répartis en deux cohortes, l'objectif étant de surmonter les obstacles, de combler les lacunes, et de favoriser la transition vers l'enseignement supérieur. Les données colligées en suivant un guide d'entretien semi-structuré ont été analysées par une méthode comparative constante. Les résultats laissent penser qu'un modèle d'enseignement qui offre un soutien créant des conditions propices à la sécurité, au sentiment d'appartenance et à l'autonomisation est déterminant pour lutter contre le racisme, le sexisme et autres facteurs discriminatoires d'origine structurelle, et ainsi favoriser l'accès à l'enseignement supérieur.*

## Introduction

Refugees resettled in Canada are provided with services to access housing, medical care, and material supports. However, such civic entitlements do not

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automatically translate to a sense of belonging.<sup>2</sup> Rather, for resettled refugees, belonging is continuously negotiated through affective encounters with others and intersectional hierarchies within host countries that influence their accessibility to crucial services.<sup>3</sup> Racial-cultural discrimination and racialization within refugee resettlement policy impose barriers through which the processes of belonging for refugees are hampered. Although refugees face common difficulties during resettlement, their experiences of social inclusion and mobility vary across race, gender, class, ability, and age. Despite attention that has been given to the obstacles they experience in social inclusion, and in accessing careers and education in Canada, an intersectional perspective helps in understanding how gender, race, class, ability, and age affect their integration and access to services. This article considers that the gendered racialization of refugees, in policy and public discourse, affects the everyday experiences of refugees resettled in Canada and are often interwoven with assumptions of deficiency—specifically their career paths and education.

This article focuses primarily on the education and career paths of refugees from an intersectional perspective who have settled in Canada, in order to identify barriers to their advancement. It examines the influence of race, gender, class, and age on post-secondary education and career trajectories of refugees. This research explored the experiences of two separate cohorts of participants who underwent a fourteen-week education program, over two semesters. This innovative education programming was based on the data from the previous phase and was designed to be a preparatory bridging program to support the education and career paths of the refugees. The article sets out to answer three research questions:

1. How can an intersectional analysis help us understand the barriers to refugees in accessing higher education?
2. How do we support racialized and gendered refugees' access to higher education and promote a sense of belonging in them in the process?
3. Does age factor into refugees' quest for post-secondary education and if so, what steps can be taken to mitigate it?

### ***Refugees' Education and Careers in Host Countries***

The right to education for refugees is enshrined in the 1951 Refugee Convention and Human Rights Laws. Education can provide the platform for psychological recovery and healing for refugees. Mariya, Gary, and Gareth argue that "education enables refugees to gain knowledge and skills as well as forging social networks and connections, which are important to find employment and for integration in

society."<sup>4</sup> However, despite the crucial role of education in social mobility and inclusion of refugees, only 1 per cent of the worldwide refugee population is able to access higher education, in comparison to 35 per cent of the rest of the population.<sup>5</sup> Given the importance of higher education for refugees' well-being, healing, and belonging,<sup>6</sup> it is necessary to understand barriers to refugees' education and social integration in general.<sup>7</sup>

One systemic problem in accessing and pursuing higher education for refugees is the lack of documentation or devaluation of their academic credentials from their home countries. According to the Canadian Council of Refugees, "People who are trained within nonwestern educational world views or scientific traditions experience great difficulties in gaining recognition for their training and skills."<sup>8</sup> Consequently, newly arrived refugees might lose motivation, face systemic barriers, and show little or no interest in pursuing their post-secondary education.<sup>9</sup>

The plight of Syrian refugees, for instance, is dire, as the armed conflict saw the massive destruction of infrastructure, leaving many refugees unable to prove their academic credentials and confirm prerequisites required for admissions, even when opportunities for post-secondary education arose.<sup>10</sup> Although some colleges understand refugees' plight and have provided them alternatives in lieu of actual paper academic records, such recognition is uncommon.<sup>11</sup>

Another challenge to refugees is the financial cost to access post-secondary education.<sup>12</sup> They can seldom secure financial resources such as scholarships and academic grants, so they are forced to work in low-paying jobs or "survival jobs" in order to finance their higher education.<sup>13</sup> This problem is also reflected in Canadian colleges and universities, where student enrollment that is considered a mere source of revenue can leave marginalized and impoverished students unable to secure post-secondary education.<sup>14</sup>

It also takes time for refugees to be granted "refugee status," and subsequently, study or work permits. If they do not meet "status" requirements, it is difficult for them to pursue education. Garrette suggests, "Undocumented immigrants and refugees awaiting asylum find it hard to get access to social services. Lacking legal status blocks immigrant and refugee families from seeking assistance.... Instead, they hide and try to become 'invisible' so that they do not run into trouble with the immigration authorities. This, in turn, makes them vulnerable to exploitation and extreme poverty."<sup>15</sup>

Refugees' access and motivation to pursue higher education can be affected by their gender, race, age, and gap in formal education. Jupp and Luckey note that past traumas, life experiences, positionalities, and resettling into a new environment often leave refugees uncertain about their abilities to cope with the education and work options in host

countries.<sup>16</sup> Hence refugees need reliable, accurate information and support to navigate their way into post-secondary education, and policies that allow them to overcome social structures that produce inequalities.

It becomes imperative for host countries to develop educational systems, policies, and programs that prepare refugees for post-secondary education. It is also important that the education system take a holistic approach, by creating a sense of belonging among refugees and addressing their identities.

### ***Access to Education from an Intersectional Perspective***

*Intersectionality* is a term coined by Kimberly Crenshaw, an American civil rights advocate, to highlight the interconnection of social identities and systems of oppression and domination—such as race, class, gender, sexual orientation, ability, and culture—which co-constitute the experience of individuals in society.<sup>17</sup> Therefore, when analyzing an issue such as class, racial, or gendered barriers to education, one must not relegate the experiences of individuals within an either/or one-category analysis.<sup>18</sup> Taking a historical perspective, which looks at the interconnections of gender, race, age, and class, and how they affect the re-settlement experience, can help in understanding the barriers to refugees in pursuing a career and education. Furthermore, the refugee resettlement experience cannot be analyzed separately from colonialism, slavery, and war. The difficulties experienced by racialized, gendered, and poor refugees are connected to geo-political, racial, and economic processes.<sup>19</sup> Therefore, refugee-ness and the knowledge that is produced around refugee-ness should be analyzed intersectionally in policy documents and public discourse, and at the individual level to better understand its impact on career and education during resettlement.

### ***Gender and Race***

Until the 1960s, but persisting through the Bill-C31 amendment to the Immigrant and Refugee Protection Act, 2001, Canadian controls over immigration were racist and discriminatory.<sup>20</sup> They maintained the interests of the colonial settler society, power structures, and domination of whiteness over other ethno-racial groups. Examples of these laws and practices include the first federal Chinese Exclusion Act in 1885, which imposed a head tax on Chinese immigrants, collecting more than \$22 million from Chinese immigrants from 1886 to 1923. The “gentlemen’s agreement” between Canada and Japan in 1907 limited emigration of Japanese to Canada to 400 persons a year. Furthermore, “during the Second World War, 22,000 Japanese Canadians were expelled from within a hundred miles of the Pacific, thousands were

detained, and at the end of the war, repatriation to Japan was encouraged. 4,000 people left, two thirds of them Canadian citizens.”<sup>21</sup> During the nineteenth and twentieth centuries the immigration of people of African origin was discouraged, including denial of entry to black people in 1911. Furthermore, the labour of black people was officially devalued while Eastern Europeans, viewed as hard workers, were sent to labour-intensive industries such as forestry and mining in Southern Ontario.<sup>22</sup> Despite the introduction of the point system in 1960, the racist and discriminatory aspects of the previous system are still reinforced through the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act, the Marine Transportation Security Act, and the Department of Citizenship and Immigration Act.<sup>23</sup> In 2012 the amendment to Bill C-31 allotted new powers to the immigration minister to determine, without council and human right experts deliberation, which countries are deemed “safe” for refugees and immigrants.

Being able to enter Canada does not necessarily translate into belonging and inclusion. Exclusion and inclusion in host countries such as Canada are grounded in a discourse “centered on whiteness as the normative mode of belonging.”<sup>24</sup> “Whiteness” is a subjectivity/consciousness that is shared by descendants of European settlers in a settler-colonial land such as Canada and is often represented in the institutions of governance.<sup>25</sup> European settlers invaded Canada, dispossessed the original inhabitants, and created political institutions that erased indigenous people, their culture, language, and practices. Therefore when examining refugee resettlement we cannot forgo the bias and hierarchy of power that is rooted in its colonial history. These racialized structures define belonging and fuel assumptions of innate difference and deficiency, thus producing and perpetuating discrepancies in wages, unemployment, education, and health. Contemporary immigration policies in Canada are thus similarly designed, demanding that new refugees conform to cultural and linguistic norms of whiteness.<sup>26</sup> These assumptions of white sovereignty make an intersectional perspective critical and relevant to our understanding.

The OECD/EU shows that the labour market outcomes of specific groups of humanitarian migrants (e.g., the very low-skilled, women, or older refugees) is comparatively low.<sup>27</sup> Refugee women of colour have significantly worse labour market outcomes, especially in the short to medium run.<sup>28</sup> Tastsoglou and Preston suggest that “immigrant women are also less likely to participate in the labor market than immigrant men.”<sup>29</sup> The sexism and gender stereotypes in the migrant and host culture, in conjunction with a lack of resources, lowered self-esteem, gendered household practices, and lack of familial support may result in women experiencing difficulties accessing higher education or

coping with the competitive learning environment of post-secondary institutions. Refugee women of colour resettling in Canada may also find themselves caught in the intersection of racism and sexism that promotes assumptions of deficiency, which could reduce their passion, self-esteem, and thus motivation to pursue post-secondary education.

### ***The Age Factor***

Although there has been little research on the effect of age on learning in schools, age can affect refugees' integration in their new environment. Banerjee and Verma<sup>30</sup> concluded that "age is known to be negatively related to adults' participation in education." The Organization for Economic Cooperation and Development suggests that older immigrants often experience difficulties in reading, and in particular learning a new language, and that "immigrant students who arrived at the age of 12 or older—and have spent at most four years in their new country—lag farther behind students in the same grade in reading proficiency than immigrants who arrived at younger ages."<sup>31</sup> Furthermore, Banerjee and Verma discovered that "cognitive ability has been found to diminish somewhat with age, so post-migration education may be more difficult to achieve for older immigrants than younger immigrants."<sup>32</sup> Their finding is corroborated by the Canadian Council for Refugees, which states that older refugees are confronted with learning difficulties and gaps in education.<sup>33</sup> Older refugee students also often struggle to connect with teachers as the result of language barriers and limited formal or interrupted schooling, and they experience more post-traumatic stress disorder, low self-esteem, and a poor outlook on life, when compared with younger refugee students.<sup>34</sup> Older refugees are not a homogenous group. Some may be more challenged by lack of language skills, difficulty navigating social services, and greater responsibilities, which may make it difficult for them to pursue education. These issues, coupled with economic needs and family obligations, may keep them in "survivalist" jobs.<sup>35</sup>

In addition, age may affect refugees' choice of career path. Pabalinas Jr., Teves, and Teves observe that students' choice of career can be influenced by socio-demographic factors such as age, gender, and parents' occupation.<sup>36</sup> For instance, older refugees are unlikely to choose careers that involve many years of post-secondary study. Again, as the result of financial constraints, they often opt to combine work with schooling, and hence prefer careers that allow for more flexibility and that are less demanding.

### ***Methods***

#### ***Study Design***

This article is based on the data collected within a larger three-phase community-based participatory research project that

aimed to facilitate refugee survivors' access to higher education. It focuses on the data collected during phase three of the research. Phase one focused on identifying barriers to refugees in accessing higher education. Taking the racialized and gendered experiences of refugees from phase one into account, phase two of the research was spent designing the educational pilot program. And phase three focused on implementing the educational program. The research included two groups of refugees who underwent a fourteen-week program to overcome barriers, bridge gaps, and facilitate their transition into higher education. The data for phase three were collected using a semi-structured interview guide. Questions in the guide were developed by the research steering committee consisting of representatives from the Canadian Centre for Victims of Torture (CCVT), Centre for Addictions and Mental Health (CAMH), Wellesley Institute, George Brown College (GBC), and refugees who had experienced trauma. Social workers and service providers were also consulted in the development of the interview questions, to ensure that questions did not re-trigger participants' past traumatic experiences. In addition, a trauma-informed, strengths-based, and anti-oppressive perspective was used in interviewing the participants. All participants were interviewed at the entry point, midpoint, and exit point of the pilot program, to gather a sense of their experience throughout the pilot program. The entry point interviews explored participants' educational goals and support needs related to the program. The midpoint and exit point interviews explored participants' perception of the relevance and value of the programming in achieving their educational goals, and whether they had identified changes in themselves as a result of the programming. The exit point interviews also inquired about participants' plans after the program.

#### ***Participants***

Forty-one clients responded to a call for participation in the project, completed the fourteen-week program, and provided complete data sets. Two groups of participants attended two sessions of the same program (September to December 2016 and January to April 2017). Participants were provided with allowance to support their travel, refreshments, and resource materials for classes. Participants had to be eighteen years of age or older, had to have completed high school (or an equivalent) and/or some college or university, aspired to pursue post-secondary education, and were survivors of torture and/or war. The study included participants who had no legal status in Canada, as well as those who had gained permanent resident status or even citizenship, because refugee-ness and the experiences of trauma, political oppression, and identity are not erased by legal status, length of time, and years of residency in Canada. These traumas and experiences can become critical parts of refugees' life histories

**Table 1.** Demographic information of cohorts

Demographic information	Cohort 1 (%)	Cohort 2 (%)	Total (%)
<b>Age</b>			
18–24	11 (57.9)	7 (29.2)	18 (41.9)
25–34	4 (21.0)	8 (33.3)	12 (27.9)
35–44	1 (5.0)	7 (29.2)	8 (18.6)
45+	3 (15.8)	2 (8.3)	5 (11.6)
<b>Gender</b>			
Men	6 (31.6)	13 (54.0)	19 (44.0)
Women	13 (68.4)	11 (46.0)	24 (55.8)
<b>Highest education completed</b>			
High school	13 (68.4)	9 (37.5)	22 (51.2)
College	1 (5.0)	5 (20.8)	6 (14.0)
University	3 (15.8)	10 (41.7)	13 (54.2)
Graduate	2 (10.5)		2 (4.7)
<b>Country of origin</b>			
Africa	6 (31.6)	19 (79.2)	25 (58.1)
Asia	6 (31.6)	1 (4.2)	7 (16.3)
Middle East	6 (31.6)	4 (16.7)	10 (23.3)
Unknown	1 (5.0)		1 (2.3)
<b>Time in Canada</b>			
Less than 3 months	1 (5.0)	2 (8.3)	3 (7.0)
4–6 months	3 (15.8)	9 (37.5)	12 (27.9)
7–11 months	6 (31.6)	3 (12.5)	9 (20.9)
1–6 years	6 (31.6)	8 (33.3)	14 (32.6)
6 years +	2 (10.5)	1 (4.2)	3 (7.0)
Unknown	1 (5.0)	1 (4.2)	2 (4.7)
<b>Status</b>			
Refugee claimant	6 (31.6)	13 (54.2)	19 (44.2)
Conventional refugee	1 (5.0)	3 (12.5)	4 (9.3)
Permanent resident	7 (36.8)	4 (16.7)	11 (25.6)
Canadian citizen	2 (10.5)	1 (4.2)	3 (7.0)
Other	1 (5.0)	2 (8.3)	3 (7.0)
Unknown	2 (10.5)	1 (4.2)	3 (7.0)

and reference points for their life stories, and these narratives and identities as survivors continue, despite changes in status or temporality. Most participants were referred from CCVT, as they are the only agency in Toronto that provides holistic specialized services for refugee survivors of torture and/or war. However, some participants were referred to

CCVT by other refugee-serving community agencies. CCVT receives referrals from other resettlement organizations who advance refugee housing, language, employment, and other life conditions but may not have the expertise to work with trauma survivors. Therefore CCVT clientele represent refugees who are trauma survivors, have settled in the Greater Toronto Area, are experiencing difficulties in adjusting to life in Canada, and want to pursue higher education. Table 1 presents an overview of participants' demographic information.

#### Data Analysis

One-on-one interviews with participants were recorded and transcribed for analysis using open coding to detect emergent dimensions. Research assistants and members of the investigator team then coded overlapping subsets of the data to generate a preliminary codebook that was refined through group discussions and review of the transcripts. Transcripts were coded utilizing the codebook agreed upon by the group, and subsequent axial coding allowed for the induction and deduction of themes based on the codes as well as identification of patterns and categories evident in the data. Finally, analytic memos were utilized throughout the analysis.<sup>37</sup> A data-analysis program called NVivo 11 was used with the coding of the transcripts.

#### Design of the Educational Pilot

The educational pilot program utilized anti-oppressive principles (AOP). An anti-oppressive framework is aware of the power dynamics in the educational system that determine participants' experiences and are linked to historical and structural injustices. It is based on the premise that *oppression is the use of power to disempower, marginalize, silence, or subordinate one social group or category, often to further empower and/or privilege the oppressor. This practice seeks to recognize oppression in our society, mitigate its effects, and equalize the power imbalance in our communities. Thus the education program piloted in this research uses an inclusive and strength-based perspective.*<sup>38</sup> The program's content and method of instruction considered the structural, economic, racial, social, and gendered disadvantages faced by refugees, and addressed their loneliness, loss of social support, lack of access, and sense of exclusion. Program facilitators and researchers adjusted to the content and methods of instruction used in the classroom to cater to the needs of the most marginalized participants, often the older women of colour. Efforts were made to create a safe space for participants who had difficulty speaking up or engaging in a classroom.

The pilot program received support from resettlement agencies (e.g., advocacy, legal support, language or career training); however, it was still unique in Canada because it went beyond them in its focus to facilitate participants'

**Table 2.** Test of within and between subjects effect for self-esteem by age

		<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>p</i>
Entry	Between groups	125.880	3	41.960	1.962	.137
	Within groups	791.339	37	21.388		
	Total	917.220	40			
Midpoint	Between groups	106.532	3	35.511	1.491	.233
	Within groups	881.078	37	23.813		
	Total	987.610	40			
Exit	Between groups	80.821	3	26.940	1.329	.280
	Within groups	750.057	37	20.272		
	Total	830.878	40			

**Table 3.** Test of within and between subjects effect for self-esteem by gender

		<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>p</i>
Entry	Between groups	91.172	1	91.172	4.304*	.045
	Within groups	826.048	39	21.181		
	Total	917.220	40			
Midpoint	Between groups	.868	1	.868	.041	.841
	Within groups	830.010	39	21.282		
	Total	830.878	40			
Exit	Between groups	42.655	1	42.655	1.760	.192
	Within groups	944.955	39	24.230		
	Total	987.610	40			

\*The result is significant at  $p < .05$

access to higher education, so it laid the groundwork for other resettlement agencies.<sup>39</sup>

### Results

In table 2, results of ANOVA indicate that age was not statistically significant in self-esteem of the participants between the groups and within the groups. Table 3 shows that women had lower self-esteem that was statistically significant in comparison to men at the entry point, but there were no differences between men and women at the end of the program.

Analysis of the qualitative data from the interviews revealed their experiences, their struggles, and what they found helpful, useful, or most beneficial.

### Knowledge Is Power: Recognizing Systemic Oppressions

The pilot program provided participants with awareness and knowledge to match power, oppression, and powerlessness

to their own experiences. This understanding allowed them to experience a transformation in the relationship between their assessment of a situation, their personal experiences, and the action they need to take. Ms. HJ, who was experiencing racism and discrimination, stated, "I wish I knew this earlier, that even as a refugee I had rights. Nobody can make me not eat with others because I am a woman and I am black."

On being asked if they noticed changes in themselves that were barriers to their goals, thirty-nine out of forty-one participants answered "yes" and only two mentioned "no." When asked, "Has the program helped you to understand how to pursue and achieve your educational goals and address systemic challenges?" thirty-eight of forty-one participants answered a clear "yes." In addition, 60 per cent of participants stated that their plans had evolved, they felt more prepared to reach their goals with the new knowledge of navigating the education system and assessing situations,



advocating for themselves, looking for allies, and accessing supports and resources they needed to reach their goals. As one participant reflected, the program has made her feel good about herself, as well as her communication and social skills: “I started communicating with people and smiling to strangers [*laughs*]. My networking has improved. Before I had only three friends, but now I have many. I learnt more about myself, that I am more interactive. My self-esteem is higher now, and I can confidently ask for what I need, though I still get nervous sometimes with people and situations, but I now know what I need to do.”

Participants were highly satisfied with the program. It gave them clarity on what they wanted to pursue. This clarity increased motivation and confidence, which was attributed to new knowledge on how to access supports and overcome systemic hurdles. Participants reported that they noticed positive changes in themselves and saw themselves as more “confident and self-motivated”:

I’ve become [a] more positive [person]. The program matured me in a sense that [I’ve come to] know my learning abilities. I’ve come to know that there are many beautiful things deep inside me that I can unleash and live a very productive life.

