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# **PATHWAYS TO SECURITY**

*Closing Gaps in Protection for Forced Migrants*

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## APPENDIX

<b>AFAD</b>	Turkish Department of Emergency and Disaster Management
<b>ARRA</b>	Administration for Refugee and Returnee Affairs
<b>BHER</b>	Borderless Higher Education for Refugees
<b>CAR</b>	Central African Republic
<b>CARE</b>	Cooperative for assistance of Relief Everywhere
<b>CBO</b>	Community-based Organizations
<b>CEAS</b>	Common European Asylum System
<b>CIE</b>	Identification and Expulsion Center
<b>CNARR</b>	Commission Nationale d'Accueil, de Reinsertion des Réfugiés et des Rapatriés
<b>DIP</b>	Division of International Protection
<b>DHA</b>	South African Department of Home Affairs
<b>DRA</b>	Department of Refugee Affairs
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EDPED</b>	Externally Displaced Person due to Environmental Disruption
<b>ELN</b>	National Liberation Army
<b>EMHRN</b>	Euro-Mediterranean Human Rights Network
<b>ERF</b>	European Refugee Fund
<b>EU</b>	European Union
<b>EURODAC</b>	European Dactyloscopy
<b>FARC</b>	Revolutionary Armed Forces of Colombia
<b>FEWSNET</b>	Famine Early Warning Systems Network
<b>FNSWG</b>	Food Security and Nutrition Working Group for East Africa
<b>GCR</b>	Greek Council for Refugees
<b>GoC</b>	Government of Chad
<b>GoE</b>	Government of Ethiopia
<b>GoJ</b>	Government of Jordan
<b>GoK</b>	Government of Kenya
<b>GSO</b>	General Security Office
<b>GPEO</b>	Global Polio Eradication Initiative
<b>IASC</b>	Inner-Agency Standing Committee
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICR</b>	Italian Council for Refugees
<b>IDP</b>	Internally Displaced Persons
<b>IDPED</b>	Internally Displaced Person due to Environment Displaced
<b>INEE</b>	Inter-Agency Network for Education in Emergencies
<b>IOM</b>	International Organization for Migration
<b>IRR</b>	International Refugee Regime
<b>JRS</b>	Jesuit Refugee Service

<b>MDC</b>	Movement of Democratic Change
<b>MoI</b>	Foreigner's Department of the Ministry of Interior
<b>MoSa</b>	Ministry of Social Affairs
<b>MRC</b>	Mandate Refugee Certificate
<b>MOU</b>	Memorandum of Understanding
<b>MSF</b>	Médecins Sans Frontières
<b>NRC</b>	Norwegian Refugee Council
<b>NGO</b>	Non-Governmental Organization
<b>OAU</b>	Organization of African Unity
<b>OCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>OHCHR</b>	Office of High Commissioner of Human Rights
<b>PAC</b>	Pacific Access Category
<b>PDES</b>	Policy Development and Evaluation Services
<b>RABIT</b>	Rapid Border Intervention Team
<b>RRO</b>	Refugee Reception Office
<b>RRP6</b>	Refugee Response Plan 6
<b>RSD</b>	Refugee Status Determination
<b>RUPD</b>	Central Registry for the Displaced Population
<b>SAR</b>	Bulgarian State Agency for Refugees
<b>SDC</b>	Social Development Center
<b>SHARP</b>	Syrian Humanitarian Assistance Response Plan
<b>SNPAD</b>	National System for the Integral Attention to the Displaced
<b>SRCD</b>	Syrian Refugee Camp Directorate
<b>SRCS</b>	Somali Red Crescent Society
<b>TRCS</b>	Turkish Red Crescent Society
<b>UN</b>	United Nations
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNHCR</b>	United Nations High Commission of Refugees
<b>UNICEF</b>	United Nations Children's Fund
<b>UNWFP</b>	United Nations World Food Program
<b>US</b>	United States
<b>USAID</b>	United States Agency for International Development
<b>WAEP</b>	World Agency for Environmentally Displaced Persons
<b>WFEP</b>	World Fund for the Environmentally Displaced
<b>WHO</b>	World Health Organization
<b>WPV<sub>1</sub></b>	Wild Poliovirus Type 1

## BURANBUR<sup>i</sup>

*Oh, God, we pray to you,  
To reverse our suffering,  
And shower our men with your valuable mercy.  
So that they may put the ammunition down.  
Women are suffering, carrying babies on their backs.  
Seeking humanitarian assistance, but to no avail.  
"Return later" is the only available response...  
Oh, Lord, help my daughter Marliil  
Like a lifeless body, I carry her here and there.  
Whoever I seek assistance from never helps me.  
Even the agencies I go to never assist me.  
But I never lose hope in her, she is the apple of my eye.  
Oh, God Almighty, make my daughter Marliil recover.  
Refugees fleeing has now become a nuisance,  
In some places ridiculed.  
Even our kin marginalize us.  
Kindly abandon the smoking guns, and surrender the ammunition.<sup>1</sup>*

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<sup>1</sup> Buranbur is a poetic prayer from a Somali mother, calling for an end to violence and suffering, and the bestowing of peace and mercy on her people. It also directly addresses the international humanitarian regime and its gaps in protection.

## INTRODUCTION

Over the past 60 years, the 1951 Geneva Refugee Convention has proven to be timeless and able to adapt to fluctuating patterns of crisis and forced migration. However, similar to the mother in the Buranbur poem, the UNHCR is not able to assist every single forced migrant. In fact, of 38,688,186 forced migrants in the world, only 7,962,549 are Convention refugees and 20,837,373 internally displaced persons (IDPs) of whom are assisted by the UNHCR.<sup>ii</sup> This excludes 9,888,264 persons of concern including environmentally displaced persons (EDPs), socio-economic migrants, refugees whose applications have been denied, and those living in a refugee-like state. Whether this gap in protection is caused by the UNHCR over-stretching its mandate<sup>2</sup> or a lack of solidarity between States and the international humanitarian regime, the human rights of millions of people are being violated.

Gaps in protection discussed in this report include lack of access to asylum in Europe, Africa, and the Middle East, poor access to livelihood, health, and education options, and a lack of protection for non-Convention forced migrants. This report focuses on the 8.5 million persons of concern originating from the Middle East and North Africa and almost 12 million from Africa as well as case studies drawn from other selected countries.<sup>iii</sup> In addition to moral and ethical considerations, gaps in protection for forced migrants are directly related to international security in that displacement can exacerbate conflict potentially causing destabilizing effects on a community or nation.<sup>iv</sup> Instead of addressing concerns of national security, the main focus of this report will be to address the security concerns of refugees and ensure that they receive full protection. It is imperative, therefore, that the international refugee regime examine these gaps in protection in order to better serve the highest possible number of forced migrants. Currently, the gaps in protection for forced migrants stem from the lack of solidarity within the international refugee regime leading to problems of access to refugee status and livelihood options. Millions of forced migrants have fallen between the cracks and now, more than ever, it is vital to address the needs of both Convention refugees and non-Convention forced migrants. This report identifies gaps in protection and makes recommendations in order to bring into dialogue the rights of all forced migrants.

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<sup>2</sup> UNHCR's mandate is to provide, on a non-political and humanitarian basis, international protection to refugees and to seek permanent solutions for them.

## EXECUTIVE SUMMARY

This report focuses on three primary themes within the international refugee regime and identifies gaps in protection for Convention as well as non-Convention forced migrants. The first, solidarity, refers to the uneven cooperation present in the refugee regime through international, national and local levels. Secondly, lack of access to information regarding the Refugee Status Determination (RSD) process and allocation of amenities. Lastly, the problem of documentation will be presented due to its importance for the consolidation of status, rights, and privileges of refugees. These themes will address concerns for various populations of refugees and forced migrants in particular urban refugees, camp refugees, and forced migrants not protected under the 1951 Convention.

### *Solidarity*

- Strengthen cooperation between international, national and local agents in the international refugee regime.
- Reiterate existing international and national treaties and agreements about upholding the refugee regime.
- Incorporate local populations and municipalities into the refugee regime response.
- Combat the influence of xenophobia and other prejudices against refugees and forced migrants.

### *Access to Information*

- Provide adequate information to people about their rights as refugees and forced migrants as well as the RSD process.
- Provide information about amenities such as healthcare, education, and work opportunities for refugees.

### *Documentation*

- Facilitate documentation processes so that it is available to all forced migrants.
- Encourage registration among populations of concern.

In order to cover all of these issues, this report is divided into sub-sections titled “Access to Protection,” “Livelihood,” and “Non-Convention Forced Migrants.” “Access to Protection” will address the process in which forced migrants gain access to host nations and refugee status. “Livelihood” will address access to important daily life issues including healthcare, education, and labor force participation. “Non-Convention Forced Migrants” will focus on categories of forced migrants that are not defined in the 1951 Convention.