At the beginning of the program ... I was not sure what route to take, how to take, deal with so many problems ... but the program [has] enabled me to focus, to believe in [studying] human rights is realistic. If it [wasn’t for] this program, I would never be at George Brown College. So, [now] I feel I can go to school, I can pursue my career, I can do much more.... I am actually so inspired. And I intend to focus on human rights.... Because I feel I’ve gone through what other refugees are going through; and I can support them.... I know how to stand [up] for them. So I think I’m in a better position of advocacy now.

### ***Exploring Personal Experiences***

The program included activities on racism and discrimination such as case studies, scenarios, and role playing, which allowed participants to engage with the issues and find their relevance to their own lives. Participants shared personal accounts of racism and discrimination, its impact on them, their reactions, and how they would address both in the future. As Ms. KH mentioned, “I found everyone [who was] running this program to be very nice, caring, and supportive. They were understanding of my situation with regards to racism. They supported me, advocated for me, taught me how to advocate, and were there for me when I needed them.”

### ***Understanding Power and Personal Social Location***

Thirty-nine of forty-one participants indicated that they had gained awareness and knowledge about power as a social

concept, how to place personal experiences within the larger social context and the role of social differences, and disparities of power between the social groups in race, gender, class, sexual orientation, disability, and age. They reflected on other differences such as religion, mental health, and single parenthood, etc. The program had helped them to apply this understanding to the Canadian educational system, helped them to identify potential resources, and enabled them to navigate the systems in Canada and to deal with challenges. One participant stated, “I am able to see my place in the larger Canadian context and understand what I am going through.”

### ***Empowerment through Strength-Based Self-Discovery***

The educational program offered activities to explore self and career, which included opportunities to examine personality dimensions, multiple intelligences, career navigation skills, and learning styles. These activities allowed participants to understand themselves, recognize their strengths and passions, and discover the best way they learn. The responses from most participants, irrespective of their backgrounds, suggested that their confidence and hope for the future had improved since they started the program. Some participants expressed optimism about conflict ending in their home country and hoped that one day they may be able to return to their country of origin, once peace returns. They expressed an interest in acquiring post-secondary education in Canada so that they could use this knowledge and skill in their country of origin, to help victims of torture, discrimination, and human rights abuse. Ms. AA responded, “I am now clear on the career I want to pursue. It’s nursing. I am 100 per cent sure I want to study nursing. It will be useful if I go back to my country eventually. If I return to my country, I will be useful.”

### ***Role of Safe Learning Environment in Creating Hope for the Future***

With a greater awareness of their strengths in a supportive learning environment, participants gained clarity on their goals and ways to navigate and address systemic challenges. The program enabled them to explore their past while recognizing their potential and provided them with skills to navigate the system, which elevated their self-esteem. As suggested by Herbert, combating apathy or aversion develops consistent hopefulness and optimism.<sup>40</sup> According to one participant, Ms. YA, “I feel good about myself. I like education. I was in high school but could not grab things. But this program has helped me. I left school. Also my marital problems all had a huge impact on me. Now I am eager to learn and have a future.”

## Discussion

*How can an intersectional analysis help us understand the barriers faced by refugees in accessing higher education?*

An intersectional perspective was critical in identifying barriers to refugees that were rooted in patriarchal gender relations in Canada and their home countries, which create a racialized and gendered refugee subject, who is either seen as passive and needy, or dangerous and needs to be securitized.<sup>41</sup> In addition, racism and patriarchy tend to create gendered and racialized representations of refugee women, which lead to isolation and “othering” in the host society, devaluing them and their labour. Such representations silence and erase refugees, diminish their self-confidence and sense of self-worth, likely making them feel insecure in accessing post-secondary education or achieving life goals. As a result, it may become harder for them to find the courage to pursue higher education without external supports.

Incorporating an intersectional perspective during phases one and two of this research allowed us to develop an educational program that was considerate and relevant to participants’ needs. Participants discussed their experiences of racialized and sexualized violence, and the program created a non-judgmental, safe, and inclusive environment for those experiences to be acknowledged, validated, and explored. This promoted a sense of belonging, empowered them, and supported their self-worth and self-esteem, allowing them to build resilience, tap into their own internal agency, and navigate discrimination and racism within Canada. They also learned not to internalize these experiences. In addition, the program utilized the expertise of counsellors from CCVT who understood the impact of traumatic experiences on participants’ learning, world view, and hopefulness. In the safety of the program, participants were able to redefine identity and not feel helpless or hopeless. This is an important change, as students who lack confidence in their ability to succeed may also lack willingness to engage in their courses or programs.<sup>42</sup> Feelings of intimidation and inadequacy may prohibit them from fully participating.<sup>43</sup> However, if students sense that their instructors care, this can increase levels of engagement, student success, and retention.<sup>44</sup>

*How do we support racialized and gendered refugees’ access higher education and promote a sense of belonging in them in the process?*

Personal connections and supports in education can result in better outcomes for impoverished racialized women in general, and refugees in particular.<sup>45</sup> The pilot program offered a safe space and support for healthy relationships to form, trust to develop, personal connections to be forged, and sense of belonging to be felt among participants and with the

research team and facilitators as well. A new sense of belonging to a legitimate (i.e., non-marginal, stigmatized) community grew, and the impact of being “othered” and feelings of not being cared for were diminished. Fleeing to safety does not necessarily reduce stress for refugees.<sup>46</sup> They may carry residue of their past that may debilitate their ability to move forward. The positive space created conditions for healing from these traumatic experiences, tangibly enhancing self-esteem, improving communication skills, and motivating them to pursue their higher educational goals: 98 per cent of participants are pursuing higher educational programs to further their career goals.

Using an AOP framework, the research team and program facilitators modelled their socially constructed perceptions, recognized power imbalances, and worked to redress the balance of power.<sup>47</sup> Their effort created inclusiveness for the students and a sense of belonging. Participants spoke about the way instructors responded and made them feel when they checked in with them about events in their lives, their feelings, and their needs. It can be deduced that these conditions were essential in their pursuit of post-secondary education.

*Is age relevant in refugees’ quest for post-secondary education, and if so, what can mitigate its impact?*

Age was an important factor in participants’ quest for post-secondary education. Although all participants aspired to return to college or university, older participants struggled against legal status in Canada, lack of recognition of their credentials, lack of language training, and financial concerns. They also had lower self-esteem when they started the program in comparison to the younger refugees. Although the programming improved self-esteem for all participants, there were no substantial changes in self-esteem by age. Older refugees were under greater financial strain, performed multiple roles, and were more vulnerable to compromising their career and educational goals in favour of their responsibilities. They were also at greater risk for exploitation and harassment by landlords and employers, due to language barriers, lack of understanding of the system, and difficulty accessing resources. During the pilot program, both older and younger participants became more open to the idea that it is never too late to attend school, build confidence, become hopeful for the future, and improve their community participation. Overall, the program made them more determined and energized. Nevertheless there was hesitation to pursue this option of post-secondary education without fully understanding the financial burdens it would put on them or their dependents. Older participants were also more concerned about their ability to learn English. The findings are supported by Banerjee and Verma, who suggest

there is a negative relationship between age at migration and post-migration education.<sup>48</sup> They stated, “Immigrants arriving early in their careers may have lower opportunity costs and greater incentive to invest in higher education.” The older participants’ confidence was also shaken by not being able to understand and communicate well, not having the necessary documentation, and not having the support to guide them to access grants, bursaries, and other means of financial support.

### Conclusion

This research expands on previous work on anti-oppressive pedagogy using an intersectional lens and describes innovative programming to support educational decisions of refugees in Canada who have survived trauma and political violence. This research outlines systemic complexities—not limited to race, gender, and age—that need to be addressed in any policies. The study also highlights the importance of education, which improves life outcomes and is a tool for empowerment and a means for social inclusion for marginalized communities. Ontario’s publicly funded education system needs to be fairer and more inclusive for all students, regardless of race, religion, ethnicity, gender, age, legal status, or any other factor related to individual identity that gives them an opportunity to succeed. Refugees experience systemic discrimination that thwarts their attempts to reach their full potential and pushes them to the margins of society. Refugees face unique challenges and require understanding, flexibility, and accommodation to improve to their opportunities. This research offered a unique program that used an anti-oppressive framework and an intersectional lens, created conditions to bridge the gap in education and career paths for refugees and promote social integration. The findings suggest that a supportive educational model that promotes self-esteem and a sense of belonging is critical to combat the structural, financial, and intersectional factors that restrict access to higher education and the pursuit of educational-career goals.

### NOTES

- 1 I would like to thank the guest editors, editors, and anonymous reviewers for their comments and suggestions. A very special thanks goes also to Social Science Humanities Research Council for their funding for this research project.
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# Refuser d'être désignées. Des identités imposées, négociées et revendiquées

ROXANE CARON, DOMINIQUE DAMANT, CATHERINE FLYNN

## Résumé

*Cet article concerne les positionnements identitaires d'un groupe de femmes « réfugiées palestiniennes ». Les guillemets sont ici d'une importance certaine du fait que l'article révèle, à travers une grille d'analyse intersectionnelle, comment le spectre identitaire de ces femmes est constitué d'identités qu'elles vivent comme imposées et d'autres qu'elles négocient ou revendiquent ardemment. Le présent travail approfondit cette complexité, qui est sous l'influence de différents « vecteurs de pouvoir » d'ordre juridique, politique, religieux et national.*

## Abstract

*This article focuses on the personal identities of a group of “Palestinian refugee” women. Here the quotation marks are very important since this article, based on an intersectional analysis, reveals how the spectrum of these women's identities ranges from identities imposed upon them to others that they negotiate or claim fervently. This article highlights this complexity that is punctuated by various “vectors of power” related to law, politics, religion, and the nation.*

## Introduction

Plusieurs de nos travaux<sup>1</sup> ont montré que l'expérience des femmes réfugiées palestiniennes « sort » du « piège binaire » de la subordination et de la résistance<sup>2</sup>, les plaçant du même coup dans des rôles où elles ne sont ni tout le temps héroïnes ni totalement victimes. À l'issue de ces réflexions, nous constatons maintenant que la façon dont ces femmes se présentent et se racontent révèle des positionnements identitaires suivant ce même schème non binaire. En effet, elles se retrouvent parfois dans des conditions qui leur sont imposées par des contraintes d'ordre structurel ou juridique (le statut de réfugiée palestinienne ou d'apatride, par exemple), d'autres fois dans des conditions qu'elles « revendiquent », de façon discursive ou latente. Ces allers et retours entre des aspects imposés et revendiqués semblent fort complexes, car sous l'influence de différents « vecteurs de pouvoir »<sup>3</sup> liés au juridique, au politique, au religieux et à la nation. Tel est le sujet du présent article.

## Le contexte de l'étude : de 1948 à nos jours

L'année 1948 voit la création de l'État d'Israël et l'exode vers le Liban de plus de 100 000 Palestiniens. À ce moment-là,

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le Liban est indépendant depuis cinq ans et la venue d'un si grand nombre de Palestiniens perturbe l'équilibre confessionnel et politique de ce jeune pays. Devant l'ampleur du drame, des camps de réfugiés sont créés. Au départ, ces espaces ne sont que des refuges temporaires mais, après des années d'exil, les tentes ont laissé place à des constructions qui s'étagent maintenant les unes sur les autres. Aujourd'hui, le conflit israélo-palestinien perdure, l'exil palestinien aussi, et les camps sont désormais bien ancrés dans le paysage architectural et social libanais.

Selon un récent recensement, 174 422 réfugiés palestiniens vivaient sur le sol libanais<sup>4</sup>. Le camp de Bourj el Barajneh est l'un des douze camps palestiniens « officiels »<sup>5</sup> au Liban. Créé en 1948 par la Croix-Rouge, il consiste aujourd'hui en une parcelle de terre d'environ 1 km<sup>2</sup> située dans la banlieue sud de Beyrouth<sup>6</sup>. La superficie allouée au camp n'a pratiquement pas changé depuis sa création, et ce bien que le nombre de réfugiés enregistrés dans les camps officiels ait quadruplé depuis leur création. Selon l'UNRWA, avec un peu plus de 17 900 réfugiés palestiniens, le camp de Bourj el Barajneh est le plus peuplé de la capitale libanaise.

L'auteure principale<sup>7</sup> de cet article a résidé pendant 18 mois, de 2009 à 2011, dans le camp de *Bourj el Barajneh* afin de s'imprégner de ce milieu de vie, tenter de comprendre sa vie communautaire et s'engager dans un rapport authentique avec les acteurs qui le composent. L'observation participante a notamment contribué à la description de l'environnement que constitue le camp de *Bourj el Barajneh*, de même qu'à celle des événements qui s'y déroulent. Elle a ainsi permis de développer une connaissance « intime » du milieu. La proximité avec plusieurs personnes du camp a donné accès à leurs réalités, leurs difficultés, leurs espoirs, leurs moments de doute, mais aussi leurs moments heureux (naissance, fiançailles, etc.). Vivre dans le camp a aussi permis la multiplication des occasions de rencontres informelles où, d'une façon ou d'une autre, le sujet d'étude a été abordé, tantôt lors d'un repas ou d'une visite pour le thé, ou encore lors d'une conférence. Le journal de bord a permis de consigner les expériences, les activités quotidiennes et les observations. L'objectif de la recherche était de comprendre peu à peu l'expérience de l'exil de Palestiniennes vivant en camp de réfugiés au Liban. De façon spécifique, le projet voulait décrire les différentes dimensions de l'expérience de l'exil qui est celle de Palestiniennes vivant en camp de réfugiés au Liban, identifier les conséquences de l'exil telles que décrites par les femmes et, enfin, identifier les différents processus de mobilisation développés ou employés par les réfugiées palestiniennes pour survivre. En préparation au séjour dans le camp, une analyse documentaire de textes relatifs au droit international et national concernant les réfugiés palestiniens a été effectuée. Celle-ci est apparue nécessaire pour avoir

une connaissance approfondie des législations et des droits relatifs au statut de réfugié et d'apatride de ces Palestiniennes, et trouve un écho dans cet article par la compréhension des identifications imposées aux femmes rencontrées.

### ***Le cadre théorique et méthodologique***

D'un point de vue théorique, les témoignages des femmes réfugiées palestiniennes de Bourj el Barajneh ont été initialement entendus et analysés selon des repères associés au féminisme postcolonial. Cet article s'inscrit toutefois dans la foulée des travaux socioconstructivistes sur l'intersectionnalité<sup>8</sup>, qui replacent le positionnement identitaire du sujet au centre de l'analyse. Le positionnement social réfère aux processus par lesquels les femmes participent à la construction de leur identité<sup>9</sup>. Il se construit à travers la façon dont celles-ci se racontent et négocient leur identité dans leurs interactions avec les différents acteurs qu'elles côtoient, dans leur engagement au sein de leur communauté, ainsi que dans différents projets politiques<sup>10</sup>. Le processus inductif réalisé dans le cadre de cette étude révèle que la formation identitaire des femmes de *Bourj el Barajneh* est sous l'influence du juridique, du politique, du religieux et de la nation.

Dans ce contexte, la compréhension du positionnement identitaire complexe des femmes rencontrées à partir des identités mises en avant par ces dernières nous apparaît nécessaire. Cet article met en dialogue les différentes identités qui émergent des récits des femmes de *Bourj el Barajneh* et contribue à construire leur positionnement complexe. Il propose également une réflexion sur la façon dont ces identités sont tantôt mises en avant par les femmes, tantôt occultées/relayées par celles-ci, tout en ayant un positionnement variable dans le temps. Pour certaines femmes rencontrées, la participation à cette étude représentait une opportunité de prise de parole, la possibilité de parler au monde à travers un travail de recherche<sup>11</sup>. Nous posons ainsi l'hypothèse que le choix des identités mises en avant par les femmes n'est pas anecdotique. Leur positionnement identitaire s'inscrit dans une démarche « agentive » par laquelle elles tentent d'affirmer des conditions menacées, qu'elles estiment importantes ou qu'elles veulent faire valoir. Dans la mesure où les relations internationales contemporaines envisagent les réfugiés comme un « dommage collatéral » de conflit ou de prise de position géopolitique, les principales personnes au cœur de ces conflits en tant que « sujets » sont alors effacées de l'analyse<sup>12</sup>. Dans le présent article, les auteures souhaitent décentrer cette analyse souvent dominante en mettant les personnes dites « réfugiées » au centre de leur étude, et examiner comment « ces personnes » se déploient à travers les différents statuts et identités qui leur sont souvent imposés.

Durant le séjour dans le camp de réfugiés, 42 Palestiniennes âgées de 21 à 82 ans ont été entendues dans le cadre

d'un entretien de type récit de vie<sup>13</sup>. Celui-ci a permis la mise en forme de l'expérience d'exil des femmes : leur parcours, leurs difficultés, leurs stratégies, leurs priorités, etc. Cette stratégie de collecte des données a également permis aux femmes de se raconter et de présenter « au monde » qui elles sont. Ces femmes ont été recrutées<sup>14</sup> avec l'aide d'organisations non gouvernementales (ONG), de personnes-ressources dans le camp de *Bourj el Barajneh*, et par l'effet boule de neige qui a suivi ce recrutement<sup>15</sup>. Pour refléter une diversité d'expériences ont été rencontrées des femmes qui différaient sur le plan, notamment, de leur vécu en Palestine, de leur âge, de leur nombre d'années de vie dans le camp, de leur statut social, de leur situation familiale et de leur milieu socioéconomique. Ainsi, la majorité des femmes rencontrées sont mariées, quelques-unes sont veuves ou célibataires ; la plupart sont mères et certaines, grands-mères. Le quart des participantes est analphabète, la majorité a terminé des études secondaires, alors que dix d'entre elles ont fait des études collégiales ou universitaires. Plus de la moitié des participantes n'ont pas de travail rémunéré, mais plusieurs ont déjà occupé un emploi d'enseignante, d'aide-domestique, d'intervenante sociale, d'infirmière ou de comptable. Certaines étaient actives sur le marché du travail lors de nos entretiens ( $n = 15$ ), parmi lesquelles deux directrices d'ONG dans le camp. Les entretiens ont été menés en arabe avec la contribution d'une interprète.

Pour le traitement des données, une analyse de contenu a été réalisée. Cette méthode « consiste à classer ou codifier les divers éléments d'un message dans des catégories, afin de mieux en faire apparaître le sens »<sup>16</sup>. Le matériel des entretiens a fait l'objet d'une analyse tout au long du processus de collecte de données : mémos après chaque entretien, rapports d'entretien, conception d'idées d'analyse et de pistes à fouiller lors d'entretiens à venir ou de périodes d'observation, entretiens rétroactifs, etc.

Au plan éthique, les participantes étaient au centre de nos préoccupations, alors qu'elles étaient à la fois les sources d'information et les sujets participant à l'étude. Conséquemment, nous avons pris les mesures nécessaires afin de protéger les femmes et de leur assurer un soutien psychologique faisant intervenir un proche, un professionnel ou un guide spirituel, entre autres. De plus, la recherche se déroulant en pays étranger, il était nécessaire de respecter les caractéristiques du milieu et le contexte culturel de la communauté d'accueil. À cet effet, il était indispensable d'être sensible aux responsabilités et aux tâches des participantes : comme les entretiens pouvaient être longs, nous avons interrompu à plusieurs reprises la discussion afin de permettre à une femme de faire sa prière ou encore de préparer un repas pour des enfants dont le retour à la maison était imminent. Par ailleurs, certaines participantes ayant été sollicitées par l'intermédiaire

d'ONG locales, les intervenantes de ces organisations ont été informées du projet de recherche ainsi que des risques éthiques inhérents à ce dernier. Pour ce faire, une lettre de consentement éclairé était prévue, qui faisait état des risques et des droits des participantes. Aussi, la rigueur professionnelle étant l'exigence éthique la plus fondamentale<sup>17</sup>, il était de notre devoir de vérifier lors des entrevues si chacune des répondantes était apte à participer au projet. Outre le consentement éclairé, la confidentialité était aussi une préoccupation majeure. Toutes les entrevues et tous les noms des répondantes sont ainsi restés confidentiels, afin de préserver non seulement leur anonymat, mais aussi la confidentialité des informations pouvant permettre leur identification. Des noms fictifs pour les femmes rencontrées ainsi que pour les organismes référents ont été utilisés lors de la transcription des verbatims. Les informations récoltées n'ont, quant à elles, été utilisées qu'aux fins de la recherche<sup>18</sup>.

### **Le concept d'identité**

Le concept d'identité est au cœur du présent article du fait que nous souhaitons nous pencher sur les discours identitaires de femmes souvent désignées comme « réfugiées ». Cet intérêt de mise en lumière des articulations identitaires des femmes rencontrées est soutenu par le message souvent entendu chez ces femmes – « ce n'est pas qui nous sommes » – à pour effet que l'identité mise en avant pour parler de leur réalité ne témoigne pas de la complexité de cette identité, et encore moins des identités que ces femmes revendiquent et jugent importantes. Ainsi, quel discours identitaire les femmes tiennent-elles ? Quelles identités mettent-elles en avant ? En revendiquent-elles certaines ? En réfutent-elles d'autres ? Sont-elles dans un processus de négociation identitaire ? Voilà quelques-unes des questions qui ont guidé notre analyse.

Dans la littérature concernant la sociologie, le concept d'identité est complexe et polyvalent. Notre conceptualisation de l'identité s'inscrit dans le mouvement de la sociologie qui perçoit l'identité comme le fruit d'un processus dépendant des structures et des interactions individuelles, et non comme un attribut possessif des individus ou des groupes<sup>19</sup>. Pour les sociologues qui s'inscrivent dans ce courant, l'identité se voit modifiée en fonction des différentes expériences rencontrées par les personnes et résulte donc d'interactions dynamiques ; elle n'est pas fermée sur elle-même, mais plutôt susceptible de se transformer dans des environnements sociaux plus vastes ou différents<sup>20</sup>. La conceptualisation de l'identité au sein des *cultural studies* est d'un apport certain à la compréhension de l'identité présentée dans le présent article. Les *cultural studies* nous permettent en effet de questionner la nature et le pouvoir foncièrement politique des représentations, notamment de groupes minoritaires



souvent occultés ou invisibilisés. Conséquemment, les identités sont vues comme des subjectivités construites dans une négociation permanente et multiple, entre des conditions matérielles et des discours idéologiques à l'intérieur même de relations de pouvoir historiquement et culturellement situées<sup>21</sup>. Une telle conception de l'identité nous permet de voir comment les femmes revendiquent et défendent certaines identités, mais aussi comment elles négocient avec les discours et les constructions identitaires hégémoniques à leur égard, ou y résistent.

### ***Des identités imposées, négociées et revendiquées***

Les récits de vie des femmes rencontrées révèlent différentes identités; certaines d'entre elles sont vécues par les femmes comme imposées, d'autres étant plutôt revendiquées. Nous verrons que si certaines identités imposées sont porteuses de formes d'oppressions, elles peuvent parfois faire l'objet d'une résistance ou d'un ardent combat pour tenter d'en faire des privilèges relatifs comme c'est le cas du statut de *réfugié*. Les récits révèlent aussi le caractère mouvant des identités alors qu'il existe parfois un processus de négociation dévoilant des formations identitaires ni totalement opprimantes ni totalement émancipantes.

#### *Négocier les identités: entre réfugié et exilé*

L'axe juridique structure (de façon dominante) le discours des femmes, soit un axe relatif au statut des femmes dans le droit international. Selon la Convention, pour être reconnue comme réfugiée, une personne doit démontrer qu'elle est persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques. Ainsi, le statut de *réfugié* confère une identité propre à cette personne (ou à ce groupe de personnes); conséquemment, celle-ci se voit considérée comme étant différente par la société environnante. On verra dans cet article la complexité et les tensions autour des deux identités de *réfugiée* et d'*apatride*, souvent perçues comme imposées par les femmes que nous avons rencontrées... à moins que celles-ci ne soient comprises à travers non seulement le prisme juridique, mais un prisme expérientiel révélant leur condition complexe. Nous verrons que c'est à cette condition seulement que des femmes acceptent l'identité de réfugiée, voire qu'elles la revendiquent.

Comme les personnes<sup>22</sup> réfugiées – contrairement à d'autres personnes étrangères – ne peuvent compter sur les autorités de leur pays d'origine pour leur fournir les protections normalement conférées par la nationalité et la citoyenneté et perdent, de ce fait, un éventail de droits civils, politiques, économiques et culturels, c'est à la communauté internationale de leur offrir le soutien nécessaire<sup>23</sup>. La

situation des personnes réfugiées palestiniennes a contribué à inspirer le système de protection des réfugiés<sup>24</sup> tel qu'on le connaît aujourd'hui, soit la Convention de Genève de 1951 sur le statut des réfugiés et son protocole additionnel de 1967, de même que le mandat de l'Agence des Nations Unies pour les réfugiés, ou HCR. Cela dit, les Palestiniens du Proche-Orient n'en bénéficient pas, étant exclus des principaux instruments relatifs aux réfugiés, ce qui les prive de droits pourtant garantis à tous les autres réfugiés.

À travers les témoignages des femmes, on observe comment le statut de «réfugiée» est vécu par certaines répondantes comme imposé, tout en étant un statut juridique qui n'est pas garant de leurs droits en tant que personnes. Le récit de Noura, 50 ans, en est une démonstration :

We never felt protected [...] life was very difficult because as a Palestinian, you are refugee here so you could not make any improvement to your house. Even if you wanted to put a needle in the wall, you needed the permission from the police... and if you would do it without any permission, that was enough to put you in jail. [...] We always had a fear because if the police would walk in the camp and see water coming out of your house, you would be in trouble. Immediately, they would take... the men actually! If there were no man, they would take the women, they would take them to the police station and hit them on their feet... It was humiliating, really humiliating...

D'autres femmes revendiquent le statut de réfugiée à condition que cette identité soit comprise au sens de Liisa Malkki<sup>25</sup>. Le concept de *refugeeness* de Malkki montre en effet que la réalité d'une personne réfugiée est complexe à saisir en ce qu'elle désigne comme conditions de vie, mais aussi comme conditions psychologiques, comme parcours, etc., le tout imbriqué dans des causes historiques et politiques diverses. Qui plus est, cette condition de réfugiée s'inscrit – comme précisé dans les lignes précédentes – dans un vaste système juridique qui conduit à des formes d'exclusions pour les réfugiés palestiniens qui se voient «privés d'avoir des droits». Les récits des femmes rencontrées témoignent donc de la réalité de «réfugiée» comme d'un monde complexe fait de conditions socioéconomiques parfois précaires sur lesquelles se greffent des histoires personnelles, familiales et sociales, des états psychologiques et des croyances spirituelles et religieuses. Le témoignage de Mariam, 42 ans, éclaire l'expérience humaine que peut être celle d'une personne réfugiée vivant en camp de réfugiés, en situation prolongée de surcroît, alors que l'exil des Palestiniens dure maintenant depuis 70 ans. Dans son témoignage, Mariam évoque à la fois l'épuisement de sa communauté et la déshumanisation, ainsi que le sentiment d'injustice vécu :

There's limits to your patience [...] it's too much and we just can't stand it anymore... We are full, full, full, full! Even, when a soldier is being captured, even if he knows that it can happen to him because is a soldier, [...] we have to think of him as having "human feelings". This soldier is a human being, he has a family that worries about him, that is sad about him... so why don't people think about the women protesting in Palestine in the same way? Some of them are sometimes captured, even some give birth in prison... they arrest people for nothing because people are protesting in the streets to demand their rights so where is justice in this world! [...] and you know, we've been through all kind of feelings: happiness, sadness, oppression, depression. All those emotions, we have them and we experience them and that's why we don't accept for others to have to go through those same kinds of feelings.

Ici, nous insistons sur la négociation qui semble se faire avec cette identité de réfugiée: des femmes la rejettent si celle-ci n'est pas comprise comme étant une réalité complexe, réalité dans laquelle elles doivent combattre et lutter pour s'en sortir: vie en camps de réfugiés, formes d'exclusions qu'elle peut engendrer, etc. Certaines vont toutefois revendiquer cette identité de réfugiée en tant que statut juridique et donc de droits à mobiliser, à revendiquer: certaines luttent pour la reconnaissance de leurs droits à la fois au Liban, mais aussi au plan international<sup>26</sup>. D'autres femmes vont rejeter cette identité de réfugiée pour insister sur celle d'exilée, qui symbolise leur attachement à leur terre d'origine, ce que nous développerons dans la section suivante.

Le point de départ de la recherche étant d'explorer le thème de l'expérience d'exil des femmes, les résultats ont montré que la condition d'exilée est non seulement une préoccupation, mais aussi une des identités phares que de nombreuses participantes revendiquent. Elles sont plusieurs – toutes générations confondues – à évoquer leur attachement à la terre de Palestine (ou à la mémoire de celle-ci), attachement qu'elles entretiennent et transmettent d'une génération à l'autre. Le fait d'avoir été contraintes de partir en 1948 dans la foulée de l'expulsion des Arabes de la Palestine, alimente chez plusieurs femmes un désir ardent de retrouver la terre perdue, ne serait-ce que temporairement, comme l'illustrent les propos de Sara, 46 ans:

My wish is to go only for one night to sleep there and die the day after. [...] I went to the border in 2000... there's a fence between Palestine and Lebanon and I made a wish [...] that they would remove the fence. If it would've happened, I would've continued without turning my head back... My husband, my family, my kids, I didn't care, all I wanted was to go there [...] It's our dream to go back, maybe it will be our sons or grandsons who will go back but it's our right to return to our homeland.

La réflexion autour des identités de *réfugiée* et d'*exilé* nous amène à cette observation: l'identité de *réfugiée* renvoie au rapport qu'ont bien des femmes avec leur lieu actuel de résidence, leur refuge, tandis que l'identité d'*exilée* renvoie plutôt au rapport des femmes avec leur lieu d'origine, la Palestine. Le problème qu'elles vivent vient en partie du fait que le droit international est celui des réfugiés: le droit de refuge. Conséquemment, il faut reconnaître l'importante vulnérabilité des réfugiés palestiniens: le « double handicap » de ces derniers – leur impossibilité de retourner en Palestine et le fait de n'appartenir, au sens juridique du terme, à aucun État – les place dans une situation de grande précarité. Or, les réfugiées palestiniennes rencontrées sont plusieurs à se considérer comme exilées plutôt que réfugiées, c'est-à-dire qu'elles se définissent par leur lieu d'origine plutôt que par celui où elles vivent actuellement, ce qui semble reléguer au second plan la question de leur intégration dans le pays d'accueil. Si plusieurs femmes abordent l'identité d'exilée, elles insistent, comme le fait Sara dans l'extrait précédent, sur leur droit de retour, droit lié lui à leur statut de réfugiée palestinienne.

#### *Négocier les identités: entre apatride et Palestinienne*

The elders felt it was their responsibility to explain it to us... they were saying: 'This is your identity.' [...] They were focusing on the good things that we had, that we were... They were doing this to show you, to prove to you that 'we were not born like this'. They were giving you some 'proudness' so you would feel proud of who you are. I think the message was very clear. It was only to tell you: 'Be proud! We were not born like this'. We kept hearing these messages from when we were little until they would die... (Noura, 50 ans)

Le témoignage de Noura est chargé en émotions. Tout son récit insiste sur le fait qu'elle n'est *pas qu'une réfugiée* vivant dans un camp. Elle nous appelle à la percevoir comme une *personne* avec des racines, une terre d'origine, une histoire, etc. vivant dans des conditions qui lui ont été imposées du fait d'un exil forcé. Ce message de Noura nous amène à introduire une autre tension qui apparaît dans les identités des femmes rencontrées, soit celle qui existe entre *apatride* et *Palestinienne*<sup>27</sup>.

Dans le contexte particulier du Liban, le statut des réfugiés palestiniens n'a cessé de susciter l'ambiguïté au plan légal et de faire l'objet de critiques<sup>28</sup>. En règle générale, le Liban a refusé de considérer la naturalisation et la réinstallation des réfugiés palestiniens, principalement pour des raisons politiques. Chez les Palestiniens, aussi, se retrouvent des enjeux politiques majeurs: malgré le désir de certains d'intégrer le Liban, celui de retourner en Palestine est lié, quant à lui, à

la préservation de leur nationalité palestinienne. Comme l'ont démontré de nombreuses études, un appareillage de dispositions et de lois contraignantes à l'égard des étrangers a entravé les droits des Palestiniens et conséquemment limité l'intégration de ces derniers au pays des cèdres<sup>29</sup>. Certaines de ces législations ont affecté différents domaines de leur vie dont l'emploi, l'accès à la propriété, l'habitat et les déplacements. Un point problématique soulevé par de nombreuses Palestiniennes est très certainement le refus aux « non-Libanaï » d'accéder à une longue liste de professions (et de secteurs d'activité) de même qu'à une protection sociale et au droit de posséder des biens immobiliers. La Loi sur le Travail promulguée au printemps 2010, censée ouvrir aux étrangers l'accès à un grand nombre de professions, n'a guère eu d'effet<sup>30</sup>. Amal, 22 ans, témoigne ici de sa colère du fait d'être traitée comme une « non-citoyenne » :

In other Arab countries, Palestinians are more respected, they have more rights, they can enjoy their rights like for example in Syria and in Jordan... they are treated as any other citizen... they can also work any job, profession they want but here, we're forbidden to do many things... and that's why we have this anger inside us...

Ainsi, malgré les contraintes associées au statut juridique de réfugiée palestinienne, l'affiliation à la Palestine demeure importante dans le cas d'un possible retour : même celles qui accepteraient une autre nationalité comme une stratégie leur permettant de sortir, voire de s'émanciper, de leur identité de réfugiée, refusent de renoncer à leur identité palestinienne.

Mis à part leur statut de *réfugiée palestinienne*, les femmes rencontrées sont aussi *apatrides*. Selon le droit international, la nationalité palestinienne – comme produit de l'autorité mandataire – s'est en quelque sorte « éteinte » avec la fin du mandat britannique et la création de l'État d'Israël. En effet, à la suite de la création de l'État d'Israël, des conditions d'obtention de la citoyenneté israélienne ont été précisées par la Cour du jeune pays : « Those who, as a result of the 1948 war were displaced outside the territory of what became Israel, were [...] denied Israeli citizenship. »<sup>31</sup> Israël refusait la citoyenneté à la plupart des Arabes ayant fui la Palestine et, de plus, il en a été de même pour les pays majoritairement arabes qui accueilleraient les réfugiés palestiniens, plusieurs le faisant dans la perspective que le conflit israélo-palestinien soit temporaire<sup>32</sup>. Ainsi, ce n'est qu'à quelques exceptions près, notamment en Jordanie, que les réfugiés palestiniens ont obtenu la citoyenneté de leur pays de refuge.

A priori, dans la mesure où ils ne disposent d'aucune nationalité, les Palestiniens semblent donc visés par la Convention de 1954 relative au statut des apatrides. Or, celle-ci est techniquement inapplicable à la situation de nombreux Palestiniens :

Those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and consequently the 1954 Convention only applies to other stateless persons. The 1954 Convention is, therefore, of no relevance to stateless Palestinian refugees, to the extent that such persons are covered by the 1951 Convention. However [...] there are many Palestinian refugees who are, rightly or wrongly, unable to benefit from the latter Convention and, to the extent that these refugees are also stateless persons, they should alternatively be able to benefit from the 1954 Convention<sup>33</sup>.

Comme le souligne le juriste Alex Takkenberg, la question de l'apatridie est au cœur du problème des réfugiés palestiniens alors que, dépossédés de leur terre, ils sont sans passeport et sans possibilité de retour. Or, le problème de l'apatridie des Palestiniens ne sera résolu que lorsqu'un État palestinien sera créé. Cette dimension juridique est indispensable à saisir puisqu'elle est dominante et s'accompagne de conséquences importantes pour les Palestiniens ; elle construit par ailleurs la position sociale des femmes (et les place souvent dans une posture d'opprimée).

Les récits des femmes montrent de façon latente leur refus du statut d'apatride. Si elles ne nomment pas explicitement le rejet de ce statut, elles manifestent majoritairement leur attachement à la Palestine dès le début de chaque entretien.

#### *Au-delà du statut juridique : le lien avec la Palestine*

De nombreux témoignages marquent l'investissement, le lien émotif particulièrement fort et puissant des femmes – des femmes de tous âges – avec la Palestine. On l'observe à travers les images, les représentations, les métaphores qu'elles utilisent : la Palestine est comme *leur âme, leurs racines, leur père, leur mère*. La Palestine est le symbole de toute une nation : la *nation arabe*. La Palestine est estimée aussi précieuse que *son enfant*, qu'une partie de son corps, aussi vitale que *le sang qui coule dans ses veines*, que son cœur qui bat, que *son existence*, que *sa propre vie*. La Palestine est tel un prolongement du corps, de l'être. De telles images témoignent de l'éternelle présence de la Palestine malgré l'éloignement géographique, malgré l'exil prolongé. Elle fait partie du « soi », du « nous », de l'identité, de la famille, voire de la nation arabe. La Palestine apparaît comme un symbole qui se situe au-delà de la cause palestinienne, elle fait partie d'un combat qui dépasse sa propre vie, sa vie humaine. Nombreuses sont les femmes qui croient que l'attente sera longue, mais elles maintiennent malgré tout la Palestine vivante ; si *elles* n'y retournent pas, leurs enfants ou leurs petits-enfants concrétiseront le retour.

The moment I opened my eyes [...] I used to think that we have a land and that here in the camp is a temporary place where we're

staying. We're only here until we go back to our land [...] My father used to have a big space here in Bourj and whenever people came to him and ask to build a house or to put up a tent, he used to say: 'Take whatever you want, we're going back, we won't stay here, this is not our land, we have our own properties in Palestine.' So that's why I have this thinking, I used to hear my dad say this phrase over and over again. (Hanîne, 55 ans)

We are attached to Palestine because our generation was deprived of knowing what it is to have a country [...] we are the ones who stayed and who still exist, we are the ones who are talking about Palestine and about the way to return to Palestine... we may return to Palestine, we may not but inside, we are deeply attached to it... (Mariam, 42 ans)

Il importe de souligner que chez les femmes palestiniennes, le présent libanais s'impose, qu'il est immuable : on rêve de la Palestine certes, mais on rêve aussi d'une vie « normale », d'une vie meilleure pour soi, pour ses enfants et ses petits-enfants. Entre l'impossibilité de s'ancrer totalement dans un univers où les conditions de vie sont si difficiles et où l'on se sent dépossédée, et celle de vivre uniquement dans les vestiges du passé ou encore dans l'attente d'un futur meilleur, une tension se crée, comme c'est le cas entre les différentes identités de réfugiée, d'apatride et de Palestinienne et, on le verra plus loin, de musulmane : on refuse le statut d'apatride, on tente de sortir de celle de *réfugiée* en maintenant celle d'*exilée* et de *Palestinienne* vivantes. Certaines vont en quelque sorte revendiquer les identités d'*exilées* et de *Palestiniennes* en s'impliquant dans la lutte nationale. Cet extrait de Janna, 43 ans, montre sa volonté de sensibiliser aux injustices vécues par les Palestiniens, mais aussi à la réponse qu'elle apporte à ces injustices... Elle ne voit pas d'autres « issues » que la lutte armée.

Us Palestinians, we can't deny that we are rejected by the whole world... all the world is busy thinking how to keep Palestine as a state for the Israelis [...] People want to solve this issue but at the same time, not really [...] they don't give us the chance to liberate our country... so when you have no option, all the conditions are against you, what can you do? Is there any other option then go into war? Us, the Palestinian people, we're not violent people, all we want is to have a proper life, that's all we are asking for... even you, you talked to women in this camp and you noticed what's happening here, you sympathize with us, you feel for us [...] so how do you think you feel when you concretely "live" those things day after day... day after day...

Selon l'anthropologue Rosemary Sayigh<sup>34</sup>, la croyance a longtemps persisté chez les Palestiniennes que la résistance (politique et armée) était en quelque sorte *la* réponse

à l'exil. L'idée était de ne pas souffrir seule, mais plutôt de lutter politiquement. Or, on voit dans les récits recueillis qu'un changement se produit alors que le mouvement nationaliste palestinien s'essouffle dans les années 1980 et que la religion gagne de l'importance aux yeux des femmes. Dans les messages transmis par les jeunes participantes, la notion de résistance est toujours présente – ces jeunes nous apparaissent tout aussi « résistantes » que leurs aînées – mais la lutte politique n'est plus le principal outil ni l'unique réponse à la *nakba*, soit la grande catastrophe liée à l'exil palestinien de 1948. Mais justement, quels sont leurs outils? Les jeunes femmes contestent les discours traditionnels, notamment par leur façon d'exprimer leur identité religieuse et par la place qu'elles donnent à l'éducation comme moyen de sortir de leur condition de réfugié; se situe ici une identité revendiquée par la grande majorité des femmes rencontrées : l'identité de *musulmane*.

#### *Synchrétisme entre les identités religieuse et politique*

Si certaines participantes ont été désillusionnées par leur participation à la lutte nationaliste palestinienne, une autre identité prend de l'importance à la sortie de la guerre : l'identité religieuse.