## ACCESS TO PROTECTION

The key to a successful implementation of a refugee regime framework is cooperation between host nations and UNHCR. This section will primarily address the

barriers the UNHCR faces in the implementation of its guidelines due to uncooperative countries, xenophobia, and faulty documentation processes. Although a majority of countries have signed the 1951 Convention, they are not upholding the regime that they helped ratify. For example, Italy and Kenya which are transitioning to stricter refugee regimes, are turning refugees away. This has strong implications because other nations in that region have to take in more refugees that they are not able to support given their current infrastructure. This trend of stricter refugee regimes derives from a perceived threat of national security exacerbated by xenophobia. Other issues that need to be addressed are the processes of informing refugees about their status or how to achieve status, and documentation. Recommendations from this section are as follows:

### ***Cooperation between UNHCR and Host Nations***

- The UNHCR must continue to help assisting and supporting the efforts to consolidate the reception, registration, documentation, Refugee Status Determination (RSD), and camp management capabilities of host nations.
- The UNHCR must work with the host nation's refugee regime to uphold their obligations under the 1951 Convention, the 1967 Protocol, and other regional laws relating to asylum, borders, and immigration. The UNHCR can work alongside international courts in order to create penalties against countries that do not follow the refugee regime recommendations.
- The UNHCR must place realistic limits on the number of asylum seekers than can be held there to enable all people to have proper nutritional and medical care as stated under the Reception Conditions Directive.
- The UNHCR should work together with host nations to set up a border asylum procedure that meets human rights standards. Migrants would be able to apply for asylum as soon as they reach the border of their perspective host nation and will facilitate their access to asylum and facilities.

### ***Information, Documentation, and Process Facilitation***

- Relocate local UNHCR offices to larger facilities which will be more accessible to urban refugees and also increase the efficiency of the entire process. It is also recommended that UNHCR increase their urban staff in order to better receive the growing number of urban refugees.
- The UNHCR should cooperate with host nations as well as refugee centered NGOs to provide a greater number of trained translators in each of these nations. This will ensure that migrants have access to pertinent asylum information.

### ***Xenophobia and Host Country Integration***

- Promote and generate a positive and refugee-friendly discourse through local media in order to combat xenophobia.

## LIVELIHOOD

The continuing plight of refugees on a daily basis is an urgent problem that needs to be addressed in order to greatly improve the lives of millions of people. Refugees face obstacles every day from finding employment to the educational needs of their children. Refugees in every country face various problems that prevent them from resuming a normal life following the trauma of becoming forced migrants. Furthermore, the massive migration of refugees has tremendous impacts on the surrounding countries and regions. For example, the impact of the Syrian Refugee Crisis has been felt in the propagation of polio in countries that have hosted refugees. This affects both refugees and those living in these countries making it a problem for all countries in the region and a problem faced on a daily basis by all. This section will go in depth to describe the problems that refugees face on a daily basis, and solutions that, when implemented, could affect a great deal of change in their lives. The focus of this section's recommendations will be on durable solutions, which will create a long-lasting impact on the lives of refugees.

Recommendations are as follows:

### ***Cooperation between UNHCR and Host Nations***

- Empower refugee-led informal schools by providing safe spaces, learning materials, teacher training, and salaries.
- Combat child labor by increasing financial aid to refugee families with children participating in labor.
- Integrate peace education into existing programs and hold community peace education programs for all to attend. Encourage host community members to engage with refugee populations and facilitate programs that combat xenophobia.
- UNHCR and other health NGOs must help to provide states with information, technology, and resources needed to improve their health surveillance systems.
- The UNHCR and other international actors must provide support for NGOs that currently provide health education in media, theater, and art campaigns, in culturally appropriate contexts, so that they may expand their programs and create more awareness and knowledge in the refugee and IDP communities on health topics such as polio.

### ***Information, Documentation, and Process Facilitation***

- The UNHCR should encourage financial institutions to invest in micro-credit options for forced migrant populations in order to encourage entrepreneurship and give forced migrants access to financial assets.
- The UNHCR should encourage local businesses to reach out to forced migrant communities in order to create economic opportunities. This not only benefits the forced migrants, but also provides a labor source and commodity market for the business.

- NGOs, states and any other actors that distribute vaccinations must provide recipients with medical reports documenting the vaccination.
- Support expansion of host country public school systems through additional teacher training programs, infrastructure updates, and supply of educational materials. Ensure host countries are receiving adequate monetary aid to support the increased burden on public schools.
- Ensure universal access to education by creating and supporting programs that inform refugees about educational opportunities and how to access them. Provide safe transportation options for students. Provide appropriate supplies including clothing, notebooks, pencils, and sanitary materials.

### ***Xenophobia and Host Country Integration***

- Ensure non-discriminatory access to education for girls through outreach programs.
- Implement accelerated learning programs for Syrian children to learn French and English in order to prepare them for Lebanese public schools, and programs for Syrian children to learn Turkish in order to prepare them for Turkish public schools.
- The UNHCR should encourage the practice of “home sharing” as advocated by Norwegian Refugee Council because it directly benefits both forced migrants and the local population.

## **NON-CONVENTION FORCED MIGRANTS**

Not all forced migrants receive equal protection; this section will primarily address the lack of protection for forced migrants not defined as refugees under the 1951 Convention. These populations include internally displaced persons IDPs, Stateless persons, EDPs, and socio-economic migrants. Although conventions exist concerning some of these populations, gaps in protection still exist allowing these populations to live in a refugee-like state without assistance from the UNHCR. For example, 2 million Zimbabweans fled to Botswana and South Africa due to the government not being able to meet their socio-economic needs but they are considered “economic migrants” in the eye of the law, therefore receive no assistance from the government or the international humanitarian regime. This section argues that these populations of concern not defined in the 1951 Convention need to receive a higher level of protection due to their refugee-like status and proposes recommendations as follows:

### ***Solidarity***

- Using the model of the Guiding Principles for IDPs, build on existing “soft law” rather than creating new “hard law” to address forced migrant protection.
- Apply human rights norms established in the documents of the “International Bill of Rights” to non-Convention forced migrants.

### ***Access to Protection & Information***

- Nations must allow wider access to humanitarian workers and organizations in order to give assistance to populations of concern.
- The international refugee regime must include the participation of non-Convention refugees as well as host community members in the form of dialogue, interviews, and surveys.

### ***Xenophobia, Definitions***

- Continue efforts to decrease xenophobia; creating awareness between local host populations and forced migrants through media and government campaigns.
- The UNHCR must create inclusive, legal-defining terms for non-Convention forced migrants.

The continuing plight of forced migrants is an urgent problem that needs to be addressed in order to greatly improve the lives of millions of people. On a daily basis, Convention and non-Convention face insurmountable problems.

A concerted effort by host countries, donor countries, municipalities, NGOs, and businesses, led by an organization such as the UNHCR could enact a great deal of change for refugees throughout the world. More concretely, the implementation of long-term and durable solutions such as the creation and accreditation of informal refugee-led schools in urban and camp settings, or programs to extend documentation to refugees could go a long way to improving their daily lives and those of their families for the foreseeable future. Currently the international response to refugee crises is one of triage in which refugee camps soon become permanent fixtures on the landscape where refugees languish for years. An investment into the well-being of refugees will produce benefits to those countries that host them, but this requires donor countries to provide resources and monetary aid to those host countries.

Refugee security and livelihood is of the utmost importance because these crises have impactful reverberations throughout the regions in which they occur. One of the most unsettling consequences from the current response to such a crisis is happening in and around Syria; the spread of polio amongst refugees and possibly to those in countries where these refugees reside. In addition to the violence that is rampant in the area and spilling over into countries such as Lebanon, communicable diseases have the potential to take many more lives.

Refugee protection and security needs to be strengthened to create the most impact in the lives of refugees and in the regions where they reside. Forced migrants and host countries alike will benefit from increased and more effectively allocated aid. This

report identifies gaps where aid is not being used effectively and where host countries are not taking full responsibility. It is imperative that the UNHCR, the international refugee regime, and all nations work in solidarity to overcome problems facing forced migrants.

# Access to Protection

## INTRODUCTION

*By: Clara Langevin*

Although the UNHCR has implemented guidelines for proper refugee regimes, it is ultimately due to cooperation with host nations to ensure that refugees receive asylum status and adequate protection. The recommendations in this section are structured with the intent of strengthening solidarity between international, national and local refugee regimes and the reduction of certain barriers to protection, such as xenophobia. Access to proper documentation and access to information about refugee status will also be addressed because they are necessary for a functioning process.

This section will focus on three regions of concern that have been chosen because of their relevance to certain refugee crisis such as the exoduses from Eritrea, Sudan, Somalia and Syria. The first region which includes Eastern and the Horn of Africa, namely the countries Kenya, Ethiopia and Chad, will focus on preventing an emergence of a more restrictive refugee regime. The next region, Europe will specifically focus on the Italian, Greek, and Bulgarian nations and their incapability, or rather reluctance to uphold UNHCR instructions for proper asylum policy. Lastly, the subject of Syrian refugees in the Middle and Near Eastern countries of Jordan, Lebanon, and Turkey will be discussed as well as the capabilities of those countries to enact successful refugee regimes or transitions to third country re-settlement.

# PROTRACTED PROTECTION

## *Preventing a Restrictive Refugee Regime in East & Horn of Africa*

By Fanny Nicolaisen

*“You are a prostitute and you Somalis are all Al-Shabaab and terrorists.”*

- A Somali refugee living in Nairobi, Kenya, recites to the Human Rights Watch what a female regular police officer said to her, just before two male regular police officers raped her in a police vehicle on January 18<sup>th</sup> 2013.<sup>v</sup>

## INTRODUCTION

The Kenyan population and government has showed remarkable solidarity towards refugees, allowing large numbers to enter, while the government has willfully opened up new camps and cooperated with humanitarian agencies to accommodate them. However, over the past few years, the general population and government of Kenya have grown increasingly suspicious and skeptical towards the large refugee population, especially those of Somali origin. The increased xenophobia has in turn, posed a threat to Kenya’s current refugee regime, and the asylum seekers and refugees’ ability to access protection. Recent policy suggestions and attitudes toward the large refugee population in Kenya send warning signs of a wish for a stricter refugee regime in Kenya. It is in the UNHCR’s interest to secure and improve refugees’ access to protection in Kenya and prevent the development of a more excluding refugee regime due to the regional ramifications that can result. For one, it would restrict new asylum seekers and refugees’ ability to access to protection and refuge within Kenya. In turn, this can force refugees to have to seek asylum in other countries in the region, like Ethiopia, whose capacity to receive new arrivals is already strained. Thirdly, if Kenya implements a stricter refugee regime, it might set a precedent for other countries in the region, who are also dealing with a large refugee population, to follow suit.

This chapter will focus on the challenges of accessing protection in East, and Horn of Africa. The central focus will be on Kenya, with connections and comparisons to refugees’ access to protection in Chad and Ethiopia. These three case studies were selected because their refugee regime and situation share several similarities. They are currently the three largest host states of refugees in Africa, and amongst the top eight in the world.<sup>vi</sup> They are all signatories to the 1969 Organization of African Unity Refugee

Convention,<sup>vii,3</sup> and have for years operated with a fairly generous admittance policy towards refugees and asylum seekers.

The policy options presented in this chapter aim to advance the UNHCR's efforts to preserve and further improve asylum seekers and refugees continued ability to access protection through a focus on improved documentation, information and solidarity.

## SECURING ACCESS TO PROTECTION IN KENYA

### *Background on the Current Refugee Situation*

Kenya has generously hosted and supported large influxes of refugees and asylum seekers predominantly from East Africa and the Horn of Africa region since the early 90s, and has proved to have a fairly accommodating and flexible refugee regime compared to many other nations. Kenya's geographical location, generous acceptance and regional circumstances have prompted around 605,913 refugees and asylum-seekers to reside within Kenya as of February 19<sup>th</sup> 2014.<sup>viii</sup> This makes Kenya the fifth largest host nation of refugees globally, the largest host nation within Africa,<sup>ix</sup> while also accommodating for the world's largest refugee camp cluster, Dadaab/Alinjugur. The two main groups of concern to the UNHCR's operation in Kenya in 2014 will predominantly be asylum-seekers and refugees from Somalia (ca. 80 percent), predominantly residing in the Dadaab/Alinjugur camp cluster due to insecurity and famine.<sup>x</sup> The second largest group is South Sudanese, (ca. 7.1 percent, but increasing) residing in the Kakuma camp due to inter-ethnic conflict and violence.<sup>xi</sup>

Kenya is a signatory to the 1951 UN Refugee Convention and its 1967 Protocol, as well as the 1969 Organization of African Unity (OAU) Refugee Convention.<sup>xii</sup> Kenya also implemented its own national refugee legislation in 2007, the Refugee Act 2006, which instituted the establishment of the Department of Refugee Affairs (DRA) and the position of an appointed Refugee Commissioner.<sup>4, xiii</sup> Kenya has been praised for its remarkable

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<sup>3</sup> The 1969 OAU Convention, adopted in 1969 and implemented in 1974, is the regional legal instrument governing refugee protection in Africa. Originally ratified by one third of the Member States of the now-called African Union, it is currently signed or ratified by 50 of the 53 Member States of the AU.

<sup>4</sup> Kenya has had an interim Commissioner for Refugee Affairs for almost 4 years now, which arguably has further weakened the capacities the DRA. The announcement of a new and permanent appointment is expected soon.

willingness to host a large refugee population, and for the Government of Kenya's (GoK) active policy efforts to accommodate them. Despite these positive aspects, the Kenyan refugee regime is still in need of considerable improvements as the quality of asylum has often been poor, with numerous violations of the civil, political, social and economic rights of refugees.<sup>xiv</sup> Kenya's *de facto* adherence and implementation of the international and national legislative framework have thus been inconsistent and flawed, which is largely attributed to the 'working policy' of encampment since the early 1990s.<sup>xv</sup> Kenya's refugee regime, historically characterized by encampment and the UNHCR in charge, has gone through substantial changes in their asylum and refugee policy framework and practices since 2006.<sup>xvi</sup> This is in large part due to the implementation of the national refugee legislation, Refugee Act 2006, which constituted the gradual shift in responsibility of key functions within the refugee regime from the UNHCR to the GoK. The Kenyan government, through the management of the DRA, has resumed greater involvement and responsibility in refugee affairs, most importantly by assuming the responsibility for the initial reception and registration of refugees in 2011.<sup>xvii</sup> The shift in roles is an on-going process as the UNHCR is scheduled to gradually hand over their responsibilities as the DRA continues to build its capacity.

Over the past few years, Kenya's current refugee regime and issues have increasingly become a matter of high politics and debates within the GoK, and with relevant non-state actors like the UNHCR. As detailed later in the Urban Refugee and the Xenophobia section, it is currently evident that popular and political Kenyan forces are keen on securitizing and shrinking the asylum space due to national security concerns.<sup>xviii</sup> The increased stigmatization of the refugee population as a threat to national security and stability has already proved to have a damaging effect on refugees and asylum seekers' access to protection. The progressions towards a more securitized and limited refugee regime can have a very damaging impact on refugee rights in Kenya if the situation is not addressed promptly and efficiently.

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<sup>5</sup> Although encampment has been the working policy of the GoK since the early 90s, Kenyan law has not officially stipulated it. Kenyan legislation makes it a punishable offence for refugees to be outside the designated areas for transit centers and camps, however such areas have not been formally designated. Freedom of movement, as stipulated by both international and national law has thus been restricted as refugees are required to obtain movement passes issued by the DRA if they wish to travel outside of the camps for specific reasons.

It is crucial for the UNHCR's future operation in Kenya to continue to consolidate the Kenyan government's reception, registration, documentation, RSD and camp management capabilities, in order to meet one of its' top priorities of preserving asylum seekers and refugees' access to protection. In addition, the UNHCR should coordinate collective advocacy and lobbying forces within national and international agencies to ensure that xenophobic prejudice and pressure to securitize the asylum space does not affect the ongoing assessment of the current Refugees Act, 2006. This is crucial to ensure the continued standards of protection for asylum-seekers and refugees as defined by the provisions in the 1951 Refugee Convention and the 1969 OAU Convention.<sup>xix</sup>

### ***Access to Protection In Kenyan Refugee Camps***

There are two main refugee camp clusters in Kenya, in which both the DRA and UNHCR are responsible for the overall management, in cooperation with other UN agencies and service-providing NGO's, like Médecins Sans Frontières.<sup>xx</sup> The largest one is the Dadaab/Alinjugur camp cluster in eastern Kenya, which is composed of five satellite camps, Dagahaley, Ifo, Ifo 2, Hagadera, and Kambios.<sup>xxi</sup> Dadaab/Alinjugur hosted 408,283 registered refugees as June 30<sup>th</sup> 2013, wherein 95.7% of the refugees here were of Somali origin.<sup>xxii</sup> The refugee population in the Dadaab/Alinjugur camp has declined with nearly 40,000 over the past year.<sup>xxiii</sup> This is partly attributed to the ongoing process of voluntary returns after the UNHCR and the government of Kenya and Somalia signed a Tripartite Agreement<sup>6</sup> in November 2013, governing the voluntary repatriation of Somali refugees in Kenya.<sup>xxiv</sup> The second largest camp cluster is Kakuma, located in Northwestern Kenya.<sup>xxv</sup> The UNHCR reported that Kakuma had an active camp population of about 147,230 people as of February 19<sup>th</sup> 2014.<sup>xxvi</sup> Kakuma has faced a major influx of South Sudanese arrivals since December 2013, and will most likely continue to do so due to the ongoing South Sudanese crisis.<sup>xxvii</sup> The majority of refugees in the Kakuma camp are of Somali and South Sudanese origin.<sup>xxviii</sup> Both Dadaab/Alinjugur and Kakuma are facing strains on resources due to overcrowding and under-funding, which negatively affects the refugees' access to protection in terms of backlogging of the registration and RSD process.