After the war, the religious issue started to come up [...] Islamic NGOs started to show up in the camp. [...] they would offer food supplies to people and, in return, people would listen to their lessons. So, at the beginning, it was like this, but the people were happy with those lessons, like if they weren't convinced, they would not have continued... So, it was the first step, charity groups started to come in the camp. Then, our youth became more aware of religion, [...] And another issue is that people needed leaders because there weren't any after the war [...] it was chaos in the camp [...] so those NGOs took the lead and people were actually happy with that, it was good for them being themselves Muslims. (Jamal, 46 ans)

Comme Jamal, plusieurs participantes témoignent du rôle pivot de la religion dans leur processus de deuil dans le Liban de l'après-guerre, alors que la population du camp de Bourj el Barajneh est en mode de survie et à la recherche d'un sens à donner à son existence. Il n'y a pas d'État pour assurer ou appuyer la reconstruction : la communauté du camp est « laissée à elle-même », ou du moins c'est le sentiment partagé par de nombreuses femmes<sup>35</sup>. La situation vécue dans l'après-guerre civile est « la goutte qui fait déborder le vase » : nombreuses sont les femmes qui ont cru à la cause palestinienne, à la lutte armée, mais avec la fin des hostilités vient la fin des illusions politiques, la mort des espoirs que ce projet rassembleur avait créés. Dans le discours de certaines participantes qui se sont engagées politiquement, il y a de

l'amertume, de la colère, une nette impression d'avoir été dupées et utilisées... C'est le cas de Basma, 41 ans :

Yes, our leaders abandoned and dumped us. They didn't care about us [...] Habibti, the leaders are fighting for power not for us, the people [...] If you go to the leaders' houses here in the camp, you'll find that they have big houses, well furnished, they even throw out food more than they can eat it... So, there's no equality between people here in the camp, that's why I say that they abandoned us. Now, each one is living a different level of life [...] All my work during the Revolution was a big lie because I did a lot for the Revolution and the ones who became leaders, they now have flats, cars and money while me, I got nothing.

Devant ce sentiment d'anéantissement et d'abandon, la reconstruction identitaire se réalise alors à travers l'affirmation de l'identité religieuse. Plusieurs femmes ont insisté sur le fait que la religion avait été en quelque sorte « dormante » chez elles ; bien qu'elles soient nées musulmanes, un élément déclencheur avait été nécessaire pour ranimer leur foi :

Us, Muslim Palestinians, it's true that when you see death a lot, you go to your God to understand... like all of us Muslims we know that after death there's heaven or hell and us, we wish we'll go to heaven so we need to do the good things in order to go to heaven... originally, we do have our religion in our soul, deep inside us but we needed a kind of motivation to trigger it and war was one of the things that motivated us... (Janna, 43 ans)

Au tournant de la guerre civile libanaise, l'identité religieuse se superpose à l'identité palestinienne ; c'est l'identité musulmane qui tranquillement vient occuper le rôle premier et structurer la vie des femmes. Laïla, 59 ans, en témoigne :

We [the Palestinians] started to get more aware about religion because of the wars. [...] When someone dies, you start to think: 'What am I gonna do? What did I do in my life? I might just die like him! What can I do to make it up for the second life?' Then, I lost my brother during that time and again, when he died, we started to reconsider, to think about our lives [...] We had lost so many things, so many people... it wasn't only my brother, many people died during the war! Specifically, during the sieges, many women got veiled back then. From then on, we started to know more about religion.

La religion offre un cadre qui rythme le quotidien et la vie en société : la prière, l'hygiène, la nourriture, l'habillement, les relations familiales et de couple, le mariage et le divorce, les fêtes et les célébrations, etc. Pour plusieurs femmes, l'effet structurant de la religion n'est pas contraignant ou rigide, mais offre plutôt un cadre de vie qu'elles adoptent et dans lequel elles s'engagent. De plus, des femmes continuent à

travers l'affirmation religieuse à transmettre le projet de la Palestine : elles sont plusieurs, issues de toutes les générations de femmes, à dire et à croire que c'est en mettant la religion au cœur de la conception de l'identité et du politique qu'on va combattre l'oppression coloniale et qu'on récupèrera la Palestine.

Ainsi, c'est à travers cette réaffiliation au religieux que l'identité palestinienne reprend de la force : on assiste à l'islamisation de la lutte. La lutte palestinienne ne disparaît pas complètement du discours des femmes, mais elle se transforme : le projet politique devient en quelque sorte porté par le religieux, comme le souligne Samira, 46 ans : « Palestine won't be liberated unless the religious people liberate it... not through a revolution like in the 60's but through religious people [...] a religious resistance ».

### *Éléments de conclusion*

Many refugees facing protracted displacement in global South contexts discursively disappear as subjects of international refugee regime and its member liberal democratic states. Refugees may be counted as humanitarian beneficiaries, but they often do not count as rights-bearing subjects, nor even as recognizably human, like us<sup>36</sup>.

De cette analyse des récits des femmes rencontrées, il ressort une complexité identitaire en raison des identités imposées, négociées et revendiquées par les femmes. La formation identitaire s'articule avec le juridique, mais aussi la terre, la nation, et enfin le religieux. Si l'on inscrit les récits dans leur contexte historique, on observe que deux identités ont refait surface dans les années 1980, soit à la sortie de la guerre civile libanaise, et ont pris de l'importance : l'identité de musulmane et celle de réfugiée.

Plusieurs femmes interrogées ont déclaré avoir commencé à porter le hijab au lendemain de la guerre civile. La piété dans les vêtements et dans les comportements s'est répandue à travers le camp ; un nouveau rapport à l'Islam s'est approfondi en reliant idéologiquement la cause palestinienne à la tendance dominante dans le monde arabe. En effet, depuis la fin de la guerre civile, les États du Golfe participent aux rapports de force qui se déploient dans les camps palestiniens du Liban par leur soutien aux courants religieux radicaux, lequel soutien s'intègre, selon Sihem Djebbi<sup>37</sup>, à la diffusion de l'idéologie religieuse au sein de différents pays musulmans par des canaux divers. De plus, un débat existe à la même période, cette fois autour de l'identité de *réfugiée* palestinienne. En effet, des femmes rejettent cette identité considérant qu'elle leur est imposée alors qu'elle est vécue comme humiliante et stigmatisante, alors que d'autres

femmes affirment plutôt qu'elle montre leur appartenance à la Palestine et non au Liban.

La réflexion autour des conditions de réfugiée et d'exilée nous amène, quant à elle, à cette observation : le terme « réfugiée » renvoie au rapport qu'ont bien des femmes avec leur lieu actuel de résidence, leur refuge, tandis que le terme « exilée » renvoie plutôt au rapport des femmes avec leur lieu d'origine. Le problème qu'elles vivent vient en partie du fait que le droit international est celui des réfugiés : le droit de refuge. Or, elles se considèrent exilées plutôt que réfugiées, c'est-à-dire qu'elles se définissent par leur lieu d'origine plutôt que celui où elles vivent actuellement, ce qui semble reléguer au second plan la question de leur intégration.

À travers l'analyse de la formation identitaire des femmes, un élément qui semble intéressant de noter est le terme *el somoud* – l'un des attributs divins signifiant *résistance* ou *tenir bon* – qui traverse le récit de nombreuses femmes et l'expérience d'exilée, mais aussi celle de Palestinienne et de musulmane. Dans le quotidien des femmes comme dans leur discours, semble se dessiner une expérience partagée de perte ou de crainte de perte dans l'exil. Depuis plus de sept décennies, des femmes palestiniennes sont hantées par la peur de l'effacement de leurs biens, de leurs droits, de leurs modes de vie et de leur identité en tant que Palestinienne. De telles craintes marquent la compréhension qu'elles ont d'elles-mêmes qui, à son tour, positionne leur engagement dans le monde. Au sein du camp de réfugiés de *Bourj el Barajneh*, être une femme est un élément supplémentaire qui renforce l'équation « existence = résistance » en tant qu'attribut des femmes. En effet, alors que la résistance politique est de plus en plus associée à la résistance musulmane dans de nombreux discours de femmes, le concept de *somoud*, traverse aussi la religion. Ainsi, à travers la praxis religieuse, certaines femmes palestiniennes relient aujourd'hui une référence islamique à la signification de *somoud*. Devant les difficultés de la vie dans le camp, la douleur de la dépossession de la terre d'origine, la souffrance des nombreuses pertes dans l'exil, les nombreux préjugés à leur égard, *el somoud* – donc la résistance – devient un impératif politique, moral, voire sacré pour bien des femmes... d'où les identités revendiquées : Palestinienne, réfugiée et musulmane.

Le but n'est pas simplement de survivre dans ce monde, soit de faire preuve de *somoud* ou de s'adapter ; par leurs actions, par leurs identités revendiquées, les femmes cherchent à s'épanouir, à trouver comment faire partie intégrante du monde. L'existence et la persistance de tensions et de négociations dans les identités revendiquées par de nombreuses femmes nous amènent à proposer une lecture. Toutes les communautés, tous les individus font face à certaines tensions, qui sont soit partielles, soit ponctuelles. Pour ce qui est

des exilées palestiniennes du camp de *Bourj El Barajneh* par contre, ces tensions se manifestent dans chaque aspect de la vie sociale et de façon permanente plutôt que ponctuelle. Il y a là peut-être l'essence du drame palestinien. La participante Janna disait d'ailleurs : « Ce n'est pas tant de la violence que de « l'oppression continue » que l'on subit ici. » Des êtres humains privés dans une large mesure de la possibilité de prendre en main leur présent et leur avenir, dépossédés de bien plus que ce qui est visible... tout devient synonyme de tension, et cela en tout temps. Mais leur résilience, leur foi, leur volonté de survie et leur certitude que le droit est de leur côté leur permettent de survivre.

L'analyse intersectionnelle réaffirme la pertinence de la prise en considération de l'histoire, comme le soulèvent Patricia Hill Collins et Sirma Bilge<sup>38</sup>. Les récits des femmes montrent en effet la façon dont l'histoire et son déroulement – à travers notamment les années de guerre et l'exil – ont influencé leur formation identitaire. Le prisme de l'intersectionnalité nous permet aussi de mettre en lumière les formations identitaires en jeu dans les réalités des femmes, de même que les phénomènes sociaux et les structures qui engendrent les différentes formes d'oppressions auxquelles les femmes doivent faire face. Par la mise en relation des identités, on voit émerger non seulement les intersections et leurs effets<sup>39</sup>, mais aussi des tensions entre les identités qui font émerger différentes formes d'agency à travers l'affirmation, la négociation et la revendication des certaines identités. Collins et Bilge nous mettent toutefois en garde contre l'utilisation d'une analyse intersectionnelle centrée essentiellement sur les formations identitaires<sup>40</sup>. Conséquemment, il importe de préciser que dans le processus de formation identitaire présenté ici, les structures juridique et politique que sont respectivement les législations internationales à l'égard des personnes réfugiées et apatrides, de même que les législations libanaises à l'égard des étrangers, contribuent à maintenir les femmes dans une position de subordination. Les femmes ne jouissent pas des privilèges associés à la protection des réfugiés – protection pourtant reconnue à tous les autres réfugiés – du fait d'être réfugié *palestinien*, catégorie spécifique dans le droit international et apatride. Conséquemment, une telle position contribue à limiter leurs opportunités. Une analyse intersectionnelle nous permet de comprendre les conditions complexes rencontrées par de nombreuses femmes palestiniennes du camp de *Bourj el Barajneh* comme une réalité sociale plutôt que comme qu'un problème personnel qui nécessite un changement de comportement de la part des femmes<sup>41</sup>. Par leurs témoignages, elles font certes état de l'aide dont elles ont besoin dans leur(s) lutte(s), mais surtout, du besoin d'être entendues et appuyées dans la défense de leurs droits.

## NOTES

- 1 Voir notamment, Roxane Caron et Dominique Damant, «Le féminisme postcolonial à l'épreuve: comment échapper au «piège binaire»?», *Nouvelles Pratiques Sociales* 26, no 2 (2015): 142-156; Roxane Caron, Dominique Damant et Catherine Flynn, «Des récits de réfugiées palestiniennes à travers la grille de l'intersectionnalité» *Recherches féministes* 30, no 1 (2017): 183-199.
- 2 Sirma Bilge, «Beyond Subordination vs. Resistance: An Intersectional Approach to the Agency of Veiled Muslim Women», *Journal of Intercultural Studies* 31, no 1 (2010): 9-28.
- 3 Sirma Bilge, «Le blanchiment de l'intersectionnalité», *Recherches Féministes* 28, no 2 (2015): 9-32.
- 4 Il faut toutefois préciser que ce recensement – organisé sous la supervision d'organismes libanais et palestiniens – arrive après de nombreux débats autour «du nombre de Palestiniens au Liban» alors que certaines estimations allaient jusqu'à un demi-million de Palestiniens. Ces variations de statistiques résultent de plusieurs facteurs: l'absence, jusqu'à récemment, de recensement au Liban depuis 1932, la confusion démographique liée à la guerre civile libanaise, l'interpénétration des populations libanaise et palestinienne et l'absence de documents officiels sur les mouvements de populations (Kodmani-Darwish, 1997). Voir Hassan Krayem, 2018, «Le recensement de 2017 des réfugiés palestiniens au Liban: la fin d'une légende», *Supplément du projet – la consolidation de la paix au Liban*, 18. Repéré à: <http://www.lb.undp.org/content/dam/lebanon/docs/CrisisPreventionRecovery/SupplementArticles/18Supp/Peace%20Builddding%20FR%2018H%20p5.pdf>
- 5 Il y a 42 camps de réfugiés palestiniens dits «informels» au Liban.
- 6 Au total, 15 camps de réfugiés seront créés au Liban entre 1948 et 1956. Aujourd'hui, il y a 12 camps officiels administrés par l'UNRWA.
- 7 Noter que l'auteure principale du présent article, Roxane Caron, est celle qui a fait le «terrain de recherche» inhérent à ce travail (projet doctoral). Dominique Damant et Catherine Flynn, coauteurs, ont longuement participé aux discussions et réflexions qui sont au cœur même de cet article. Toutes trois poursuivons nos collaborations à travers notamment un projet de recherche commun (Cousineau, Fernet, Côté, Caron, Damant et al.), mais aussi à travers des intérêts communs autour des réalités de groupes de femmes «racisées» et du cadre théorique féministe intersectionnel.
- 8 Floya Anthias, «Thinking through the Lens of Translocational Positionality: an Intersectionality Frame for Understanding Identity and Belonging», *Translocations: Migration and Social Change Journal* 4, no 1 (2008): 5-20; «Baukje Prins, Narrative accounts of origins: a blind spot in the intersectional approach?» *European Journal of Women's Studies* 13, no 3 (2006): 277-290; Susan Knudsen, «Intersectionality—A theoretical inspiration in the analysis of minority cultures and identities in textbooks», *Caught in the Web or Lost in the Textbook* 53 (2006): 61-76; Dorthe Staunæs, «Where have all the subjects gone? Bringing together the concepts of intersectionality and subjectification», *NORA: Nordic Journal of Women's Studies* 11, no 2 (2003): 101-110.
- 9 Anthias, *supra* note 5.
- 10 Elizabeth Harper, 2012, «Regards sur l'intersectionnalité. Centre de recherche interdisciplinaire sur la violence familiale et la violence faite aux femmes», *Collection études et réflexion*, 44. Repéré à [https://www.cri-viff.qc.ca/sites/cri-viff.qc.ca/files/publications/pub\\_06112012\\_83352.pdf](https://www.cri-viff.qc.ca/sites/cri-viff.qc.ca/files/publications/pub_06112012_83352.pdf)
- 11 Roxane Caron, Dominique Damant et Catherine Flynn, «*Ajnabiyyé bi Bourj el Barajneh* ou une étrangère parmi des exilées palestiniennes. Retour réflexif sur une expérience de recherche», *Recherches Qualitatives* 36, no 1 (2017): 1-23.
- 12 Jennifer Hyndman et Wenona Giles, *Refugees in Extended Exile. Living on the Edge* (New York: Routledge, 2016).
- 13 Daniel Bertaux, *Le récit de vie* (3e éd.). Paris: Armand Colin, 2013.
- 14 Les critères de recrutement étaient d'être une femme âgée de 18 ans ou plus, réfugiée palestinienne et habitant le camp de réfugiés de Bourj el Barajneh.
- 15 Pour cette recherche, nous avons obtenu la collaboration de deux ONG implantées dans le camp de réfugiés: accompagnées de l'interprète, nous avons rencontré des groupes de femmes fréquentant les organisations afin de présenter le projet de recherche (but, objectifs, méthode par récit de vie). Dans chaque milieu, une intervenante était ciblée comme personne-ressource et nous retournions ponctuellement faire une relance. Le recrutement se faisait essentiellement sur-le-champ, dès la présentation du projet terminée. Nous avons l'habitude de rester et de participer aux activités de l'organisme (préparation de repas, groupes de discussion, artisanat, etc.); une telle approche permettait aux femmes présentes de poser des questions sur le projet, mais aussi sur les raisons de notre présence dans le camp, et cela contribuait ainsi à établir un lien de confiance. L'effet «boule de neige» est aussi non-négligeable. En effet, certains entretiens se sont déroulés en présence d'un tiers (ex.: voisine, membre de la famille, etc.) et cela a souvent mené au recrutement d'autres participantes intéressées, elles aussi, à donner leur point de vue. Enfin, des rencontres faites durant notre séjour, lors d'activités quotidiennes dans le camp, ont aussi enrichi le processus de recrutement. Une telle variété dans le mode de recrutement nous a ainsi permis d'atteindre une plus grande représentativité sur le plan de la diversité des femmes *réfugiées palestiniennes*.
- 16 Robert Mayer, Francine Ouellet, Marie-Christine Saint-Jacques, Daniel Turcotte et coll., *Méthodes de recherche en intervention sociale*, Montréal: Gaëtan Morin Éditeur, 2000:161.
- 17 Hubert Doucet, *L'éthique de la recherche: guide pour le chercheur de la santé*, Montréal: Presses de l'Université de Montréal, 2002.

- 18 L'interprète est aussi soumise au respect de la confidentialité; un document explicatif lui a été présenté à cet effet.
- 19 Anthias, *supra* note 5; Rogers Brubaker, « Au-delà de l'identité », *Actes de la recherche en sciences sociales* 3 (2001): 66-85.
- 20 Erving Goffman, *Stigmate*, Traduit de l'anglais par Alain Kihm, Paris: Les éditions de Minuit, 1975 [1963]; Georges Hébert Mead, *L'esprit, le soi et la société*, Paris: Presses universitaires de France, 1965 [1934].
- 21 Stuart Hall et Paul Du Gay, *Question of Cultural Identity*, Londres: Sage Publications, 1996.
- 22 Nous insistons ici sur le terme « personne » pour montrer la « commune humanité » qu'on oublie (trop) souvent en utilisant le terme « réfugié »; cela est aussi congruent avec la prise de parole (et de la posture) de nombreuses femmes qui sont au cœur de cet article.
- 23 Guy Goodwin-Gill, *The Refugee in International Law* (2<sup>e</sup> éd.), Oxford: Oxford University Press, 1996.
- 24 Voir Alex Takkenberg, *The Status of Palestinian Refugees in International Law*, New York: Oxford University Press, 1998.
- 25 Liisa H. Malkki, « Refugees and exile: from "refugee studies" to the national order of things », *Annual Review of Anthropology* 24 (1995): 495-523.
- 26 Voir Jalal Al Hussein, « Le statut des réfugiés palestiniens au Proche-Orient: facteur de maintien ou de dissolution de l'identité nationale palestinienne? » dans *Les Palestiniens entre État et diaspora. Le temps des incertitudes*, dir. Jalal Al Hussein et Aude Signoles, Paris: Kartala, 2011.
- 27 Le terme *Palestinienne* ne se limite pas seulement à la nationalité alors que des femmes insistent sur le lien et l'appartenance à la terre, à l'histoire avec cette terre d'origine, avec les générations précédentes, une culture que plusieurs tentent de perpétuer (ex.: broderie palestinienne).
- 28 Al Hussein, *supra* note 18; Souheil Al Natour, « The legal status of Palestinians in Lebanon », *Journal of Refugee Studies* 10, no 3 (1997): 360-377.
- 29 Voir Al Hussein, *supra* note 18; Mohammed K. Dorai, *Les réfugiés palestiniens du Liban. Une géographie de l'exil*, Paris: CNRS Éditions, 2006.
- 30 Élisabeth Longuenesse, « Marché du travail et droits sociaux au Liban et au Proche-Orient », *IFPO*, 2011, <http://ifpo.hypotheses.org/1874>.
- 31 Takkenberg, *supra* note 16.
- 32 Goodwin-Gill, *supra* note 15.
- 33 Takkenberg, *supra* note 16.
- 34 Voir Rosemary Sayigh, *Too Many Enemies: The Palestinian Experience in Lebanon*, New York: Zed Books, 1994;
- Rosemary Sayigh, « Remembering mothers, forming daughters: Palestinian women's narratives in refugee camps in Lebanon » dans *Women and Politics of Military Confrontation: Palestinian and Israeli Gendered Narratives of Dislocation*, dir. Nahla Abdo et Ronit Lentin, New York: Berghahn Books, 2002; Rosemary Sayigh, « Women's nakba stories: Between being and knowing » dans *Nakba: Palestine, 1948 and the Claims of Memory*, dir. Laila Abu-Lughod et Ahmad H. Sa'di, New York: Columbia University Press, 2007; Rosemary Sayigh, *The Palestinians: From Peasants to Revolutionaries* (2<sup>e</sup> éd.), New York: Zed Books, 2007.
- 35 Le soutien apporté par l'UNRWA, l'agence onusienne apportant assistance aux réfugiés palestiniens, est le grand absent des discours des femmes. Alors que l'aide offerte par l'UNRWA est décrite comme « précieuse » dans les premières années de la *nakba*, les femmes insistent pour dire qu'elle est insuffisante à l'issue de la guerre civile libanaise, et cela jusqu'à aujourd'hui.
- 36 Hyndman et Giles, *supra* note 9.
- 37 Sihem Djebbi, « Les réfugiés palestiniens dans les camps du Liban à la lumière du nouveau concept de sécurité humaine », *Revue de la sécurité humaine* 2 (2006): 9-34.
- 38 Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (2<sup>e</sup> éd.), New York: Routledge Editions, 2000; Sirma Bilge, *supra* note 1.
- 39 Voir Roxane Caron, Dominique Damant et Catherine Flynn, « Des récits de femmes réfugiées palestiniennes à travers la grille de l'intersectionnalité », *Recherches Féministes* 30, n° 1 (2017): 183-199.
- 40 Patricia Hill Collins et Sirma Bilge, *Intersectionality*, Cambridge: Polity Press, 2016.
- 41 Mary Romero, *Introducing Intersectionality*. Cambridge: Polity Press, 2018.