An issue affecting refugees' access to protection within the Dadaab/Alinjugur camp cluster is the possible repercussions following the ratification of the Tripartite Agreement between the UNHCR, the GoK and the government of Somalia in November

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<sup>6</sup> The tripartite agreement defines the signatories' roles and responsibilities, and is incorporate the internationally accepted standards that safeguards voluntary repatriation. The agreement will not affect the assessment of international protection needs of asylum-seekers from Somalia.

2013. Several voices within the international refugee regime, like Amnesty International and Refugees International, has voiced concerns that the implementation of the Tripartite Agreement can lead to refoulement.<sup>xxxix</sup> This is especially true for the refugee population with the Dadaab/Alinjugur camp cluster, which hosts the majority of Somali refugees and asylum-seekers and is located very close to the border between Somalia and Kenya. The conditions in Somalia are not conducive for to large scale returns, but the Tripartite Agreement has opened up for facilitating small-scale voluntary returns to the areas in Somalia that are deemed stable enough to receive returnees in a safe and sustainable manner.<sup>xxx</sup>

According to the UNHCR's Voluntary Repatriation Handbook, voluntary decisions of repatriation are based on "an informed decision" and "a free choice," and can only be deemed voluntary if positive 'pull- factors in the country of origin' are the 'overriding element in the refugees' decision to return rather than possible push-factors.'<sup>xxxi</sup> However, according to a recent study by Amnesty International, many Somali refugees feel forced to return to Somalia due to the mounting pressure from Kenyan political and social factors to limit the asylum space through restricting their right of free movement, arbitrary arrests, xenophobic violence and other human rights abuses.<sup>xxxii</sup> These impressions have been further strengthened by public statements by high-level Kenyan official that contradicts some of the key principles of the Tripartite Agreement.<sup>xxxiii</sup> The Kenyan Secretary of Interior, Joseph Ole Lenku stated, "All the camps should be closed and the debate on whether or not it is appropriate has been passed by time" when visiting the Dadaab camp shortly after the agreement was signed.<sup>xxxiv</sup> Echoing this sentiment, Vice President Ruto stated that the GoK "estimate that the repatriation process could take up to three years."<sup>xxxv</sup> This contradicts the Tripartite Agreement, as it does not assert a timeline for the repatriation process of Somali refugees.<sup>xxxvi</sup> The UNHCR has an obligation to make sure that repatriation process does not violate the international principles of asylum and non-refoulement, and denies Somali refugees' rights to access to protection. They can do so by verifying that all the assisted refugee repatriations are fully voluntarily, and according to the international refugee law and standards.<sup>xxxvii</sup> Secondly, the UNHCR should provide information and guidance in the Dadaab/Alinjugur camp cluster relating to the voluntary repatriation process to ensure that decisions to return to Somalia are truly an informed decision based on a free choice.

In a UNHCR Kakuma camp update from the beginning of February this year, it was stated that the Commissioner for Refugees was expected to call a DRA senior

management meeting shortly, in which the possibility of *prima facie*<sup>7</sup> recognition of South Sudanese asylum seekers would be discussed.<sup>xxxviii</sup> Such a recognition could have a significantly positive impact on South Sudanese's access to protection in Kakuma - and in Kenya in general, and the UNHCR should thus attempt to participate in this discussion, and put pressure on the DRA to recognize South Sudanese asylum seekers on a *prima facie* basis.

### ***Access to Protection In Urban Areas***

Since the early 1990s, the Kenyan authorities have followed an un-codified encampment policy, which effectively restricted refugees to reside either in the Dadaab or Kakuma camps.<sup>xxxix</sup> However, the enforcement of these restrictions has varied, and been somewhat limited, as they have not been fully ratified by law.<sup>xl</sup> Over recent years, urban areas - most notably Nairobi with an estimated asylum-seeker and refugee population of 56,000, have experienced a steady influx of people.<sup>xli</sup> Following the Nairobi Initiative in 2005<sup>8</sup>, and the UNHCR's revision of its urban policy in 2009, the UNHCR established a special program in order to assist urban refugees and asylum seekers more efficiently.<sup>xlii</sup> Despite the un-codified encampment policy, Kenyan authorities have acknowledged that urban settlement by refugees is unavoidable and to some degree permitted.<sup>xliii</sup> Thus, when the DRA took over the responsibility of registering refugees in March 2011, registration activities and operations were also undertaken in Nairobi, and later on in Mombasa, Malindi, Nakuru, Eldoret and Isiolo as well.<sup>xliv</sup> Prior to 2011, individuals would only register their refugee claim with UNHCR. However, the registration process has changed in accordance with GoK's pledge to take increased responsibility for the refugee and asylum seeker population. Today, individuals have to first register as asylum-seekers with the DRA in order to receive an asylum pass, before proceeding to the UNHCR for RSD.<sup>xlv</sup> Somali refugees are admitted on a *prima facie* basis, and are thus automatically recognized as refugees and issued a certificate of refugee status, often referred to as a Mandate Refugee Certificate (MRC) by the UNHCR.<sup>xlvi</sup> The MRC provides refugees with proof of their legal status within Kenya.<sup>xlvii</sup> Refugees with different origins are required to

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<sup>7</sup> Countries usually lack the capacity to consider individual asylum applications when faced with a mass influx of refugees. It is generally obvious why they have fled, e.g. due to conflict or generalized violence, and as a result such groups, like the Somalis in Kenya, are often granted admission and protection on a *prima facie*, or group basis. Subsequently, refugees are protected from *refoulement*, but their rights are often more limited and they are usually confined to camps.

<sup>8</sup> The UNHCR launched the Nairobi Initiative in order to re-evaluate its urban refugee program through a series of workshops and meetings with NGOs working with refugees in Nairobi. This marked the beginning of stronger and more coordinated relationships among UNHCR, NGOs, and refugee communities.

undergo the RSD process individually, and if their claim is approved they will receive a MRC, before they, along with the Somali refugees, are referred back to the DRA to receive their government-issued ID. <sup>xlviii</sup>

In terms of urban refugees' access to protection, there are currently two major problems; for one, the RSD process with the UNHCR is severely backlogged and inefficient. Secondly, the 2012 directive from the GoK to relocate urban refugees into camps has halted the DRA' registration services of new refugees and asylum-seekers, and caused increased levels of xenophobic violence and arbitrary arrests.

Urban refugees who are subjected to individual RSD processing face several registration challenges when encountering the UNHCR. They are subject to unreasonable timelines with RSD processing averaging to 13 months, inconvenient office location, errors and postponement of appointments.<sup>xlix</sup> They also encounter personnel who lack education and proper knowledge of the refugee regime, and language barriers due to poor and absent translation practices.<sup>l</sup> All of these factors contribute to a gap in refugees and asylum seekers access to protection in urban areas. In order to speed up the RSD process, the UNHCR has to increase its current capacity by increasing its staff and their education in relation to Kenya's refugee regime and the RSD process. In Nairobi, the UNHCR should also consider relocating to a more convenient and larger office location, closer to where the majority of the urban refugee population resides. This would help mitigate the problems of cost and security issues refugees face when repeatedly travelling to the UNHCR office for the RSD process. <sup>li</sup>

A more recent development that has affected UNHCR's ability to provide access to protection for urban refugees and asylum seekers, and which continues to put the urban population at risk, is the government directive from late December 2012. The directive was in response to the increase in attacks on political and civilian targets by the Al-Shabaab, and required urban refugees to relocate to their respective refugee camps. <sup>lii</sup> According to the notice posted in newspapers by the GoK "*The government of Kenya has decided to stop reception, registration and close down all registration centers in the urban areas.*" <sup>liii</sup> In practice, this was an attempt by the GoK to bring about a legislated *de facto* encampment policy in Kenya.<sup>liv</sup> It thus marked a serious setback to Kenya's significant advances in their refugee regime to accommodate urban refugees, as well as a threat to UNHCR's urban refugee policy.<sup>lv</sup> Following a joint challenge in court initiated one of UNHCR's legal partners Kituo Cha Sheria, the High Court of Kenya issued a reprieve against the directive.<sup>lvi</sup> The High Court concluded that the directive was in violation of several constitutional and international rights, e.g. the right to freedom of movement, right to dignity, right to fair and administrative action.<sup>lvii</sup> However, as of late December 2013, the DRA has not yet resumed its legal services and full operations that were suspended during the court process,<sup>lviii</sup> and the GoK has indicated its intention to appeal

the High Courts decision.<sup>lix</sup> More importantly, the DRA's lack of registration and issuance of documents puts new asylum seekers and refugee arrivals at an increased risk of arbitrary arrest based on lack of documentation. It also restricts their access to scarce social resources even further, like health services, education and other essential services.<sup>lx</sup> This situation and its lingering after-effects are not mentioned in the UNHCR Global Appeal for 2014-2015. Despite this, it is crucial that the UNHCR addresses this gap in access to protection for urban refugees without further delay, and puts pressure on the DRA to resume its registration responsibilities in urban areas in order to ensure that the asylum space in Kenya is properly protected.

### ***Increased Level of Xenophobia***

The 2012 government directive discussed above was also symptomatic of the GoK interest in shrinking the asylum space and securitizing the current refugee regime in the context of their domestic political and security concerns.<sup>lxi</sup> This reflects the increased xenophobia in Kenya, which has contributed to heightened levels of harassment and extortions of urban refugees by security services in Nairobi.<sup>lxii</sup> The hostility is largely directed towards the dominant Somali refugee population, who has continued to arrive in large numbers on a *prima facie* basis since the early 90s.<sup>lxiii</sup> Somali urban refugees have experienced the brunt of the increased levels of xenophobia since 2011, as police personnel from various agencies; have subjected them to increased harassment and abuse. The suspicion and mistreatment of Somali refugees arise from the unjust association to the Somali insurgent group Al-Shabaab. Since Kenya deployed military forces to Somalia in 2011, Al-Shabaab has carried out several attacks within Kenya in retaliation, like the Nairobi mall shooting in September 2013.<sup>lxiv</sup> Non-state actors that are involved with the Kenyan refugee system primarily consider the 2012 directive to be targeted towards the Somali refugee population specifically, in an attempt to securitize the asylum space and protect national security concerns.

The use of specific language and discourse is a strong tool, and can have great impact on populist understanding and perceptions on societal situations and issues. Kenyan populist politicians and journalists frequently depict asylum seekers and refugees as threat to national security and stability, by referring to refugees and asylum seekers within the context of terrorists, illegal and a burden. These types of sentiments and generalizations can quickly create a distorted and negative image of the refugee population within the Kenyan public, and indirectly fuel racism, xenophobia, hostility and resentment.<sup>lxv</sup> The UNHCR should therefore mitigate the problem of xenophobia by changing the populist perceptions of refugees and asylum seekers in Kenya by changing the discourse used by the media and politicians. An initiative that the UNHCR has implemented in other countries facing some of the same challenges, are by encouraging and promoting more accurate media coverage through voluntary codes of conduct for

reporting on asylum and refugee issues and situations.<sup>lxvi</sup> The UNHCR should thus initiate a code of conduct initiative, e.g. through a partnership with the Kenya Correspondents Association, which will help mitigate the problems of xenophobia and negative stigmatization by encouraging a more positive and accurate discourse regarding the refugee population.

## ACCESS TO PROTECTION IN ETHIOPIA

### *Background on the Current Refugee Situation*

Due to Ethiopia's geographical location, the environmental and political developments in the region, as well as its generous acceptance of refugees and asylum seekers,<sup>lxvii</sup> Ethiopia is currently ranked the eight largest host country in the world with a refugee population of about 453,836 people as of January 31<sup>st</sup> 2014.<sup>lxviii</sup> The Government of Ethiopia (GoE) has generously allocated land for 18 existing refugee camps, and is currently in the process of arranging for new camps to be opened as the existing camps are reaching their maximum capacity.<sup>lxix</sup> The three main groups of concern to the UNHCR's operation in Ethiopia in 2014 will predominantly be asylum-seekers and refugees from Somalia (ca. 52 percent), mostly residing in Dollo Ado and Jijiga camps due to insecurity and famine.<sup>lxx</sup> The second group of concern is South Sudanese refugees (ca. 20 percent, but increasing), who mostly reside in in camps in the Gambella region or in host communities in Wanthowa Woreda and Raad due to inter-ethnic conflict.<sup>lxxi</sup> The third group of concern is the Eritrean refugees and asylum seekers, (ca. 19 percent) primarily residing across the Tigray and Afar regions.<sup>lxxii</sup> Along with other national and international NGOs and agencies, the UNHCR's main cooperation and implementation partner is the Administration for Refugee and Returnee Affairs (ARRA) within the Ethiopian government.<sup>lxxiii</sup> Ethiopia is a signatory to the 1969 OAU Refugee Convention, but continues to hold reservations against the 1951 UN Convention, notably to Articles 17-19 regarding employment opportunities.<sup>9</sup> <sup>lxxiv</sup> Despite this, they support and allow refugees to reside outside camp facilities, and to be part of various livelihood activities in the informal sector.<sup>lxxv</sup>

### *Issue Regarding Access to Protection in Ethiopia*

Similar to Kenya, Ethiopia is currently facing a major influx of South Sudanese refugees and asylum seekers along its western border due to the political crisis and

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<sup>9</sup> According to the 1951 Convention, Article 17 outline wage-earning employment, Article 18 relates to self-employment and Article 19 is concerned with liberal professions.

increased level of violence in South Sudan.<sup>lxxvi</sup> Since December 15<sup>th</sup> 2013, over 28,751 South Sudanese refugees have fled to neighboring Ethiopia to seek refuge, bringing the total population of refugees with South Sudanese origin to almost 97,000.<sup>lxxvii</sup> A continued influx of South Sudanese refugees is expected, but the capacities in the current camps are already strained. It is thus crucial that the UNHCR in cooperation with ARRA determinate a new camp site so that increased accommodations for new arrivals can be launched quickly if necessary.

### ***Potential Effect if Kenya Restricts its Refugee Regime***

As exemplified by Europe, increased restrictions and policy interventions against refugee influxes in one country can have regional affects, as the burden falls on other regional countries as they become alternative settlements. The southern sea border was considered the most porous section of the EU's external borders in 2008, but between 2009 and 2010 there was a step decline in illegal border crossings by sea into Italy, Malta and Spain.<sup>10 lxxviii</sup> This is mostly attributed to increased border controls by FRONTEX, and bilateral prevention and return agreements with third countries.<sup>lxxix</sup> The restrictions to the Western and Central Mediterranean migration routes forced the migration flow elsewhere, predominantly towards the Eastern Mediterranean land route between Greece and Turkey.<sup>lxxx</sup> As Italy detected a decline of unauthorized entries from 35,000 to less than 5,000 between 2008-2010, the Greece-Turkey border faced an increase from 14,000 to over 45,000 unauthorized entries in the same time period.<sup>lxxxi</sup>

A similar trend could potentially happen in the East-Horn of Africa if the current trends and calls for a stricter refugee system in Kenya continue to develop and become implemented. Ethiopia will most likely carry the brunt of such a development, as it shares a very similar demographic in term of incoming refugee and asylum seekers with Kenya. The Somali refugee population is dominant in both Ethiopia and in Kenya, and the ongoing influx of South Sudanese refugees due to the inter-ethnic conflict, is affecting both of these countries as well. If Kenya restricts access to protection, as indicated by the 2012 Government directive, a large number of refugees, predominantly South Sudanese and Somalis, might feel compelled, if not forced to, seek out Ethiopia as an alternative place of refuge. The Ethiopian refugee system is already stretched thin in terms of capacity, and a possible increase in refugees who are “redirected” from Kenya, would

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<sup>10</sup> Most migration patterns are subjective to frequent fluxuations and changes, and this is also the case for the southern sea border in Europe as the Arab Spring changed and influenced migration routes and numbers.

overwhelm the system further and critically affect the ability and quality of access to protection for refugees.