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# Decade of Despair: The Contested Rebuilding of the Nahr al-Bared Refugee Camp, Lebanon, 2007–2017

ARE JOHN KNUDSEN

## **Abstract**

*In mid-2007 the Nahr al-Bared refugee camp near Tripoli was destroyed by the Lebanese Army battling an insurgent Islamist group, Fatah al-Islam. Displacing about 30,000 Palestinian refugees, it was one of the largest internal battles in post-civil war Lebanon. A decade later, the camp has yet to be fully rebuilt; indeed, reconstruction has been slow, conflictual, and underfunded. Rebuilding the camp has been contested and delayed by political opposition, funding shortfalls, and complex ownership of land and property. About half of the displaced families have been able to return, the remainder are internally displaced, living temporarily in other camps or rented apartments. This article analyzes the slow-paced reconstruction of the Nahr al-Bared camp and especially what can be learnt from rehousing refugees in a militarized space of exception.*

## **Résumé**

*À la mi-2007, le camp de réfugiés de Nahr al-Bared a été détruit par l'armée libanaise alors qu'elle combattait Fatah al-Islam, un groupe de rebelles islamistes. Ce conflit, l'un des conflits internes les plus importants après la guerre civile libanaise, a déplacé environ 30 000 réfugiés palestiniens. Dix ans plus tard, le camp reste encore à reconstruire entièrement; en réalité, sa reconstruction est lente, conflictuelle et insuffisamment financée. Cette reconstruction est contestée et retardée par une opposition politique, par un manque de fonds, et par des problèmes complexes de propriété foncière et patrimoniale. Aujourd'hui, environ la moitié des familles déplacées ont pu retourner au camp, l'autre moitié restant déplacée à l'intérieur du pays, vivant de manière temporaire dans d'autres camps ou dans des appartements loués. Cet article analyse la lente reconstruction du camp de Nahr al-Bared, et tout particulièrement les enseignements*

*qui peuvent être tirés quant au relogement des réfugiés dans un espace militarisé d'exception.*

### Introduction

On 20 May 2007, after weeks of minor skirmishes, heavy fighting broke out between the Lebanese Army and Fatah al-Islam, a militant Islamist group that had infiltrated the Nahr al-Bared camp near Tripoli (figure 1). After fifteen weeks of intense bombardment and gunfire, the camp was reduced to rubble and the death toll had reached 500, including around 226 militants and 179 soldiers.<sup>1</sup> At least 50 civilians were also killed in the bloody standoff that forced the camp's 30,000 residents to flee, most of them to the Beddawi refugee camp located ten kilometres to the south, doubling the camp's population. This was one of the biggest internal conflict events since end of the civil war in 1990. Following in the wake of nationwide political crises—the 2005 assassination of former premier Rafik Hariri and the 2006 July War with Israel—the battle turned into a proxy war between pro-Syrian and pro-Western government blocs.<sup>2</sup>

Cautious of being drawn into an urban street fight in the alleyways of the camp, the army resorted to mortar fire and aerial bombardment of the camp.<sup>3</sup> The sustained bombing accounted for the enormous physical destruction of the Nahr al-Bared camp.<sup>4</sup> Almost 6,000 residential and commercial units were damaged or destroyed, as was the camp's rudimentary infrastructure: electricity, water, and sewage.<sup>5</sup> The army's siege trapped civilians inside the camp, ignoring calls for a truce by humanitarian groups. The last civilians were evacuated from the camp in late August, more than two months after the battle began. In September, after more than one hundred days of sustained bombing, the last Fatah al-Islam fighters were defeated and the remaining 215 militiamen taken into custody.<sup>6</sup> Palestinian officials from Hamas and the Palestine Liberation Organization (PLO) differed in their response to the army's siege of the camp but, fearing reprisals against the refugees, chose to protect the residents at the expense of the camp.<sup>7</sup> Lacking protection from political patrons, the camp could be destroyed without consequence. The Nahr al-Bared residents were a marginal and isolated minority that could be marked out as disposable; indeed, only in a refugee camp would a humanitarian disaster be hailed as a victory.<sup>8</sup>

One of the first refugee camps to be established by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the tiny Nahr al-Bared camp began in 1949 as a tented settlement that later was replaced by breeze-bloc sheds and houses (figure 2). By the 1950s, Nahr al-Bared was one of fifteen official refugee camps,<sup>9</sup> which were later reduced to twelve when three ruined camps were not rebuilt after the civil war (1975–90).

In 1983 the Nahr al-Bared camp was destroyed by inter-factional battles, but there was no concerted post-war effort to rebuild the camp or other camps, and they were haphazardly rebuilt as money and resources allowed.<sup>10</sup> In 1986 the Shatila refugee camp in south Beirut was ruined by the factional infighting that became known as the "War of the Camps." The destitute residents were given individual grants for reconstruction, but without any plan or coordinating body to steer reconstruction.<sup>11</sup> Unplanned and underfunded reconstruction has made refugee camps like Shatila remain overcrowded slums,<sup>12</sup> without proper sewage, water, and electricity infrastructure.<sup>13</sup> There is no historical precedent for the systematic rebuilding of refugee camps destroyed by war in Lebanon.

Programs that seek to refurbish, upgrade, or improve dilapidated Palestinian refugee camps are typically met with suspicion, as they are seen as a potential threat to the refugees' "right of return [to Palestine]" as attested by case studies from the Jordan valley and Syria.<sup>14</sup> This problem becomes even more acute when a refugee camp is not only upgraded, but rebuilt after being purposively destroyed. An example is Linda Tabar's study of the rebuilding of the West Bank Jenin refugee camp ravaged by Israeli bulldozers in 2002.<sup>15</sup> The reconstruction of Jenin's ruined centre and rebuilding the 500 destroyed houses took three years and was contested among residents in the camp and vis-à-vis UNRWA. The camp's stakeholder committee wanted to rebuild the camp "as it was" and it was adamant that the new access roads should replicate the narrow streets of the old centre as a means of community protection. This demand brought the committee into conflict with UNRWA planners, who argued that narrow roads were neither feasible nor desirable. UNRWA's vision for unhindered vehicular access was shared by other residents viewing wide access roads as preferable, despite legitimate security concerns. The disagreement delayed planning and divided residents. In the end, the committee was sidelined, and the proponents were branded "emotional," "self-interested," and therefore "political," as opposed to UNRWA's masterplan cast as neutral and universal.<sup>16</sup> UNRWA pushed through with the plan for seven-metre roads, almost twice the maximum demanded by the committee and three times wider than the pedestrian footpaths. The contested reconstruction of the Jenin camp prefigured UNRWA's Camp Improvement Program, which was inaugurated in 2006 and aimed at "improving living conditions in houses and camps through a systematic and participatory approach."<sup>17</sup> The new program incorporated lessons from Jenin (West Bank) and Neirab (Syria) and marked a transition from relief to development. The new program replaced UNRWA's outdated housing and shelter standards with a new policy that ruined homes should be rebuilt on the basis of



**Figure 1.** Nahr al-Bared refugee camp, inset map of Lebanon

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what was lost.<sup>18</sup> Nonetheless, camp upgrading and improvement programs continued to stir conflict, amidst internal divisions and claims of elite hijacking of projects.<sup>19</sup>

**Exceptionality of Camps**

In recent years the works of Giorgio Agamben have attracted attention to the unique governance issues that produce



**Figure 2.** Nahr al-Bared, ca. 1960

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refugee camps as “spaces of exception” and turn resident refugees into disposable subalterns (“bare life”).<sup>20</sup> Despite the emerging critique of Agamben<sup>21</sup> and the sometimes simplified and over-determined use of his key concepts, in Lebanon his work has been used to deconstruct camp governance,<sup>22</sup> detainment refugees and wholesale destroy camps wholesale,<sup>23</sup> but not to explain the complex and contested refurbishing and rebuilding of refugee camps. This omission is significant, because it is in their reconstruction, I contend, that the inherit contradictions of refugee camps are most glaring. To this end, this article is a contribution to the discussion of the exceptionality of refugee camps<sup>24</sup> and here used to analyze the conditions that make rebuilding refugee camps a quagmire. Punitive house demolitions is a common form of collective punishment of Palestinians,<sup>25</sup> making analyzing it particularly important for urban planning, and especially so because of the importance of home for exiled Palestinians, captured in the multi-vocal Arabic term *al-Beit*.<sup>26</sup>

The exceptionality of refugee camps becomes even more glaring when we compare this to the rebuilding of non-camp urban and rural neighbourhoods destroyed by war. In mid-2006, Hizbollah’s cross-border ambush of an Israeli patrol led to a month-long military campaign known as the “July War” with punitive Israeli air strikes targeting Shia-majority areas in South Lebanon and Beirut’s Southern Suburbs (Haret

Hreik) and wreaking destruction of residential areas (table 1).<sup>27</sup> Within hours of the United Nations brokered ceasefire, Hizbollah’s reconstruction wing Jihad al-Bina delivered cash grants directly to the affected home-owners in the South, soon followed by other Arab and Muslim donors providing grants ranging from US\$3,000 to US\$30,000.<sup>28</sup> Providing cash grants to affected homeowners played on local sentiments where speed and efficiency trumped other concerns.<sup>29</sup> This gave the Arab donors strong popular credibility, unlike Western donors favouring a governmental response, which was interpreted as propping up the state in a country where the government is associated with a slow, wasteful, and corrupt bureaucracy. A reconstruction facilitator rather than actor,<sup>30</sup> the Government of Lebanon (GoL) paid the least and was slowest in disbursing funds.<sup>31</sup> In addition to emergency aid and cash grants to the affected villages and homeowners, the many foreign donors also provided massive bilateral support to Lebanon that was chartered both inside (Saudi Arabia) and outside government-controlled channels (Iran, Jihad al-Bina), reflecting donor agendas and political relations vis-à-vis the Government of Lebanon (GoL).<sup>32</sup>

The importance of rapid rebuilding and rehousing of residents was also key to Hizbollah’s reconstruction in Beirut’s Haret Hreik neighbourhood where 20,000 destitute homeowners (*malikeen*) were rehoused by Wa’ad, a subsidiary of Hizbollah’s reconstruction agency (Jihad al-Bina) tasked with planning the reconstruction of Haret Hreik. A not-for-profit NGO, Wa’ad was named after General Secretary Hassan Nasrallah’s “solemn promise” (*Wa’ad al-Sadiq*) to rebuild homes “more beautiful than before.” As the legal representative of the homeowners,<sup>33</sup> Wa’ad collected the government compensation funds on their behalf, disregarding calls from urban planners to provide more public space that would delay the reconstruction,<sup>34</sup> rebuilt the 300 multi-story houses as pre-war replicas within five years (table 1).<sup>35</sup> To this end the design, planning, and reconstruction were chartered outside state channels and made the Hizbollah an “urban planner.”<sup>36</sup>

In little more than two years (2006–8), almost two-thirds of the buildings damaged or destroyed in South Lebanon had been either rehabilitated or rebuilt, and more than three-quarters of the displaced had returned home (table 1). In Haret Hreik the level of destruction and size of displacement was comparable to Nahr al-Bared but covered a much larger area;<sup>37</sup> reconstruction and rehousing the residents was completed in five years (table 1). In 2008 UNRWA estimated that rebuilding the Nahr al-Bared camp would take three years,<sup>38</sup> but a decade later only half of the destroyed homes had been rebuilt and the majority had not returned. This comparison demonstrates that UNRWA achieved less in ten years than the July War actors in less than half this time

**Table 1.** Comparison of conflict events, costs, and reconstruction outcomes, 2007–17<sup>a</sup>

Conflict event	Reconstruction period	Pledged US\$ (millions)	Disbursed US\$ (millions)	Residential units ruined	Residential units rebuilt	IDPs	Rehoused & returned (%)
July War (South Lebanon)	2006–8	8,500	1,500 <sup>b</sup>	125,000	80,000	262,000	78
July War (Haret Hreik)	2007–12	–	400 <sup>c</sup>	3,000	3,000	20,000	100
Nahr al-Bared siege	2007–17	345	238 <sup>d</sup>	4,591	2,514	20,000	54

a. Data collated from Al-Harithy (2010), Barakat and Zyck (2010); Barakat (2013); Mac Ginty and Hamieh (2010); GoL (2008); Hourani (2015); UNRWA.org (2017); UNRWA (2018).

b. Arab and Muslim donors (US\$622 million), GoL (US\$293 million), Jihad al-Bina (US\$600 million).

c. The homeowners were paid US\$50,000 each, plus additional compensation for “common areas” (US\$30,000). Support from Jihad al-Bina other donors (Iran) accounted for the rest.

d. Of the twenty-seven donors, the three largest are United States (US\$85 million), Saudi Arabia (US\$50 million) and EU (US\$41 million). The Palestine Liberation Organization (PLO) donated US\$2.2 million, which is higher than the median donor support.

(table 1). What are the reasons that rebuilding the tiny Nahr al-Bared camp took so long and proved so difficult?

In this article I argue that the contested Nahr al-Bared reconstruction was delayed in response to lessons from the July War’s rapid reconstruction and rehousing projects. The slow-paced reconstruction took place inside bureaucratic governance channels, hence was subject to political bickering and delays. The design principles were contested, planning was politicized, and the contractor-driven reconstruction stewarded by a humanitarian relief agency (UNRWA) depended on donations. Blamed for hosting a militant Islamist group, the displaced Nahr al-Bared residents were not seen as victims but as perpetrators who had allowed a militant group to gain a foothold in the camp. This served to securitize reconstruction and made the army fill dual roles as conflict actor and urban planner. The primary data for this article were collected as part of documentary filmmaking during the site clearance and planning phase (2008–9), followed by field visits and taped interviews with displaced refugees in Nahr al-Bared and Beddawi camps during the initial reconstruction phase (2010–11). The ensuing reconstruction period (2012–17) combines secondary data and interviews with UNRWA and PLO officials, local activists, and others involved in rebuilding the camp.

### **Rebuilding Nahr al-Bared?**

Today Lebanon is host to twelve official refugee camps under management by UNRWA. The Palestinian refugees were denied civil rights from the start, and their socio-political

segregation was manifested by establishing new refugee camps in the outskirts of the capital, Beirut, and coastal cities. Most camps were located at a distance from urban centres and in some cases planned, in other cases built around former refugee settlements and army barracks.<sup>39</sup> The majority of the Palestinians have since remained camp based (52 per cent)—the highest in the region—a result of non-integrative policies to prevent their permanent settlement (*tawteen*).<sup>40</sup>

In Lebanon rebuilding refugee camps is especially sensitive, because they embody critical governance issues that prevent their permanent settlement, and sensitive sectarian and security issues, which, after 1990, have made camps associated with lawlessness, expressed in the term “security islands” (*juzur amniyya*, “islands of [self-policed] security”), meaning that they are beyond the reach of Lebanese law, harbouring weapons and sheltering criminals. The refugee camps are self-governed and autonomous, and factions inside camps are armed—privileges granted in response to PLO military strength in the period prior to the civil war (1975–90)—forming a part of the “Cairo Agreement” (1969).<sup>41</sup> Attempts to repeal these privileges, especially to disarm factions and decommission arms, have been unsuccessful, although the original Cairo Agreement was abrogated by parliament in 1987. This means that refugee camps are under multiple, competing, and often conflictual governance by the state, security agencies, the army, UNRWA, and the camps’ multiple leaderships, parties, armed factions, and Palestinian factions (“Popular Committees”), giving rise to a system of “hybrid sovereignties.”<sup>42</sup> The governance of Palestinian refugee

camps depends on their history and location. The northern camps, especially those clustered around Tripoli, such as Beddawi and Nahr al-Bared, were traditionally under Syrian stewardship following the defeat and evacuation of PLO forces from North Lebanon in 1982.<sup>43</sup> Until 2007 Nahr al-Bared was the most open, peaceful, and prosperous camp in the country and enjoyed close relations with neighbouring communities through its role as a central marketplace, with a large informal economy, cheap labour, goods, and services, as well as close to the highway connecting the rural Akkar region with Tripoli, the regional capital.

The 2007 siege and destruction of Nahr al-Bared, the first during peacetime, was a turning point in the state's relation with Palestinian refugees that had steadily improved following the creation of the Lebanese Palestinian Dialogue Committee (LPDC) in 2005, a ministerial committee to manage refugee affairs.<sup>44</sup> The Nahr al-Bared disaster was a political setback that verified long-held claims that the refugee camps are a security threat and shelters militant groups operating under foreign command. Rebuilding the camp also challenged the official policy of preventing permanent settlement of refugees in Lebanon, and was important enough to be inscribed into the Taif Agreement that ended the civil war, as well as in the preamble to the Lebanese constitution. The government and refugees reject "settlement" in Lebanon, but the camp's reconstruction involves refugees being "re-settled," with the connotation of implantation, and that is why groups in government opposed reconstruction and sought to delay it.<sup>45</sup>

The government was adamant that the new camp should not become a base for militant groups again. To this end, the rebuilt camp would not be administered by Popular Committees, as in most refugee camps, but, for the first time, be a Lebanese-administered camp controlled by the army. The plan involved construction of an army and naval base with a staff of about one thousand men stationed inside the camp perimeters (figure 3). The army's plan for community policing was rejected by the residents,<sup>46</sup> seen as proof of the strict security regime to be enforced in the rebuilding of Nahr al-Bared—in official parlance a "model" that could be expanded to include other camps.<sup>47</sup> This would not only open the thorny issue of autonomy and camp governance but was also seen as a return to the 1960s control of refugee camps by the army intelligence agency, the "Deuxième Bureau,"<sup>48</sup> and make the army the camp's final arbiter.