## ACCESS TO PROTECTION IN CHAD

### ***Background on the Current Refugee Situation***

Similarly to Kenya and Ethiopia, Chad has also operated with a generous acceptance policy towards refugees and asylum seekers over recent years.<sup>lxxxii</sup> This, coupled with its geographic location has thus prompted Chad to be the seventh largest refugee host in the world.<sup>lxxxiii</sup> Following two refugee crises and influxes in cross-border migration trends in 2013, due to political instability and security concerns in neighboring countries,<sup>lxxxiv</sup> Chad hosted an estimated 449, 230 refugees and asylum seekers as of December 2013.<sup>lxxxv</sup> The newly admitted refugees add to an already sizable refugee population of concern to the UNHCR with the Sudanese population representing ca. 80 per cent, and Central African refugees representing ca. 19 per cent of Chads total refugee and asylum-seeker population.<sup>lxxxvi</sup> The UNHCR is expecting to see a continued increase in refugees arriving from the Central African Republic (CAR) and Sudan in the year to come, as the political situation and security conditions are likely to remain unstable.<sup>lxxxvii</sup>

The UNHCRs main governmental partner in Chad is the Ministry of the Interior, through the operations of the Commission Nationale d'Accueil, de Reinsertion des Réfugiés et des Rapatriés (CNARR),<sup>lxxxviii</sup> along with other international and national agencies and NGOs. Similar to Kenya, Chad is a signatory to the 1951 Refugee Convention and its 1967 Protocol, as well as the 1969 OAU Refugee Convention. In addition, the government of Chad is in the process of adopting a national law on refugees and asylum.<sup>lxxxix</sup> The majority of refugees - arriving from CAR in the south, and Sudanese refugees in the east, are admitted on a *prima facie* basis and are thus automatically accepted as refugees by the Government of Chad (GoC), and enjoy the right to access health and educational services.<sup>xc</sup> Urban refugees are subjected to the RSD process through CNARR, and are granted the same rights as *prima facie* refugees once approved.<sup>xc</sup> Although the UNHCR continues to focus on improving the integration of refugees into national education, health and basic social services programs, the GoC has made great efforts to strengthen its presence in refugee host communities and its relationship with the UNHCR.<sup>xcii</sup>

### ***Lack of National Refugee Legislation***

Chad is a signatory to international and regional refugee conventions, yet the adoption and implementation of a national refugee law has been delayed since 2007.<sup>xciii</sup> During a UNHCR Ministerial Intergovernmental Event in Geneva in December 2011, the GoC promised to adopt the drafted asylum law in the first half of 2012 and ensure its' compliance with international and regional refugee law and standards.<sup>xciv</sup> Despite this

commitment and pressure from the UNHCR, the national refugee law is still pending review and endorsement by relevant ministries within the GoC.<sup>xcv</sup> The UNHCR needs to put increased pressure on the GoC to adopt the implementation of the national refugee law without further delays. A prompt adoption of the national refugee law is of great importance for the following four reasons. 1) It would further strengthen the national legal framework for the protection of refugees and improve their situation.<sup>xcvi</sup> 2) A national law could help manage the major influx of refugees that are currently arriving from CAR more efficiently and proficiently. 3) If the adoption of the refugee law is further delayed for a long period of time, one runs the risk of a shift in the political willingness to accommodate refugees. This could prove to be particularly relevant if the CAR situation continues to put increasing strains on Chad's ability to host refugees.

Another factor that can possibly affect the GoC's willingness to accommodate and host refugees is if Kenya limits its refugee regime. Chad and Kenya are currently dealing with similar refugee situations in terms of size, management and international and regional laws and framework. Thus, if Kenya continues down the path towards a more restricted and limited asylum space due to national security and stability concerns, it would be fairly easy for forces within Chad to argue the same and prompt the GoC to follow suit.

### ***The Current Situation in CAR's Effects on Chad***

Following UN High Commissioner for Refugees António Guterres visit to CAR's capital, Bangui in early February, he described what he had seen there as "a humanitarian catastrophe of unspeakable proportions" and stated that massive ethno-religious cleansing continued to take place.<sup>xcvii</sup> As the humanitarian situation continues to deteriorate in CAR, thousands of people are fleeing into southern Chad and other neighboring countries for protection. According to a United Nations Office for the Coordination of Humanitarian Affairs (OCHA) situation report, although the majority of the people accessing Chad are returning Chadian migrants, 7,685 Central African refugees have been registered in Chad since December 2013 as of February 19<sup>th</sup> 2014.<sup>xcviii</sup> The UNHCR, in cooperation with the local authorities, are currently deploying mobile teams to ensure quick identification of refugees at border entry points by monitoring arrivals and pre-registering them before they facilitates for further transfers to refugee camps or host communities.<sup>xcix</sup> Current response capacities at transit centers have proved to be a major gap in protection. According to the International Organization for Migration, there are 33,808 people who are currently remaining in transit sites who face unsuitable conditions due to overcrowding and lack of access to proper shelter and services.<sup>c</sup> The transit sites near N'Djamena in western Chad, and the five transit centers in southern Chad are exceeding or have already exceeded their capacities.<sup>ci</sup>

As an estimated 150,000 people are or will be in need of shelter during the span of the first six months of 2014, the UNHCR will need to increase its efforts in Chad due to the crisis in CAR. They can do so by assisting the local authorities in identifying and preparing additional, and better-suited locations for transit centers. Secondly, the UNHCR can offer to undertake the responsibility of managing the site of Zafaye in Gaoui near N'Djamena, as the GoC has not identified a humanitarian partner to do so yet.<sup>cii</sup> This new transit site, which opened on January 27<sup>th</sup>, has a maximum capacity for 5,000 people, and is meant to host Chadian returnees.<sup>ciii</sup>

## CONCLUSION

The current refugee regime in Kenya, Ethiopia and Chad share several similarities, most notably, how generous their admittance policies of refugees and asylum seekers have been over the last couple of decades. However, regional instabilities and challenges in neighboring countries continue to prompt a large influx of refugees to all three destinations. Strains on their systems are evident, and the UNHCR plays an important role in all three of the countries by mitigating the challenges posed to the host countries by such large refugee population, and in order to secure the refugees access to protection and standard of living. Especially in Kenya, these long term strains and challenges of hosting such a large refugee population have started to take its toll on the host country's willingness to accommodate refugees and asylum seekers. This is evident by some of their recent policy proposals and political shifts, and in the increased levels of xenophobia. If Kenya continues down the current trajectory of creating an increasingly strict and limited refugee regime, then this might cause a ripple effect on other regional countries, like Chad and Ethiopia, as refugees will be forced to seek refuge elsewhere. It is thus in the UNHCR's interest to consider the implementation of the various policy recommendations laid out in this chapter, and summarized below.

## RECOMMENDATIONS

### *National*

#### **Kenya**

- The UNHCR must continue to help assist and support the efforts to consolidate the Kenyan government's reception, registration, documentation, Refugee Status Determination (RSD) and camp management capabilities.
- The UNHCR should coordinate collective advocacy and lobbying forces within national and international agencies to ensure that xenophobic prejudice and pressure to securitize the asylum space does not affect the ongoing assessment of the current Refugees Act, 2006.

- The UNHCR must verify that all the assisted refugee repatriations from Kenya to Somalia, (predominantly from Dadaab/Alinjugur camp cluster) are fully voluntary, and conform to the international refugee law and standards.
- The UNHCR should attempt to participate in the DRA senior management meeting where the status of South Sudanese refugees will be discussed, and put pressure on the DRA to recognize South Sudanese asylum seekers on a *prima facie* basis.
- The UNHCR should initiate a code of conduct initiative for Kenyan media, e.g. through a partnership with the Kenya Correspondents Association, to mitigate the problems of xenophobia.

## **Ethiopia**

- The UNHCR, in cooperation with ARRA, should determinate a new refugee campsite in order to facilitate for increase accommodations for new arrivals to be launched quickly if necessary.

## **Chad**

- The UNHCR needs to put increased pressure on the Government of Chad to adopt the implementation of the national refugee law without further delays.
- The UNHCR should assist the local authorities to identify and prepare additional and better-suited locations for transit centers.

## **Local**

### **Kenya**

- The UNHCR should provide information and guidance in the Dadaab/Alinjugur camp cluster relating to the voluntary repatriation process to ensure that decisions to return to Somalia are truly an informed decision based on a free choice.
- Change location of UNHCR office in Nairobi into a bigger office space located closer to the majority of urban refugee settlement in Nairobi. Increase the office's efficiency of processing –especially the appointment system, by hiring additional staff and provide them with better education in relation to Kenya's refugee regime and the RSD process.
- The UNHCR must put pressure on the DRA to resume full operation in urban areas.

### **Chad**

- The UNHCR can offer to undertake the responsibility of managing the new transit site of Zafaye in Gaoui, near N'Djamena, as the Government of Chad has not identified a humanitarian partner to do so yet.

## LOST IN NUMBERS

### *Syrian Refugees in Turkey, Jordan, and Lebanon and the Problems with Access to Protection*

By: Fatihah Jacob

## INTRODUCTION

The Syrian refugee crisis is entering into its third consecutive year, and the number of people fleeing into neighboring countries is still increasing which is causing incredible strains on regional resources. Every day, thousands of people fleeing Syria are crossing borders into neighboring countries like Jordan, Lebanon, Turkey, Northern Iraq, and Egypt. There are more displaced people from Syria than any other country in the world, including Bosnia or Rwanda<sup>civ</sup>. The UN has labeled this situation as a level three emergency; the highest level of emergency in the UN system, and a top priority for funding and personnel<sup>cv</sup>. According to the UNHCR, almost half of the world's refugees live or reside in cities, compared to the one third that live in designated camps<sup>cv</sup>. As of September 2013, over 70 percent of Syrian refugees were displaced in urban areas<sup>cvi</sup>. The growing number of refugees in the region, is creating short-term, long-term, and negative strains on host countries' resources, labor markets, institutions, well-being of local populations, and other Syrian refugee populations.