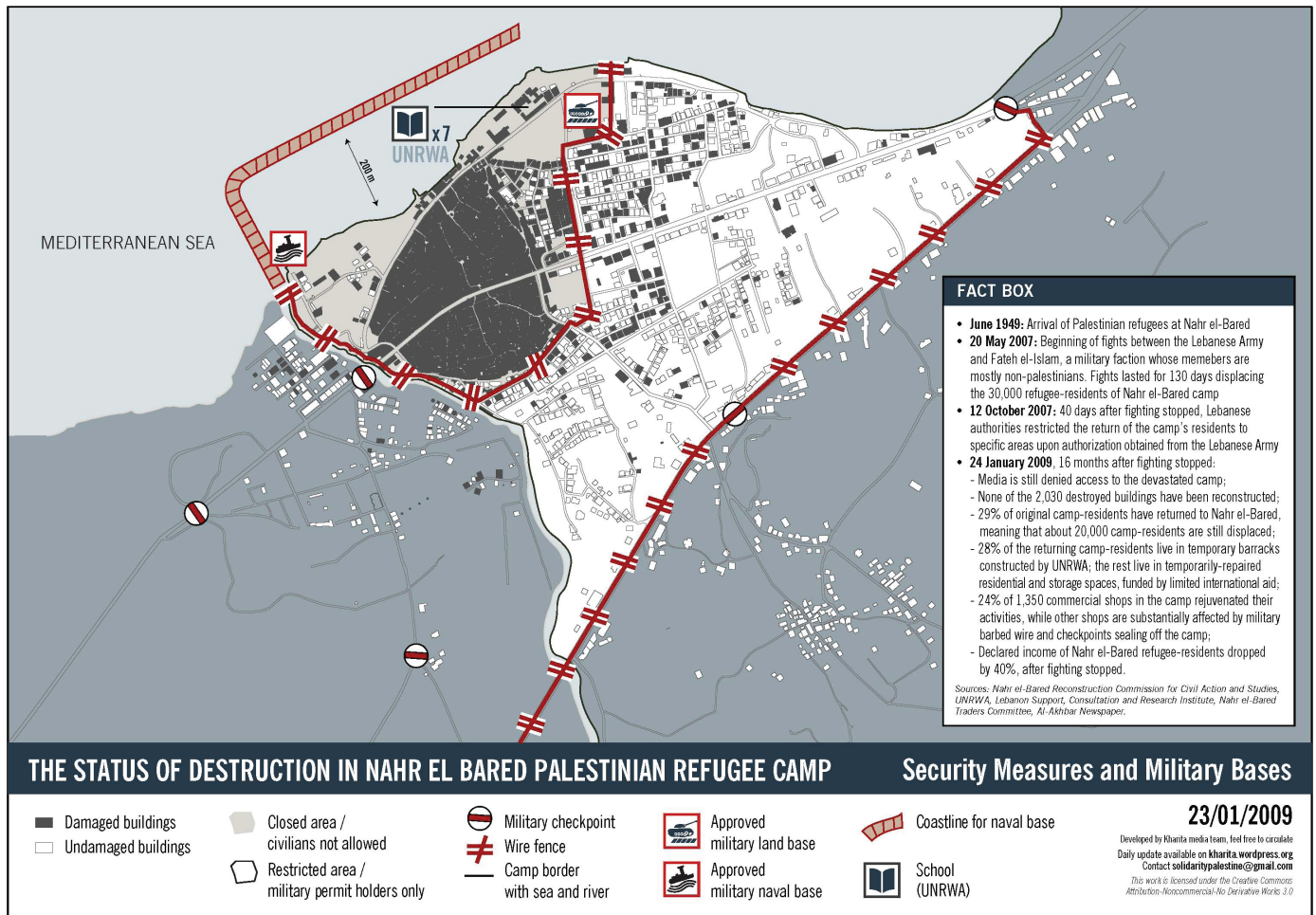
Almost fifty donors contributed to the early relief and recovery phase costing close to US\$125 million (2007–11), but UNRWA, which was responsible for the humanitarian assistance to the displaced refugees, struggled to maintain adequate support.<sup>49</sup> Rebuilding the camp and its infrastructure is costly and complex, comparable to constructing a mid-sized town. In 2008 Lebanon organized a donor conference

in Vienna to raise money for rebuilding the camp.<sup>50</sup> Since then the costs of reconstructing have continued to rise and now stand at US\$345 million if pre-construction operations are included. An additional US\$116 million is needed to rehabilitate adjacent (non-refugee) municipalities damaged during the army siege, bringing the total sum to around US\$450 million. By mid-2013 the twenty-eight donors had disbursed US\$171 million, including a multi-donor trust fund, leaving more than US\$150 million for the camp's reconstruction.<sup>51</sup> When completed the Nahr al-Bared camp would be one of UNRWA's largest rebuilding projects outside Palestine and Gaza. During previous camp disasters, one of the destroyed camps was not rebuilt.<sup>52</sup> Among the refugees, there was suspicion that this camp too would not be rebuilt for lack of money and political opposition, especially from Maronite groups objecting to the Palestinian presence in the country.<sup>53</sup> Despite government assurances to the contrary, refugees distrusted the pledge to rebuild the camp. The lingering uncertainty was made worse by subjecting those allowed to return to their homes in the ruined camp to a security regime that was stricter than that applied to the unruly camps in the south.

### *Cordoning the Camp*

From late 2007, the ruined Nahr al-Bared camp was cordoned off with a wire fence interspersed by five army checkpoints (figure 3). To enter the camp, all residents above the age of thirteen had to carry an identity card and hold a residency permit. The residency permits were issued at the discretion of the army's Directorate of Military Intelligence and could be denied or left pending without reason and subject to change without prior notice at the discretion of army personnel.<sup>54</sup> Non-resident refugees could obtain visitor permits following a similar procedure. Additional permits, so-called work permits, were needed to access specific sections of the camp, the destroyed Old Camp, and the so-called Adjacent Area ("New Camp"). The permit system was premised on the fact that although the army's siege ended in September 2007, the camp has since been a de facto military zone, a measure that according to the Lebanese constitution (article 65, paragraph 5) requires a cabinet decree followed by parliament approval. Even though no such approval exists, the camp will be managed a designated military zone until reconstruction is finished.<sup>55</sup>

The residents were routinely harassed at checkpoints and their personal belongings scrutinized. The security regime made living in the camp so difficult that residents despaired and felt demonized. In the words of a local activist, "Why are they treating us like terrorists; why, why?"<sup>56</sup> He had earlier been arrested and detained after criticizing the army's heavy-handed security in a TV newscast. He was released two days



**Figure 3.** Nahr al-Bared: Security measures and military bases, 2009

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later, on condition that the interview was deleted, yet he continued to face harassment and intimidation. Another contact had similarly been detained after writing a critique in a local daily of the army's role in cordoning the camp. These examples underline the strict security that applied to the camp and the harassment of those criticizing the army's post-conflict role. These restrictions are significant because the army is one of Lebanon's most trusted public institutions, and in carefully protecting its neutrality it avoids taking sides in conflicts.<sup>57</sup> However, sensitive to its public image, the army silenced the critique of the siege of Nahr al-Bared, furthering government "obsession with security," which slowed the camp's reconstruction.<sup>58</sup>

At the time, most of the camp's residents were displaced and living in makeshift shelters or shared and rented rooms. The few who had been allowed to return were forced into debt to repair their homes or to rent temporary housing. The

worst off were the about 1,000 persons languishing in temporary shelters—"metal housing units" measuring only eighteen square metres—without air-conditioning stacked on the edge of the camp, appropriately nicknamed "Guantanamo 2." Hot, humid, and drab, the shelters are filled with tired and depressed adults, wide-eyed youngsters, and bored youth killing time playing cards.<sup>59</sup> Nahr al-Bared had become a hyperghetto where the residents suffered from strict surveillance and segregation in what could be called a "permanent state of emergency."<sup>60</sup> The displaced refugees were adamant that the army's target was not Fatah al-Islam but getting even with the refugees believed to be complicit in hiding, supporting, and abetting the militants. The real target was the refugees themselves, not Fatah al-Islam. Ruining the camp was a collective punishment of the refugees, not a military tactic dictated by the need to confront Fatah al-Islam.

For the first-generation Palestinian refugees who lost their home and property in the 1948 Arab-Israeli war, commonly referred to as the disaster (*al-Nakba*), the loss is even deeper. The Nahr al-Bared destruction is interpreted as a second disaster. Many of the first- and second-generation refugees living in Nahr al-Bared have experienced repeated war and displacement. The attack on the camp brought back painful civil war memories: the destruction and flight from the Tell al-Zatar refugee camp (1976), the massacres in Sabra and Shatila (1982), and the brutal War of the Camps (1985–7). The destruction of the Nahr al-Bared camp was therefore seen as a continuation of the attack on Palestinians in Lebanon facing decades of legal discrimination, marginalization, and repeated displacement.<sup>61</sup> In the words of a young Palestinian from the camp, “We, the Palestinians, really do not have any rights. We are oppressed, but why? Is it because we have this blue ID-card? Or because we are refugees? Or because we live in camps, in slums [*zincos*]? But I feel proud of being a Palestinian. You and others might hear me, but those who should give me my rights are not listening to me. They ignore me because I am a Palestinian.”<sup>62</sup>

#### *Securitizing Reconstruction*

The original master plan for rebuilding the Nahr al-Bared camp sought to extend the military’s role in determining the layout of the camp’s reconstruction. In order to ease access and surveillance, the army wanted Nahr al-Bared rebuilt with low-rise apartment blocks separated by streets that were ten to fifteen metres wide. This is a securitized model of urban planning that breaks with the original camp layout, which is modelled on an army camp with barracks.<sup>63</sup> Moreover, the army opposed balconies and banned basements; the new houses should have neither because they could be used by armed groups.<sup>64</sup> In order to prevent the new homes from becoming future bases in an armed insurrection, they are constructed using a “floating slab foundation,” where concrete is poured onto the construction site with minimal topsoil removal (figure 4).

This building technique avoids digging deep into the ground, which could potentially harm archaeological remains but, more importantly, prevents access to the many underground bunkers that were excavated during the civil war. The bunkers were one reason why the army took so long to dislodge Fatah al-Islam. The floating slab foundation was chosen to securitize the camp’s reconstruction and prevent the camp from becoming an insurgent base. Hence the army sought to transform the camp from a potential “zone of outlaws” to a military “zone of security” where the residents had minimal influence on their urban space. In this sense, the army emerged as an urban planner, stewarding



**Figure 4.** Floating slab foundation used in reconstructing Nahr al-Bared, 2011

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reconstruction based on a militarized design that privileges security and policing.

One of the most complex issues for rebuilding the camp, in addition to the lack of money, was the complex property ownership that surrounds both the plots and individual housing units.<sup>65</sup> Most residents did not hold formal deeds of ownership to their houses or plots. Many of the houses and flats had changed owners several times, or absentee owners had put flats on long-term lease, but without legally valid registration. This is a common practice in Lebanon, reflecting the pervasive informality of the housing and property market.<sup>66</sup> The 2001 amendment, which barred Palestinian refugees from owning or registering property, made the process even more difficult and time consuming.<sup>67</sup> Additionally, the destroyed camp is divided into two sections that not only reflect the territorial expansion from the original UNRWA Old Camp to the adjacent New Camp, but also from houses located on land leased by UNRWA, to land where the houses are squatting on private and municipal land. Thus, complex ownership issues surrounding apartments, housing blocs, and plots, and necessitated expropriation of land need to be resolved.<sup>68</sup>

#### *Participatory Planning?*

In order to counter the original plans for rebuilding the camp and establish a baseline for rebuilding houses, a grassroots initiative was formed around a young Palestinian architect turned activist.<sup>69</sup> Initially the upstart Nahr al-Bared Reconstruction Commission for Civil Action and Studies was ignored by the government, UNRWA, and local powerbrokers in the camp.<sup>70</sup> Undaunted, the commission inserted itself squarely into the planning process to document property



ownership, influence the reconstruction, and especially challenge the initial draft for the master plan that would turn housing blocs into barracks and alleyways into autostradas. The commission surveyed the ruined buildings and, with the help of the destitute families, sorted out property ownership and drew up detailed plans for individual housing units.<sup>71</sup> More than 150 volunteers helped with “asset-mapping,” using large-scale walk-in maps to assist residents with identifying their houses and those of their neighbours. This painstaking work included almost 1,700 buildings and was critical enough for UNRWA’s Camp Improvement Program (CIP) to include the commission in a joint planning and design unit comprising four chief architects leading more than eighty support staff liaising with the UNRWA HQ developing the overall design for the camp and individual apartments.<sup>72</sup> After two years of work, more than sixty design meetings with officials and submission of twenty-four different versions of the master plan, the preliminary plan was finally approved by the government in May 2009.<sup>73</sup> Says a camp manager, “The system was very tightly controlled and demanding, with frequent controls and monitoring. All plans, drawings and work packages had to be approved and the [the buildings’] size and height had to comply with the plan. The Master Plan was the ‘red line’ and when agreed to by the army, UNRWA, and the government, it had to be adhered to.”

This was the first time UNRWA agreed to work in partnership with a grassroots organization.<sup>74</sup> The most important part of this participation was to “recreate the social geography of the camp, reproducing the original street and public space layouts as well as the footprints of the various buildings.”<sup>75</sup> The urban design was based on the extended family unit with mostly three-storied residential blocs,<sup>76</sup> but the master plan reduced the footprint of individual housing units by 15–35 per cent to provide more public space (increased from 13 to 37 per cent) but also to accommodate the army’s demand for wider streets.<sup>77</sup> This meant rehousing refugees in smaller apartments, with smaller families taking the biggest reductions, creating resentment and charges of favouritism and corruption.<sup>78</sup>

However, before construction could begin, UNRWA had to validate the information and ensure that the plan complied with national building regulations. The validation process alienated the refugees, who were turned from participants to clients, with UNRWA reasserting control of the reconstruction.<sup>79</sup> At the same time, the commission began to crumble following internal divisions and growing opposition from Popular Committees, which ignored it at first, later considered it a competitor, and finally decided to replace it.<sup>80</sup> In the spring of 2010 the commission closed operations and the main protagonist left. This not only ended the participatory planning between the commission and UNRWA’s design unit

but also made political factions, weakened by loss of authority and trust, the new counterpart in the camp’s reconstruction. The collapse of the commission was UNRWA’s loss too, as the agency no longer benefited from liaising with a politically independent body.<sup>81</sup>

In early 2009, almost two years after the camp’s destruction, bulldozers finally began removing the rubble and unexploded ordnance that littered what used to be the Old Camp. In March an inaugural ceremony was held to mark the laying of the foundation stone for the new camp. Nonetheless, rubble removal was halted after archaeological remains were unearthed, only to be restarted a couple of months later. Reconstruction continued at a snail’s pace, mostly on temporary shelters and repairs. In the New Camp that falls outside the original camp perimeters under management by UNRWA, the majority were still awaiting permission to move back to their severely damaged but still habitable homes located adjacent to the camp in the “Prime Areas” zoned from A through E. The original deadline for completing the camp’s reconstruction was in 2011, but by then Nahr al-Bared’s slow and erratic reconstruction had caused enormous frustration, resentment, and, in the end, public protests and demonstrations.<sup>82</sup> The militarized security regime had made the camp one of the most difficult places to live in Lebanon and discouraged many from returning. Still, those displaced remained emotionally attached to the camp and wanted to return: “I don’t know how to express it, but I prefer to live in Nahr al-Bared, whatever the situation, even in the presence of Lebanese soldiers and security fences.”<sup>83</sup>

### *Rebuilding Camp and Community?*

The many delays, false starts, and planning hurdles had made people despair and lose faith. In late September 2011, after an agonizing four-year wait, the first of eight reconstruction “packages,” P1 housing 317 families and three UNRWA schools were inaugurated during an official ceremony (figure 5). On this occasion, invited guests were whisked past checkpoints by courteous army personnel checking IDs and printed invitation cards. Inside the camp, smiling UNRWA employees distributed white baseball caps sporting the UNRWA logo and provided a lavish, colour portfolio of the Nahr al-Bared reconstruction project titled “Peace Starts Here.” The inauguration ceremony was held under the patronage of the Government of Lebanon and included speeches by ministers, UNRWA officials, as well as Palestinian representatives in the presence of donors, ambassadors, UNRWA representatives, and UNRWA staff seated in the front rows next to the outdoor scene erected for the event (figure 5).<sup>84</sup> The carefully staged event included speeches, appeals, popular song and traditional dance performances by a Palestinian youth troupe, all captured by film crews and journalists.

Next to the podium, activists from the camp's political factions held up placards listing demands that the government end the permit system, rebuild the remainder of the Old Camp, and arrange for UNRWA to fund emergency relief and provide temporary shelters (figure 5). To underline the urgency of their demands, they chanted impromptu couplets subtly shaming the prominent speakers:

O' government ... where are you, where are you? And the [army's security] permits are in front of your eyes!

O' government ... where are you, where are you? And the [PLO] ambassador is in front of your eyes!

O' the PLO ... where are you, where are you? And the eight million [dollars promised as funding] are in front of your eyes!<sup>85</sup>

Behind them a huge poster publicized the event: "Nahr al-Bared: Rebuilding a Community" (figure 5). Still, the camp's erstwhile community, its residents, was literally offered the backseat. Separated from the guests of honour by a green ribbon, the rows to the rear had been reserved for them. Only a few showed up, not for lack of interest, but because only a limited number had been allowed to take part. Aghast, many stayed away, feeling snubbed.<sup>86</sup> One distraught woman in the back rows repeatedly tried to break into the front lines where UNRWA officials and invited speakers were seated, only to be restrained by army personnel. This division points to much deeper tensions between UNRWA's celebratory inauguration ceremony "Rebuilding a Community" and the desperation of displaced refugees at the end of their tether. It suggests that the "participatory approach" ended when the planning phase was completed in 2009 and UNRWA reasserted control of reconstruction, reverting to its default central planning mode that alienated the displaced refugees.

### **Contested Reconstruction**

Despite completion of the first reconstruction package, the residents were fed up with the living conditions in the camp and suffered from stress, frustration, and anger. In mid-June 2012 a new round of protests broke out in the camp. At one army checkpoint, a quarrel over entry permits led to army guards killing a fifteen-year-old boy.<sup>87</sup> With the camp's cemetery already filled beyond capacity, burial was impossible within the confines of the camp. The next day the victim's body was taken for burial on a piece of land owned by the PLO but controlled by the army. When the army intervened to stop the burial, fighting broke out and the soldiers on duty, claiming to be under attack, fired into the crowd, killing two and injuring twenty.<sup>88</sup> These incidents sparked countrywide protests and provoked clashes, strikes, and sit-ins in support of the victims. The situation in the Nahr al-Bared camp long remained tense, with the army claiming that it had been "infiltrated" by pro-Syrian elements



**Figure 5.** Nahr al-Bared inaugural ceremony (Package 1), 2011  
Source: Photograph by the author

seeking to provoke strife and destabilize the country. Later, bowing to pressure, the army lifted the camp's permit system from mid-July 2012, but other entry restrictions remain in place, and the checkpoints are still manned by the army.<sup>89</sup> Says an UNRWA camp manager, "The camp is a weapons-free zone, but the army is still controlling the camp. Since 2014, the army has withdrawn and is less visible, but has a well-developed intelligence-gathering system in the camp—they know what is going on and pretty much run everything."<sup>90</sup>

In mid-2013 reconstruction stalled again amidst new funding shortfalls, prompting demonstrations in front of UNRWA's head office in Beirut.<sup>91</sup> The fact that only two smaller sections (packages) of the Old Camp had been rebuilt by then was proof that the reconstruction of the camp was a hoax. The contract for clearing the building site and reconstruct the camp was first awarded to the Lebanese firm Al-Jihad Associates, but after delays and extensive subcontracting, it was transferred to another contractor, Danash. Although the main contractor is Lebanese, most of the labour force is Palestinian.<sup>92</sup> For UNRWA, managing the many donors was time consuming, with most channelling funds outside the multi-donor trust fund set up for the purpose, as was matching them with contractors. In the words of a UNRWA camp manager, "In the first phase, we outsourced too much work to large contractors which subcontracted the work, resulting in poor quality. This gave us a problem and made us lose control of the reconstruction." Following an internal audit in 2013–14, UNRWA decided to downsize the reconstruction unit, laid off non-essential staff, outsourced less work, and gave out only smaller tenders.<sup>93</sup>

In 2013 the Nahr el-Bared master plan was shortlisted for the prestigious Agha Khan Architecture Award and, a year later, nominated for the City-to-City Barcelona award.

However, the camp's urban design had reduced the size of homes by one-third on average, to accommodate enlarged public space, gardens, wider alleys, and access roads. The residents, however, preferred larger homes but had to contend with a net reduction in their living space. Like in camps elsewhere in Lebanon, enlargements and adding new top floors are prohibited, although the rule is frequently circumvented, leaving families without legal options for enlarging homes and accommodating new family members.<sup>94</sup> After ten years, the returning families' size and composition had changed, leaving many dissatisfied with their new homes.

By October 2015, UNRWA could no longer afford to pay rental cash subsidies (US\$150) to the close to 2,200 displaced families renting temporary premises elsewhere: "The donors would no longer provide humanitarian aid almost ten years into the post-conflict phase."<sup>95</sup> As foreign funding dwindled, key services were also reduced, especially health care, prompting long and angry protests from the refugee community, including the closure of construction sites. Between 2013 and 2015, violent clashes in Tripoli prevented access to the camp and further delayed reconstruction. Inside the camp, local commerce had not rebounded because army checkpoints discouraged traders and customers alike. Reconstruction had also stalled as the result of funding shortages, with about US\$100 million needed to finalize the remaining three reconstruction packages.<sup>96</sup> The massive funding needed for the Syrian displacement crises (2012–present) had made funding even scarcer, but Lebanon was able to get additional funds for the Nahr al-Bared reconstruction (US\$50 million) as part of the Syria Pledging Conference in London in 2016.<sup>97</sup> In 2016, UN Secretary Ban Ki-Moon visited the camp and urged donors to fund the camp's reconstruction,<sup>98</sup> but the deadline for completion kept being extended. By the end of 2017 about half of the housing units had been completed, while another 370 housing units were under construction (table 1).<sup>99</sup> In the words of an UNRWA camp manager, "We are committed to rebuild the camp, especially for those still living in temporary shelters. We are also bound by the Vienna document and our responsibility to the refugee community."<sup>100</sup> While the Vienna document put UNRWA in charge of the Nahr el-Bared reconstruction, even by 2012 this arrangement had had not been formalized in a memorandum of understanding between the government and the agency.<sup>101</sup> Also unresolved was UNRWA's post-reconstruction role in a camp built by donor money on expropriated land.<sup>102</sup> By March 2018, UNRWA had received US\$238 million and estimated that reconstruction could be completed in two years if the remaining funding was secured.<sup>103</sup> However, withdrawal of U.S. funding to UNRWA in August 2018 and the loss of one-third of its budget could further delay reconstruction

of Nahr al-Bared, despite the agency's efforts to compensate for the loss.<sup>104</sup>

### Conclusion

The Nahr al-Bared refugee camp was destroyed and its populace displaced in one of the largest internal battles in post-civil war Lebanon. The army's victory was achieved at very high human costs and at the expense of the displaced refugees. In this article I have argued that the destruction of the camp laid the foundations for its contested reconstruction and illustrates the obstacles to urban planning and reconstruction in a militarized "space of exception." The piecemeal reconstruction was subject to army dictates, which influenced the new camp's layout (access roads), construction technique (slab foundation), and design principles (maximum height, facades), and introduced new governance and security regimes vested with the army (community policing).

The design for the new camp was a milestone in the participatory planning of a refugee camp, but the contractor-driven reconstruction faced many obstacles—financial, bureaucratic, governmental—meaning that delays were inevitable. The 2006 July War reconstruction used owner-driven and contractor-driven approaches in South Lebanon and Beirut respectively, but the Nahr al-Bared reconstruction relied solely on the latter. A mixed or hybrid approach, combining the two,<sup>105</sup> could have sped up reconstruction of Nahr el-Bared, but judicial, political, and security concerns prevented this from being an option. Stewarding reconstruction on behalf of the displaced refugees pitted UNRWA against the army, doubling as a conflict actor and urban planner. Because of the contested nature of the camp's destruction and fear of upstaging the consensus on "non-settlement" of refugees, UNRWA could neither steer the camp's reconstruction outside bureaucratic channels nor disregard state directives in the manner of powerful patrons-cum-planners such as Hizbollah. UNRWA—a humanitarian agency dependent on donations and chronically underfunded—juggled close to thirty reconstruction donors, with about one-third donating less than one million dollars. Handling the large number of donors was time-consuming and more so, because most avoided channelling funds through the multi-donor trust fund, which added to the stakeholder bureaucracy, as did managing funds for emergency relief to the displaced refugees. Together this overwhelmed UNRWA's capacity and mandate.

The widespread housing informality added another layer of complexity for UNRWA, having to sort out ownership and rehouse refugees on a smaller area. Indeed, rehousing residents in smaller apartments violated UNRWA's camp improvement policy of "rebuilding what was lost," although

the apartments were better planned and constructed and had more available light. Once planning ended, UNRWA reverted to the top-down approach that alienated the displaced refugees. The master plan's urban design was an attempt to reconcile home and security, but the most fundamental planning principle was not the refugees' needs and rights, but the army's demand for security that would ease policing and surveillance in the camp, since 2007 a designated "emergency zone." The army's main objective was to prevent militant groups from regaining a foothold in the camp. The huge loss of life to army servicemen during the siege of the camp further increased the need to securitize reconstruction. The combined security and financial constraints accounted for massive delays in rebuilding the camp that in a decade have left half the residents still homeless. In glaring contrast to the swift July War reconstruction, this demonstrates the exceptionality of refugee camps and the human costs of failing to rebuild the Nahr al-Bared camp in a timely manner that subjected the displaced refugees to a "decade of despair."

### Acknowledgements

I would like to thank Palestinian and Lebanese friends, collaborators, and activists who facilitated research in Nahr al-Bared and shared information on the camp's lengthy reconstruction. A special thanks to Kjersti Berg and the journal's two anonymous reviewers for detailed comments on a previous version. Remaining errors are solely my own responsibility. Permission to reproduce images copyrighted by UNRWA and the International Crisis Group (ICG) is gratefully acknowledged. This article is dedicated to the memory of the late Ahmad Mi'ari—Nahr al-Bared refugee, activist, and volunteer.

### NOTES

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## Book Reviews

### *Refuge Lost: Asylum Law in an Interdependent World*



Daniel Ghezelbash

Cambridge: Cambridge University Press, 2018, 207 pp.

**R***efuge Lost: Asylum Law in an Interdependent World*, la première monographie du juriste Daniel Ghezelbash, offre une analyse détaillée du « transfert » de mesures restreignant les droits des demandeurs d'asile entre l'Australie et les États-Unis, et du rapport de ces mesures avec le droit international. Bien que ce livre soit ancré dans la méthode juridique, les non-juristes le trouveront relativement accessible.

L'apport de cet ouvrage est à la fois théorique et empirique. Sur le plan théorique, Ghezelbash conçoit un cadre conceptuel original multidisciplinaire qui repose sur une analyse de droit comparé et l'étude du processus ayant mené au transfert de politiques. L'étude du processus s'appuie en partie sur les résultats de soixante entrevues menées auprès de responsables des politiques publiques en Australie et aux États-Unis. Cette approche combine des aspects substantifs et méthodologiques propres au droit, à la sociologie, aux relations internationales et à l'étude des politiques publiques.

Ghezelbash s'intéresse à trois types de mesures : la détention obligatoire et à long terme des demandeurs d'asile, l'interdiction maritime, et le traitement extraterritorial des demandes d'asile. Cette analyse est précédée d'un examen des divers facteurs qui mènent au transfert interétatique de politiques de contrôle des frontières. L'auteur explique que la notion de transfert coopératif est à la source du régime international de protection des réfugiés. Son analyse accorde cependant une importance toute particulière à la notion de transfert compétitif. Ghezelbash présente ici une analogie avec la politique économique : afin d'attirer l'investissement étranger, les États adoptent des politiques

toujours plus favorables aux investisseurs, au détriment des politiques sociales. Le même phénomène se produit en matière de contrôle des frontières. Chaque État tient à être perçu comme étant une destination d'asile moins favorable que ses voisins. Le nivellement par le bas que cela provoque, explique Ghezelbash, risque de faire écrouler le régime international de protection des réfugiés.

L'analyse du transfert des trois types de mesures entre les États-Unis et l'Australie est abondamment documentée. En ce qui concerne la détention obligatoire des demandeurs d'asile, Ghezelbash démontre qu'il s'agit d'une mesure d'abord adoptée par les États-Unis à la suite de mouvements migratoires en provenance d'Haïti et de Cuba au début des années 1980. Aux prises avec l'arrivée d'un nombre important de demandeurs d'asile cambodgiens, sino-vietnamiens et chinois vers la fin des années 1980, l'Australie s'est inspirée de l'expérience américaine pour concevoir son propre programme de détention obligatoire. À partir du milieu des années 1990, le transfert s'est produit dans le sens inverse, les États-Unis suivant l'exemple de l'Australie pour restreindre les catégories de détenus pouvant éventuellement accéder à la libération. À partir du milieu des années 2000, le transfert s'effectue dans les deux sens, alors que les deux pays tentent de limiter les excès de leurs programmes de détention respectifs.

Pour ce qui est de l'interdiction maritime, Ghezelbash explique qu'elle est d'abord apparue aux États-Unis, durant les années 1980, ici encore pour limiter l'accès au territoire américain aux demandeurs d'asile haïtiens et cubains venus par bateau. En 2001, après l'arrivée du navire Tampa dans les eaux australiennes, le gouvernement australien s'est appuyé



sur l'expérience américaine pour concevoir la « solution du Pacifique ».

Ghezelbash démontre que le transfert de politiques s'est effectué dans le même sens en ce qui concerne le traitement extraterritorial des demandes d'asile. Aux États-Unis, cette pratique a débuté par le triage en mer des demandeurs d'asile arrivés par voie maritime. La base navale de la baie de Guantanamo a ensuite servi de site extraterritorial pour le traitement des demandes. L'auteur explique que la « solution du Pacifique » australienne, qui prévoit le transfert à Nauru et en Papouasie-Nouvelle-Guinée des demandeurs d'asile arrivés par bateau, a beaucoup emprunté aux politiques américaines. Dans les deux cas, l'objectif était de reléguer les demandeurs d'asile à l'extérieur du territoire national et hors de la portée du droit domestique.

Un chapitre entier est consacré à une analyse de la légalité des mesures à l'étude en vertu du droit international. Ghezelbash estime qu'il ne fait aucun doute que les mesures mises en oeuvre en Australie et aux États-Unis violent de nombreux principes de droit international, y compris ceux établis dans le *Pacte international relatif aux droits civils et politiques* et la *Convention relative au statut des réfugiés*. La position australienne et américaine voulant que les violations du droit international se produisant à l'extérieur de leur territoire n'entraînent pas leur responsabilité étatique est mal fondée : en vertu du droit international, le « contrôle effectif » d'un territoire entraîne la responsabilité étatique, et non la souveraineté.

Au dernier chapitre, l'auteur examine le succès juridique des transferts à l'étude. Il conclut que les mesures transférées ont résisté dans une large mesure à de nombreuses contestations judiciaires dans les deux pays. Cela est étonnant, compte tenu des différences importantes entre les systèmes juridiques australien et américain sur le plan des droits fondamentaux et de l'incorporation du droit international. Au final, le succès juridique des transferts est dû au fait que les tribunaux domestiques des deux pays considèrent

l'immigration, et l'immigration irrégulière en particulier, comme faisant exception à l'application du droit ordinaire.

Dans son chapitre final, l'auteur examine également les conséquences politiques des mesures restreignant le droit des demandeurs d'asile. Son constat est inquiétant : l'interdépendance compétitive des États en matière de contrôle des frontières mène au non-respect répété des normes de droit international. Non seulement ces États perdent l'autorité morale d'insister sur le respect du droit international, mais le régime de protection des droits des réfugiés en entier s'en trouve compromis. Ghezelbash prévient que si l'Europe suit l'exemple de l'Australie et des États-Unis, le régime international des réfugiés risque de subir une « blessure mortelle ».

On se trouve, comme l'écrit Ghezelbash, dans une période charnière. Alors que la crise mondiale des réfugiés ne cesse de croître, et que le populisme gagne du terrain partout à travers le monde, on a raison de craindre que les mesures de contrôle des frontières ne continuent de s'accroître. Force est de constater que, depuis la parution de ce livre, de nouvelles mesures ont été mises en place. Citons comme exemple la directive du procureur général des États-Unis selon laquelle la violence domestique ne constitue pas un fondement suffisant pour recevoir l'asile, et la politique américaine qui a mené à la détention et à la séparation de leurs parents de milliers d'enfants. Il semblerait que le nivellement par le bas s'accroisse. L'ouvrage de Ghezelbash vaut certainement la peine d'être lu, car il offre des outils originaux pour comprendre les processus qui mènent à la diffusion de politiques en matière de réfugiés dans un monde de plus en plus interdépendant.

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### *Belonging and Transnational Refugee Settlement: Unsettling the Everyday and the Extraordinary*



Jay Marlowe

New York: Routledge, 2017, 180 pp.

**H**ow can refugee settlement be conceptualized and implemented in ways that foster long-term belonging and meaningful participation in civic life for resettled refugees? Such is the question at the core of *Belonging and Transnational Refugee Settlement: Unsettling*

*the Everyday and the Extraordinary*. Departing from the emphasis on integration that is prevalent in forced migration and settlement literature, Marlowe advances the concept of belonging as a lens through which to examine refugee settlement. Over six chapters, Marlowe examines refugee

settlement experiences across diverse international settings using case study data, qualitative interviews, and focus groups. Marlowe challenges conventional assumptions about refugees, and highlights how transcending a singular focus on the extraordinary elements of refugee lives and focusing instead on the everyday can reveal transnational and contested dynamics of refugee settlement, with implications for professional practice.

At a time when resettlement programs in numerous countries are being challenged, Marlowe provides refreshing insight into the possibilities of refugee settlement. The use of case studies from different global contexts ensures its appeal to diverse audiences. Marlowe argues that bringing the everyday dynamics of refugees' lives to the fore of research, public representations, political dialogs, and professional work with refugees is a way to challenge the dominant narratives of victimization, pathologization, and deficiency that situate refugees as abstract problems rather than actual people who lead complex lives.

A central focus of the book is recognizing the transnational dynamics of refugee settlement, which is typically characterized in forced migration literature as a predominantly localized experience. Although only around 1 per cent of refugees globally are resettled annually, examining their settlement experiences through a transnational lens reveals that the lives of the other 99 per cent who often remain within insecure, protracted displacement are significantly affected by those who are resettled: making settlement itself a crucial site of interest for understanding forced migration. Turning attention to the transnational aspects of settlement is a key contribution of the book.

Belonging is the theoretical lens applied to various case studies throughout this book. In scholarly work, belonging can often be applied in vague and uncritical ways, but Marlowe avoids this by identifying three aspects that need to be taken into account when considering how (and whether) people experience belonging in contexts of refugee settlement: social locations; identifications and emotional attachments; and ethical and political value systems. Marlowe notes the important distinction between a society that invites refugees to settle there and a society that welcomes them; between a society that tolerates the presence of refugees and a society that fosters the active participation of refugees.

This critical turn towards belonging allows the experiences of refugees themselves to inform and direct how settlement is evaluated and understood, rather than the more extrinsic and externally determined markers that are typically applied to them through integration discourses. Marlowe identifies aspects of settlement that significantly affect how resettled refugees experience belonging but have otherwise been treated as peripheral in forced migration literature,

including exclusionary access to education and employment. That settlement itself can confront resettled refugees with experiences of social and economic exclusion that can be just as traumatizing as displacement is an important point that is often overlooked in forced migration scholarship.

But such musings on belonging are not simply conceptual questions. Chapters 3, 4, and 5 cover trauma, disaster, and professional practice, respectively. Marlowe shows how examining those aspects of refugee settlement experiences through the lens of belonging can foster new ways of supporting refugees to become meaningful participants in their local societies and active members of their transnational networks.

The call to shift from pathologizing refugees through assumptions of trauma by focusing on their individual and collective narratives of everyday experience is not necessarily a new focus of forced migration literature, but it is nonetheless usefully reiterated here. The focus on disasters is a new and much welcomed contribution. By showing how resettled refugees bring unique vulnerabilities and capacities to disaster responses, Marlowe brings attention to the crucial role that forced migration may play in future disasters. Finally, the focus on professional practice is a key strength of the book, which widens its appeal to diverse audiences who work with refugees, particularly in the health and social services. The rights-focused approach set out by Marlowe, which encompasses consideration of the availability, accessibility, acceptability, and adaptability of rights to refugees, is an important contribution. So often refugee policy analyses finish after recognition that particular rights are put in place for refugees, with little consideration of how (or if) these rights are implemented. Within refugee settlement, Marlowe shows that this distinction is significant and suggests that resettlement does not automatically provide refugees with access to cultural, social, and economic rights and freedoms: rather, these must be recognized and promoted at levels of professional practice, political advocacy, and civic life.

Although this book covers many important aspects of settlement, there is scope to consider further dynamics that affect refugees in which resettlement is being challenged and delegitimized. New regimes of securitization can be considered in which resettled refugees may become targets of intensified governance. And the risk of economic exploitation that is embedded in some refugee programs can be recognized: for example in the United States, where policy has long required refugees to secure self-reliant livelihoods within ninety days of arrival, meaning that they are often funnelled into poorly paid menial work with little scope for economic mobility and social inclusion. In addition, although gender dynamics are mentioned briefly throughout the book, there is scope to further explore how everyday dynamics of settlement that Marlowe pointed out reflect

gendered differences, particularly in shifting livelihood responsibilities, more expansive educational opportunities, and new cultural landscapes.

Overall, *Belonging and Transnational Refugee Settlement* should be applauded for emphasizing the need to recognize the complexity of refugee lives, and to rethink the dominant assumptions that so often render refugees through singular frames of victimhood. With its accessible theoretical frameworks and diverse case study analyses, *Belonging and Transnational Refugee Settlement* is highly recommended for

undergraduates, graduate students, and practitioners who are interested in refugee settlement from fields of migration studies, sociology, social work, health, policy, and other applied fields.

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### *Elusive Jannah: The Somali Diaspora and Borderless Muslim Identity*



Cawo M. Abdi

Minneapolis: University of Minnesota Press, 2015, 289 pp.

In *Elusive Jannah: The Somali Diaspora and Borderless Muslim Identity*, Cawo Abdi gives a nuanced account of the lives of the Somali diaspora in three key locations: the United Arab Emirates (UAE), South Africa, and the United States. The book is based on three years of rigorous ethnographic enquiry and meticulous documentation, including 162 interviews and ten focus groups with members of the Somali diaspora. Abdi, herself a Somali-born academic, who arrived in Canada as an asylum seeker, acknowledges the resourcefulness of her positionality in navigating Somali communities with whose culture and predicament she could identify. The book contributes detailed new knowledge and ways of thinking to the refugee and migration literature. Throughout, the book engages with identity, belonging, residency, and integration. A Muslim identity is continually interrogated and juxtaposed with locally encountered identities.

The publication of Abdi's work coincides with the escalation of migration discourses as a priority in foreign policy debates on obligations to asylum seekers and refugees from failed states, such as Somalia. Within these discussions, the implications for the receiving community in national resource sharing (such as welfare) and cultural assimilation or integration have taken centre stage. The three research sites show the importance of "place" in how integration experiences unfold.

The book is divided into six chapters: an introduction, a conclusion, and four chapters. The book launches with a chapter entitled, "The Genesis of Contemporary Somali Migrations." Here Abdi describes the Somali experience and seamlessly integrates the role and history of Dadaab

(a collective of three refugee camps in northeastern Kenya) as the launch pad into the pursuit of the *Jannah* (Arabic for paradise). The volume provides intriguing detail about Somalia's history with democracy, dictatorship, violence, and crisis, allowing the reader to understand the breakdown that led to the current era of exodus, as well as previous large population movements, including the exoduses to the UAE in the 1970s in the wake of Somalia-Ethiopia war.

The first case study is set in the UAE, an absolute monarchy that remains a non-signatory to the 1951 UN Convention on Refugees (among other international human rights documents). Studying Somali experiences in the UAE is significant, because this setting and how it meets its own need for foreign labour while simultaneously circumventing the liberal human rights legal regime is distinctive. Importantly, the UAE doesn't provide for pathways to citizenship for migrants. Somali interviewees frame the UAE as an easy country to navigate. They described benefiting from the favouritism the Emirati showed them due to a shared Arab identity. In a county made up of 80 per cent foreign labour, with no integration system, this hierarchy of differences works in Somalis' favour. This part of the book provides rare insight into the realities and politics of migration outside a liberal democracy setting.

The second case study is South Africa, a democratic republic in its infancy. This setting conjures questions of migration policy in a post-apartheid context of pervasive racism and extreme inequality. The case studies of Somalis residing in Johannesburg and Cape Town are interwoven with the realities of transforming South Africa and the tight-rope the state walks in attempting to simultaneously meet

national and international obligations vis-à-vis migrants. The South African narratives provide a window into the Muslim brotherhood by unpacking a fraternity that unites the Somalis with South African Indian Muslims. Although the South African government's commitment to meet its obligation to Somali refugees surpasses all its regional neighbours, the country remains a liminal space; a stepping stone to the United States, the imagined *Jannah*. The word *Jannah* appears several times in the text to capture Somalis' imaginaries of an anticipated paradisiacal destination. This optimistic view of South Africa is complicated by incidences of xenophobia and insecurity, and, in some cases, violence, perpetrated by poor black members of the neighbourhoods in which Somalis earn their livelihoods.

The final part of the book focuses on Somalis in the United States. Here Abdi juxtaposes the imagined glorified portrayals of day-to-day North America with Somalis' challenging encounters with U.S. immigration policy. The U.S. accounts are fraught with contradictions and deviations from what is imagined to be the reality that awaits the Somali diaspora, or what Abdi calls *Elusive Jannah* or elusive paradise. The U.S. chapter highlights both the culture shock and incompatibility between American and Somali culture. Here Abdi's objective to bring to the fore issues of settlement

and integration is most illuminated, and she makes a case for the need for more efficient and inclusive strategy-designing methods to meet the humanitarian obligation to provide home to Somalis in distress.

Overall this book is a poignant compilation of narratives collected between 2008 and 2012; however, the book's time frame misses a key shift in the global construction of Somali identity in the wake of Al-Shabaab's meteoric rise as an international terrorist group in East Africa. Evidenced from 2013 onwards, a study that incorporates this development would add a textured layer to an already insightful piece of work.

Taken as a whole, this book provides a humanized account of what is generally abstracted in foreign policy and international law debates on refugees, security vetting, repatriation, visa restrictions, welfare benefits, and related issues that fall under the migration regime. In the book, each of these issues is punctuated by real human experiences, anxieties, and insecurities and brings to the fore the possibility of migration policy formulation through analysis of non-reductive refugees' voices.