The international community has no expectation that the numbers of Syrians crossing into regional countries will decline. According to Anne C. Richard, assistant secretary of the Bureau of Population, Refugees, and Migration of the U.S. State Department, the Syrian refugee crisis is already worse than projected one year ago<sup>cvi</sup>. The influx of fleeing Syrians has undermined regional economic, political, and social stability. While the UNHCR is not considered a developmental organization but a humanitarian organization, the various effects of the Syrian refugee crisis will require a development approach. The current refugee crisis has the potential to result in an entire lost generation, who lack adequate infrastructure in their temporary residencies because of host countries' resource limitations. The urgency of the Syrian refugee crisis must be given full attention in order to stop further deterioration of regional stability. The complexities and innumerable facets of the conflict present an opportunity for the UNHCR, NGOs and the international community, to reform their response techniques for future refugee challenges.

This chapter highlights the gaps in access to protection for Syrian refugees in Turkey, Lebanon, or Jordan, the countries to which the majority of Syrian refugees have fled. The recommendations presented are based on the gaps to protection in urban and refugee camp settings and consider the possibility of third country resettlement.

## BACKGROUND

The Arab Spring in 2011 brought a new political consciousness in Syria which resulted in a multitude of protests. The Syrian Government's violent response generated a civil war. As a result, hundreds and thousands of Syrians have fled to nearby countries, such as Turkey, Jordan, and Lebanon. What originally began as a reaction to revolts has now developed into a humanitarian crisis which requires international response. The increase of forced migrants and asylum seekers into the region has become so large that the people and governments in the region need international assistance.

Lebanon, Jordan and Turkey<sup>11</sup> are three of the few countries that are opening their borders and providing assistance to Syrian asylum seekers. Their borders remain open to Syrian refugees despite the fact that none of these countries are signatories of the 1951 Convention Relating to the Status of Refugees, nor are they signatories of the 1967 Protocol that amended it. As a result, the legal status of Syrian refugees is determined by host countries' national laws concerning foreign nationals.

## ACCESS TO PROTECTION IN TURKEY

### *Background on Current Refugee Situation*

Turkey had strong relations with Syria under Bashar al-Assad, however, shortly after the start of the March 2011 uprisings in Syria, Turkey began to take an anti-regime position<sup>cxix</sup>. Turkey was the first country to formally respond to the influx of Syrian refugees. Turkey has been praised by many, including *New York Times* writer Mac McClelland<sup>cx</sup> and the head of the UN Food Relief Agency<sup>cxix</sup>, for their relatively successful measures to accommodate large numbers of Syrian refugees. The refugee camps for the Syrian refugees are set up by the Government of Turkey, are within humanitarian standards<sup>cxii</sup> and have been deemed the 'nicest in the world<sup>cxiii</sup>'.

Over half of the Syrian refugees who crossed into Turkey entered without a passport, or personal identification, meaning they came into the country illegally<sup>cxiv</sup>. Regardless of whether Syrian refugees have any type of documentation, including their passports, they are able to receive residence permits by registering with the Foreigner's Department of the Ministry of Interior (MOI). In addition, the Turkish Department of Emergency and Disaster Management (AFAD) has given Syrians access to medical

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<sup>11</sup> Though Turkey was a signatory, they signed with an asterisk. Turkey only appealed to refugees from Europe. EU countries are noticeably not going what they have agreed to do.

services with Turkish national health facilities<sup>cxv</sup>. About 60 percent of people used health services in Turkey and were satisfied with them<sup>cxvi</sup>. In Lebanon and Jordan however, Syrians can only access the public health systems once they are registered<sup>cxvii</sup>. These policies implemented by Turkey represent an attempt to address issues before they evolve into a more serious problem.

The refugee camps that accommodate Syrian refugees in Turkey are run by AFAD and the Turkish Red Crescent Society (TRCS)<sup>cxviii</sup>. Turkey's 1994 Asylum Regulation provides all refugees with "temporary asylum-seeker status<sup>cxix</sup>." All Syrian refugees in Turkey however, whether they are in camps or not, also benefit from the Turkish Temporary Protection Regime. The Temporary Protection Regime is recognized by international law, and its core elements adhere to international refugee principles<sup>cxx</sup>. These principles include: unlimited duration of stay for refugees, non-refoulment, and the possibility of obtaining access to basic needs,<sup>cxxi</sup> and enables all Syrian refugees for prima facie status.

The registration of refugees and camp management are coordinated by AFAD<sup>cxixii</sup>. The Turkish Red Crescent and other NGO agencies offer operational support to AFAD. In Turkey, the role of the UNHCR is to assist with technical advice and to help fund coordination centers that are used to register and counsel refugees<sup>cxixiii</sup>. The UNHCR does not register Syrian refugees in Turkey<sup>12</sup>. It is the Turkish government that oversees all registration of new arrivals<sup>cxixiv</sup>.

### ***Access to Protection in Refugee Camps***

The camps in Turkey are established by AFAD and the TRCS. Refugees living in camps do not require a residence permit. The housing in the camps include tents and shipping containers. According to a report by the UNHCR, most Syrian refugees prefer to live in the camps.<sup>13cxv</sup> Syrian families prefer to live in camps primarily for economic reasons; most Syrians, not only in Turkey but also in Lebanon and Jordan, cite money as their number one problem<sup>cxvvi</sup>.

One of the greatest accomplishments in Turkey concerning the Syrian refugee situation is the e-card program which was initially set up in October 2012 by the TRCS and UNWFP. The e-card program started in a few camps but, due to its success, now

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<sup>12</sup> The UNHCR registers Iraqi and other non-European refugees in Turkey in parallel and separate procedures to AFAD.

<sup>13</sup> The report only asked those already living in the camps.

extends to all camps in Turkey<sup>14</sup>. Each family receives one card with USD\$45 per member per month<sup>cxxvii</sup>. This card allows the families to buy fresh food items and necessities from participating markets<sup>cxxviii</sup>. Through this program, 100 percent of donated funds are being transferred to local communities inside and around the camps. As refugees use the cards to buy local products, they have a positive impact on local host communities and promote positive perceptions of Syrian refugees within the host community. This reinforces the current policies of the Government of Turkey's Temporary Protection Regime. According to the Jordan RRP6 report, greater community engagement by humanitarian organizations has led to improved security situations in camps<sup>cxxix</sup>. Currently, 82 percent of Syrian refugees are reportedly pleased with security in Turkish camps<sup>cxix</sup>. The e-card program should be extended to Syrian refugees across the region. Distribution of the e-card to Syrian refugees will result in higher engagement with host communities by buying products from local stores, and bringing positive interaction between Syrian refugees and host community members. The development of this program will result in safer camps, increased funds in communities with high numbers of Syrian refugees, and will enable organizations like UNHCR to better track what items are being bought by Syrian refugees. The data collected from the e-cards will help the UNHCR develop a better understanding for what Syrian refugees need in the region, and will also help the UNHCR prepare aid for future crises.

### ***Access to protection in Urban Areas***

Though the majority of Syrians who live in Turkish refugee camps are satisfied with the assistance that they receive, urban refugees in Turkey have less access to protection. That is, the urban refugees in Turkey are not being accommodated to the same extent as camp refugees. While most funds go to refugee camps, over half of the Syrian population in Turkey lives outside of established refugee camps.<sup>cxix</sup> Since there are growing numbers of Syrian refugees in urban settings in Turkey, the government of Turkey has decided to include more assistance to them<sup>cxix</sup>. However, there are larger percentages of people in camps who receive aid than outside of camps<sup>cxix</sup>. Efforts by the Government of Turkey to assist urban refugees, unfortunately, have not been sufficient. There are reports of abandoned sites as far from the Syrian-Turkish border as Istanbul that are 'slowly turning into refugee camps'<sup>15cxix</sup>. The 'refugee camps' are essentially

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<sup>14</sup> There are 21 refugee camps and over 600,000 persons of concern in Turkey.

<sup>15</sup> Fatih, an old historic district in Istanbul, Turkey has abandoned buildings without doors and windows that are currently occupied by Syrian refugees. The abandoned buildings barely provide shelter for the

unregulated, slums and marginalized communities that Syrian refugees have converted into shelter. The UNHCR needs to pay more attention to Syrian urban refugees in Turkey. The UNHCR needs to work with AFAD, TRCS and local communities, like the Fatih community in Istanbul to connect with Syrian refugees to help them find basic necessities. They should establish registration centers near these areas with translators to help Syrian refugees find affordable housing and receive other necessary aid.

High Commissioner António Guterres is working with AFAD to fund more than 10 registration centers in urban settings in Turkey.<sup>16</sup> Unfortunately this effort is not enough. About 2,000 Turkish farming families near the Syrian border<sup>17</sup> have lost at least half of their annual income as a result of the loss of local cross-border trading opportunities from the Syria Crisis<sup>cxxxv</sup>. The e-card program already in place for Syrian camp refugees in Turkey should be extended to urban refugees as well. The additional funds will help refuel the lost economy in neighborhoods where Syrians refugees reside. In addition to a restored economy, the e-card program will also reduce the tensions between refugees and local populations. This will address the issue of lack of transportation for those living in rural areas, the disabled, or women who cannot travel far from their homes. With the implementation of the e-card program in non-camp settings, people will be able to buy fresh food and products in nearby shops.