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## *Gender, Violence, Refugees*



Edited by Susanne Buckley-Zistel and Ulrike Krause  
New York: Berghahn, 2017, 292 pp.

**T**he institutional conditions and socio-cultural dynamics that give rise to sexual and gender-based violence are analyzed in *Gender, Violence, Refugees* by focusing on a global set of case studies. Drawing from the experiences of refugees fleeing conflicts and persecution in Burundi, Congo, Syria, Sudan, and Western Burma, among others, the authors in this edited collection explore conceptual frameworks for understanding violence as it is differentially experienced by refugees; the role of "host" nations in determining experiences of refuge; and the ways that gender understood by both refugees and "host" societies shapes experiences of violence, settlement, and post-conflict return.

One of the most important contributions of the volume is the challenge to understandings of the relationship between refugee processes and sexual violence. This challenge is presented in numerous chapters throughout the volume but most notably in those by Turner and Olivius. Turner takes issue with the "orientalist" assumptions used to justify moral

panic vis-à-vis migrants in public discourse. He challenges an un-interrogated, unsubstantiated claim in some refugee studies scholarship that "displacement causes social and moral chaos" where male sexuality runs "amok" (54). Olivius similarly points to the problems in scholarship and international community interventions that locate violence against women in the cultural fabric of refugee communities. Her work suggests that, in practice, the lack of culturally sensitive approaches to the problem of violence against women "denies refugees a role as agents in the transformation of their own communities" (73). Krause's own chapter in the volume calls for focused attention on the problem of sexual violence and refuge that takes into account the sites of its occurrence in "conflict, flight and protected encampment" (181) but also understands that violence in refuge takes place in a broader continuum of violence.

A number of chapters focused on the recent European response to forced migration carefully examine the ways that

refugee reception institutions and national imaginaries define how gender and violence come to be understood in refugee populations. For example, McCluskey's work outlines how Sweden's national self-conception as a socially progressive, gender-equal, and morally exceptional society hides opposition to Syrian refugees. As Swedes embrace isolationism and fear faced with difference in the flesh, McCluskey's ethnographic research demonstrates that these are not incompatible with the imaginary of a progressive society of superior moral standing. Hartman's work shares McCluskey's implicit claim that understanding the dynamics of where and how refugees are housed gives insight into how national ideals shape violence and gender. Applying Le Febvre's toolkit for understanding the power of place-making, Hartman focuses our attention on the role that spatial arrangements play in making violence possible and difficult to address when it occurs in German refugee reception centres.

Contributors to the collection demonstrate that gender mediates experiences of violence and refuge. Gender, according to the authors, is shaped not only by cultural heritage but importantly transformed and mediated by the culture of service providers in refugee camps, the refugee management plans of international organizations, economic opportunities in exile, and particular migration trajectories.

On the impacts of refugee management plans, Krause's chapter demonstrates that protective encampment where continued co-existence with perpetrators is inevitable and where reporting fees are charged enables particular forms of vulnerability to sexual violence. These vulnerabilities set up in protective encampment are layered onto histories of violence in conflict and flight as well as structural gender inequalities in cultural practice such as forced marriage and the acceptance of forced sex in marriage. Janmyr's chapter similarly focuses on the ways that UNHCR's material assistance emphasis put together with the location of settlements in unstable border regions of Uganda enables continuing violence. The chronic insecurity, including the continuation of forced recruitment of Sudanese men under UNHCR "protection," results in large part from the institutional set-up of protective encampment in Uganda, as Janmyr's ethnography documents.

A number of chapters in the collection also account for how changing economic opportunities in migration

trajectories shape refugees' vulnerabilities to violence. Betts's collection of life stories used in tandem with an analysis of the archives of Médecins sans frontières demonstrates how the forced deportations of primarily female migrant workers from Angola back to post-conflict and economically decimated regions of the DRC resulted in a sharp increase of horrific violence. Such increased forms of violence against women during their return were closely tied to their economic insecurity. For Betts, it was the "structures within the international system that enabled these patterns of sexual violence to occur, to be globally recognized, and yet to be largely ignored" (260). Buscher also shows that the possibilities for livelihoods in refuge differ according to gender and that this in turn predisposes certain vulnerabilities to violence. He suggests policy interventions that support the protection of particularly vulnerable displaced women, pre-established gender roles that mitigate against marginalized masculinities, and the development of market-driven opportunities that enable self-supporting independent economic units in exile.

In a final example, changing economic opportunities in migration trajectories are also shown to shape refugees' gender roles. Returning Burundian refugees who had become heads of household in exile faced active discrimination and limited access to economic sustenance opportunities upon return. According to Lukumka, the experience of exile put together with the particular forms of discrimination experienced upon return changed gender dynamics and incited new forms of women's agency.

As a collection, *Gender, Violence, Refugees* provide a crucial perspective from which to analyze and develop policy to address the challenge of forced migration now facing much of our world. With its emphasis on how gender affects the experience of refugees, the authors urgently point our attention to the often understudied and overlooked challenges of gender on migrant status, protection, economic stability, and continued vulnerability to violence for refugees and returnees.

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## *Children of the Camp: The Lives of Somali Youth Raised in Kakuma Refugee Camp, Kenya*



Catherine-Lune Grayson

New York: Berghahn Books, 2017, 246 pp.

*Children of the Camp* is an ambitious and timely ethnographic approach to understanding the experiences of Somali youth who have lived all or most of their lives in a refugee camp in Kenya. The circumstances leading to their protracted refugee status have tragically become increasingly common, so while her work is about the Somali youth experience in Kakuma specifically, Dr. Grayson highlights frustrated creativity and enduring stasis that could lend insight into the experiences of displaced youth in many different contexts globally.

Her detailed attention to infrastructural, legal, and logistical challenges and options faced by these Somali youth, clearly drawing on her years of experience working within the world of refugee and humanitarian aid and resettlement, contextualize her ethnographic attention to the voices of these young people. Further, her focus on young people specifically helps to fill a literature about a portion of the population that gets far too little attention.

One of the most exciting aspects of her argument, for me, was how she implicitly constructed Kakuma itself as a protagonist in the autobiographical narratives these youth created for themselves and their communities. Kakuma, as a foster parent of sorts, was constantly both explicitly and implicitly engaged in a dialogue with these young people as they narrativized their senses of self and, borrowing from Martin Heidegger, their being-in-the-worldness. In doing so she avoided and at certain moments outright challenged the often arboreal representations of “the refugee”: rootless, ungrounded, etc. The danger in doing so, as she points out, is to strip the creativity and *self*-construction constantly undertaken by youth as they negotiate a somewhat nostalgic remembering of the past, an imagined future of becoming, and a present that is not fulfilling many promises. Importantly, she does this without over-stating this agency. As Lila Abu-Lughod reminds us, every act of agency is a diagnostic of power and of the structures in which that act is performed. Dr. Grayson does this well.

In situating Kakuma as a protagonist rather than simply a location, Grayson shows how the often conflicted ways people viewed the space were not inherently contradictory. Like a foster parent, Kakuma was supposed to offer a temporary refuge with the hopes that a more permanent home could be found (or returned to) for the children. Foster homes are

not designed to be durable solutions. Foster parents usually mean well but are often strait-jacketed by bureaucratic limitations and resources. Children who are placed under these temporary protections can feel a combination of relief, uncertainty, *and* the situational empowerment of knowing the placement should be temporary, and a not uncommon combination of feeling safe and untrusting.

It is logical, then, when viewing the refugee young person as in a dialogue of sorts with Kakuma, to expect her to undertake a complex and non-linear approach to narrativizing her own autobiographical self vis-à-vis the only “home” she has really known. But truly “becoming,” as Grayson states clearly, requires a movement out of that home and a severing of that relationship in the future present. Grayson does this especially well in chapters 7 and 8 when she shows how the young people with whom she worked represent themselves (in self-portraits and in life-narratives) and how they imagine future possibilities in their own photos and words. These are also the chapters with the richest ethnographic data and descriptions. She cultivates a deeply critical perspective of current humanitarian and refugee-based policies and practices that offer a category of being, “refugee,” as either a threat or a victim without acknowledging the agency and creativity constantly employed by the young person in everyday ways.

By focusing on these youths’ individual and collective engagement with Kakuma—the complimentary and the critical—especially as these young people have known life only in camps, Grayson offers insight into the sometimes puzzling ways these Somali youth have come to understand their lives and place in the world. They are nostalgic for and have included memories of a Somalia they have never known. They see their ability to “become” in an idealized and imagined elsewhere, but that elsewhere was made possible because of Kakuma.

The challenges Grayson faced methodologically working in this context and with a population that has been socialized into an uncertain, often violent, and untrustworthy world were likely not small. I do wonder about how her entrée into the community potentially affected some of the ways people attended to issues such as insecurity or violence. I do not doubt the veracity of those claims but, as someone with professional attachments to aid organizations, I wonder if some

of the themes characteristic of “life in Kakuma” might have been chosen by her interlocutors on the basis of that role.

I would have liked to see more of the youths’ voices and ethnographic detail in earlier chapters to further humanize the argument she was making. While she provides very rich histories of the migration process and descriptions of institutional expectations, I wanted to hear about which artists local DJs were using to mix with Somali musicians on bootlegged and dubbed CDs and tracks. I wanted to hear a little about the latest wedding video that was circulating and that groups watched to admire, tease, envy, and criticize. When hearing about life in Kakuma I missed some of the everyday

ways of being—not just the everyday violence. I wanted to read about the conversations these young people had with their families when they brought home or staged the photographs. I wanted to hear about how they went through the market to buy Eid el Fatr gifts and ingredients for the dinner.

I think *Children of the Camp* will be an important read for anyone interested in youth in protracted refugee status.

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### *After the Flight: The Dynamics of Refugee Settlement and Integration*



Edited by Morgan Poteet and Shiva Nourpanah

Newcastle upon Tyne: Cambridge Scholars Publishing, 2018, 278 pp.

**I**ntegrating into a new locality can be very challenging for refugees. *After the Flight: The Dynamics of Refugee Settlement and Integration* focuses on some of the extreme barriers refugees face to their civic participation. Globally, a punitive political climate sees asylum seekers and refugees demonized as terrorists or welfare scroungers; alternatively, many are also belittled as vulnerable. Meanwhile, cuts to settlement services have been felt across the sector, characterized by a culture of mistrust and misunderstanding.

*After the Flight* is an edited volume that, after a brief introduction by the editors, is divided into eleven chapters—each depicting case studies of refugee integration in the Global North. The book develops its focus with attention to detailed empirical research and an emphasis on human agency. The chapters draw from extensive interviews and time spent with key individuals across the resettlement landscape from refugees to NGOs, academics, and immigration officials. Throughout, the attention to representing refugees as resourceful agents, who at times construct their own forms of integration, aims to counter patronizing depictions.

The book is divided into two main sections focused on the socio-cultural integration in host contexts and specific approaches to integration. In the first section, chapters trace the social and cultural landscape that refugees integrate to and from. Baker et al. emphasize the importance of acquiring citizenship for identity formation. The experience of Bhutanese Lhotshampa refugees moving from Nepalese refugee camps to small-town life in Newfoundland is fractured, with little sense of political and civic stability. Refugees develop what the authors refer to as a “cultural toolkit,” drawing from

past and present experiences to build an identity, which encompasses a sense of self-assurance. Malischewski, on the other hand, flips the focus to the vestiges of turbulence in the host country, in particular the many layers of segregation encountered by refugees resettling in Northern Ireland. Northern Ireland has seen a dramatic rise in asylum claims in recent years, but sectarian and local/foreigner divisions complicate integration. This chapter opens up interesting debates around integration when the norm is not to integrate but to live in sectarian divided neighbourhoods.

Following the focus on identity formation, the contributions move to develop questions of structure and agency. Nourpanah emphasizes the importance of seeing refugees as resourceful agents in her study of the integration of Afghan refugees in Halifax. Here refugees are subject to negative public stereotypes as fundamentalist Muslims or victims suffering loss and trauma. Nourpanah considers how refugees respond to the matrix that they find themselves fitting into, giving a fuller picture of people as creative and skilled workers. MacLaren et al. also provide an important critique of government policy, underlining the crucial role of networking among Karen refugees from Burma resettled in Australia. Refugees also encounter a toxic political discourse in Australia. The authors make specific recommendations for settlement agencies, including understanding people’s cultural particularities and the importance of forging a culture of welcome. Finally, Ward turns the mirror on academics, arguing that they help shape the problematization of refugees. She raises important concerns, pointing out that academics tend to emphasize refugee vulnerability or focus research on

certain refugee groups as “more vulnerable” or important than another. However, funding prerogatives hinder more critical, alternative refugee research.

Throughout, the chapters take care to balance theoretical frames with ethnographic description and qualitative research. In the second section, the chapters move into more detail on integration practices themselves. In particular, Mantei takes a feminist perspective of fabric arts as gendered text among Karen women moving from Burma to Thai refugee camps to resettlement in Saskatchewan, Canada. Weaving becomes a way for women to connect to the past, even as the weaving shifts in meaning and utility for women. Holt and Laitsch’s chapter examines settlement practices in schools for refugee students adjusting to the new education system. They look at the experience of settlement workers, providing specific areas for improvement as well as highlighting the role that schools play. Sienkiewicz and Nichols keep the focus on institutional models, charting the evolution of settlement houses in the United States. Drawing on ethnographic research at a resettlement complex in North Carolina, they argue that increased communication and targeted recruitment are required to bolster integration into communities across ethno-national and racial divides.

Key strengths of this book are the authors’ suggestions for pragmatic approaches of reform. Hynie et al. develop a holistic model of integration drawn from a refugee resettlement study in six Ontario cities. They stress the importance of considering subjective variables, such as feelings of belonging and of being at home, as part of a larger holistic integration model. Bose, on the other hand, looks at the successes and challenges of a mutual aid association staffed primarily by refugees in Vermont. He makes recommendations to improve the resettlement experience, centring his methodology on participatory action research. Poteet provides an uplifting conclusion to the book, considering a more expansive notion of integration among Central American

male youth in Toronto of refugee origin. Supports are most effective when young people are encouraged to take action themselves and be involved in decision-making. This chapter makes clear—as is the case throughout the book—the challenges faced by the current restrictions of refugee policy, in particular the lack of support for community agencies.

This book is an effort to comparatively study the resettlement landscape in English-speaking countries in the Global North. What emerges is a nuanced portrait of the challenges of integration for refugees and concrete suggestions for developing better models of service delivery. Although helpful to focus on countries that have similar integration systems, omitting countries outside of the Global North does inscribe developmentalist North/South divides. In this regard, future research might consider the many ways in which people are creating local response structures, including more informal forms of hospitality in major refugee hosting contexts outside the Global North. At the same time, future researchers may also wish to reflect on forms of resettlement available not just for government-assisted refugees. Ontario’s new Conservative government recently announced that no support will be provided for the costs associated with asylum seekers crossing from the United States. In this context, it is important to understand the integration landscape for arrivals outside of institutional resettlement responses. Certainly this book has exciting implications for future research avenues. Its rich ethnographic detail and theoretically attuned exploration of the dynamics of refugee settlement and integration will make it invaluable to scholars, practitioners, and policy-makers interested in forced migration and resettlement across the social sciences and humanities.

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### *Asylum after Empire: Colonial Legacies in the Politics of Asylum Seeking*



Lucy Mayblin

Lanham, MD: Rowman and Littlefield International, 2017, 200 pp.

**L**ucy Mayblin’s book offers a sociological history of asylum policies in Great Britain through a post-colonial and a de-colonial approach that defines the refugee as “the embodiment of the darker side of modernity and of the global fallout of colonialism” (3). The first of eight chapters provide an excursus of Great Britain’s toughening laws

against migration during the 1990s, which stemmed from the government’s approach to the 1951 Geneva Refugee Convention and the related 1967 Protocols. The author builds on Chimni’s<sup>1</sup> “myth of difference,” according to which there were no non-EU migrants moving toward Great Britain after the massive displacement of the Second World War. Drawing



on Orchard's<sup>2</sup> “non-entrée regime,” the book illustrates how the U.K. government prevented people from migrating, working, or living in the cities of their choosing (2–3). Since most migrants in the United Kingdom originally came from Britain's former colonies, the author emphasizes the need to rethink the history of asylum as non-European—a detail that studies on forced migration missed as stemming from imperialist foundations. The multiple histories of displacement need to be incorporated into a European understanding of the history of asylum. This introductory chapter therefore paves the way for an in-depth analysis of the “hostility of the British state” to post-colonial asylum seekers.

In chapter 2 Mayblin reminds us that the 1951 Refugee Convention had been drafted for the European refugees of the two world wars (1915–18 and 1939–45), and the Eastern Europe refugees of the Cold War were instead relatively few. Against this historical scenario, refugee crises are today portrayed as a “problem.” Configuring her critique as a “sociology of absences,” the author examines how non-European refugees at the gates of Europe in the 1990s were depicted as “different”; she argues that they were deliberately excluded from the refugee conventions as though they did not exist (24). Non-European refugees did not come from the modern world and were therefore believed to have a status other than that of “refugee.” Mayblin's important association between modernity and refugeehood often goes unheeded in the scholarly literature, as does the contribution of colonialism to modernity. As a result, according to the author, there is a lack of contemporary accounts that strongly connect refugeehood to coloniality.

In chapter 3 Mayblin discusses how coloniality, rather than race, lies at the basis of today's anti-asylum attitudes. This chapter engages with discussions of the policies of labelling migrants (31), but the way Mayblin tackles the relationship between economic migration and forced migration remains slightly unclear. Her key argument is that it is not possible to categorize refugees on a racial basis; *asylum seeker* is a legal term that is not discriminatory in terms of ethnicity, religion, race, or gender. However, the modern colonial approach marks out refugees as “different”; asylum seekers are out of place in the spatial organization of modernity (39). While this statement is crucial to understand Mayblin's thinking, she explains in full what modernity means to her—the “right to humanity”—only later in the book, leaving the reader unsure about her conceptual framework during the early chapters.

To epistemically frame international politics in terms of coloniality and modernity, in chapter 4 the author examines the differential rights to humanity that lead to a human hierarchy. Britain's understanding of the “other” is applied to those who come from outside Europe (52). Non-white bodies

are accorded a humanity according to criteria that range from biological to cultural and civilizational (77) attributes. The abolition of slavery—which the British government used to consider a source of sustainable viability—was a historical moment of rupture in the prevailing conceptions of humanity (81). While there is surely a racial element in the hierarchical ordering of human worth, for Mayblin, human beings are organized around ideas, cultures, civilizations, and religions, rather than the biological essence of racial ascription.

Chapter 5 outlines a history of the agreements enacted between colonial countries such as the 1919 Paris Agreement that led to the new League of Nations, the post-First World War peace settlement. However, I would have preferred to see a deeper explanation of how ending this human hierarchy “is not so much about race, but the motivations of racists and the obstacles they impose” (90). Mayblin mentions the post-First World War attempt to establish a transformative institutional order, when the Japanese delegation's proposal to introduce a racial equality clause was rejected. Japan could not be treated as equal to white supremacists, and in fact faced discrimination in Great Britain and other white settler colonies (109).

Chapter 6 reasserts how the dismantling of colonialism and the subsequent reshaping of the world order entailed mass displacements outside Europe (114). The chapter recapitulates how, in the post-war period, the British government did not want to grant human and refugee rights to non-European refugees, particularly colonial subjects, but was in favour of aiding non-European refugees excluded from the Refugee Convention. In this sense, the contemporary British asylum and refugee policy needs to be understood within a context of colonialism and decolonization (146).

In chapter 7 the author unravels the institutionalized dehumanization of asylum seekers, whereby asylum applicants' ethnic origins and their position in an imaginary racial hierarchy, rather than their numbers (148), provoke racial reactions in the post-Brexit era. Importantly, Mayblin associates the British government's ongoing “war on poverty” with the historical protection reserved to non-colonized populations. She delineates a solid legal history of asylum that can also serve as an analytical basis for informed activism.

Chapter 8 concludes the book by contending that it is paramount to rebuild a historical sociology of asylum to understand how “dehumanisation is possible by the state even in the post-racial policy language of the contemporary moment” (179). With this book Mayblin employs an unusual combination of coloniality, modernity, and race in forced migration debates, stimulating further questions on post-Brexit Great Britain: do contemporary policies constitute an abandonment of Europe, or rather a rupture with the colonies by abandoning Europe?

Mayblin's book may be conceptually challenging for those who are less familiar with cultural and post-colonial studies but will inspire academic and non-academic researchers and activists to engage with human rights and asylum-seeking policies in the Global North.

#### NOTES

- 1 B.S. Chimni, "The Geopolitics of Refugee Studies: A View from the South," *Journal of Refugee Studies* 11, no. 4 (2009): 11–29.
- 2 Phil Orchard, *A Right to Flee: Refugees, States, and the Construction of International Cooperation* (Cambridge: Cambridge University Press, 2014).

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