## ACCESS TO PROTECTIONS IN LEBANON

### *Background on Current Refugee Situation*

Lebanon currently holds the largest number of Syrian refugees. According to Lebanese government estimates, Lebanon is hosting over 1 million Syrian Refugees<sup>18</sup>, of which, less than 900,000 have been registered with the UNHCR<sup>cxxxvi</sup>. Syrian refugees face many obstacles before crossing the border into Lebanon. In 2003, Lebanon signed a Memorandum of Understanding (MoU) with the UNHCR to address refugees in Lebanon. However, the MoU was not designed to address large influxes of refugees, and expects

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refugees as they do not have doors or windows to keep the Syrians safe from the harsh winter weather. These building also lack running water and electricity. It will soon be demolished to build luxury homes.

<sup>16</sup> In addition to this, in cooperation with the TRCS, the UNHCR will also be funding the production of about 18,500 more tents.

<sup>17</sup> The families that have lost income due to the Syrian crisis extend as far out as 5km from the Syrian-Turkish border. (Turkey RRP5 pg. 236)

<sup>18</sup> As of February 20<sup>th</sup>, 2014.

that refugees are resettled into a third country within 9 months. As a result, the UNHCR is drafting a replacement MoU with Lebanese authorities<sup>cxxxvii</sup>.

Many people fleeing from Syria must pass through conflict-ridden areas and constant security check points, where security guards may confiscate their identifications. Syrians are allowed to cross the border between Lebanon and Syria without a visa<sup>cxxxviii</sup>; however other populations fleeing Syria, like the Palestinians, require a visa to enter Lebanon. By crossing through official crossings into Lebanon, Syrians holding a valid national Syrian identity card or passport receive an Entry Coupon (also called Return Coupon) that allows them to stay in the country for up to 6 months, and is renewable one time through Lebanon's General Security office (GSO).<sup>cxxxix</sup> Since July 2013, stricter border controls implemented by GSO, deny entry to refugees if documents have been damaged or are missing.<sup>cxl</sup> This may lead to Syrians believing that, if they attempt to register, their papers will be rejected and they will be sent back to Syria. If they do not register, however they may not get the assistance they need.

In April 2011, the UNHCR began registering Syrians. Syrian refugees in Lebanon are not issued an identification card, and are not granted legal residence. However, Syrian refugees are granted a registration certificate, this enables them to access to assistance<sup>cxli</sup>. To receive a registration certificate, Syrian refugees must make an appointment with the UNHCR by approaching the nearest Social Development Center (SDC) of the Ministry of Social Affairs (MoSA), the municipality, or UNHCR offices. Afterwards, the UNHCR will call the individual for an interview appointment in one of the four centers<sup>19cxlii</sup> where entire household members must be present with identification cards and family-related documents. Wait times for an appointment with the UNHCR range as long as 30 days. This process is problematic in many ways, due to the fact that the process is slow, there are not enough offices, all household members must be present at the time of the interview, too many documents are required to register, and the UNHCR expects refugees to have an access to a phone.

### ***Access to Protection in Refugee Camps***

Due to Lebanon's past experience with Palestinian refugee camps, Lebanon is reluctant to establish camps for the Syrian refugees<sup>20</sup>. Palestinians were permitted to stay

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<sup>19</sup> The four registration centers in Lebanon includes: Tripoli in the North, Zahle in Beqaa, Tyre (Sour) in the South and Jnah in Beirut.

<sup>20</sup> Palestinians make up around 10 percent of the population in Lebanon; however, they cannot obtain certain rights because they haven't been formal citizens of another state. <sup>20</sup>

in Lebanon for one month in 1948, but now the Palestinian refugee population in Lebanon is close to 500,000<sup>cxliii</sup>. It is feared that the new Syrian refugees will stay and take resources away from Lebanese citizens. Lebanon does not want a repeat of history with Syrian refugees. Unlike Jordan, Turkey and Iraq, this fear explains why Lebanon still has no official refugee camps for Syrian Refugees<sup>cxliv</sup>.

The slow response to humanitarian aid for the Syrian refugees is mostly due to divisions within Lebanon's own government. There are political tensions within the Lebanese host community that Syrian refugees and asylum seekers aggravate. Lebanon is divided over the Syrian revolution, especially in Northern Lebanon, where 250,000 refugees reside.<sup>cxlv</sup> There is a separation between those who are pro Bashar al-Assad and those who are against his government within the Lebanese population. There is also a fear that Lebanon's sectarian balance will tilt towards Sunni Muslims.<sup>cxlvi</sup> The majority of refugees coming from Syria are Sunni. These Lebanese domestic issues concerning politics and religion contributed to the refusal to the establishment of refugee camps.

The Lebanese government also worries about the signals setting up camps could send to the Syrian government.<sup>cxlvii</sup> The Lebanese government does not want to show that they are supporting the rebels by establishing camps. Though the Lebanese officials working with the Syrian refugees are told to maintain a neutral stance concerning the Syrian Civil War, a divergence between Sunni and the sectarian communities still exists.<sup>cxlviii</sup> The political balance between Lebanon and Syria is unstable at the moment. As the Syrian refugees continue to stream into Lebanon, this may lead to a number of political repercussions.<sup>21cxlix</sup> As there are no established camps in Lebanon, about half of all Syrian refugees in Lebanon are in rented housing, and the other half are in nomadic tents or are hosted by family members or local communities.<sup>cl</sup> The UNHCR, should therefore, work with the Lebanese government to create a solution to the problem of shelter for Syrian refugees without taking sides in Lebanese politics. The UNHCR will need to first target densely populated areas, like Beirut and Beqaa<sup>22</sup> because there are larger numbers of people living in tight quarters in these areas.

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<sup>21</sup> One of the largest political repercussions is the negative impact on the dynamics among political factions between the Sunni population and the Lebanon's majority sectarian population.

<sup>22</sup> There are four main areas where Syrian refugees are settling in Lebanon: north Lebanon, Beirut, South Lebanon, and Beqaa. Beqaa holds the largest number of refugees in Lebanon. There are about 310,500 persons of concerns there.

The Lebanese population and government will also need to be reassured that the history of Palestinian refugees will not be repeated with Syrian refugees. The UNHCR will reassure the Lebanese population that the Syrians will create a positive impact in the country. Greater community engagement and positive interactions will mitigate Lebanon's reluctance of building refugee camps, an important element to help support migrants. As such, the Syrian refugees will also ultimately be able to simulate Lebanon's host country's economy by simulating innovation, and eventually offer employment to the local people.

### ***Access to protection in Urban Areas***

The Government of Lebanon is limiting the amount of assistance that they provide to the Syrian refugees on the grounds that it is too controversial.<sup>cli</sup> Protecting and recognizing Syrian refugees has political implications which can be interpreted as helping or not doing enough for Islamic forces in Syria. For some people in Lebanon, aiding Islamic forces is too controversial while for other people it is too controversial to not aid Islamic forces. Therefore, the aid provided to the Syrians is essentially provided by the Lebanese host communities and civil society organizations and municipalities. The negative repercussions on Lebanese civil society due to the influx of Syrian refugees in urban areas today is showing, and now the support for refugees is strained. The strains on schools, health services and available accommodation are increasing as the numbers and demands from the Syrian refugees increase.<sup>clii</sup> There are simply too many people that require humanitarian aid for the Lebanese civil society to maintain. Also, more people put more demand on limited resources and infrastructures. Shelter is so hard to come by for refugees that many of them revert to living in old and abandoned homes and parking lots.<sup>cliii</sup> Unlike the Syrian refugee situation in Jordan or Turkey, the Lebanese government is not providing facilities or any land to temporarily accommodate Syrians<sup>cliv</sup>.

According to a 45 year old Syrian refugee, when he first arrived in Lebanon, there were high fears that wolves would get into the tents provided by the UNHCR at night, however, these fears have grown into a fear of how they will survive the harsh winter weather in Lebanon.<sup>clv</sup> In Lebanon, the weather is getting colder and refugees are being housed together in tighter quarters due to growing numbers and the lack of available shelter. Often, the facilities that they find are not sanitary, and their desperate conditions will worsen with issues like hepatitis, diarrhea, malnutrition, scabies, and other infectious diseases.<sup>clvi</sup>

## **ACCESS TO PROTECTION IN JORDAN**

### ***Background on Current Refugee Situation***

Like Lebanon, Jordan is not a signatory to the 1951 Convention Relating to the Status of Stateless persons or a signatory to the 1967 Convention on the Reduction of

Statelessness.<sup>clvii</sup> Despite this, much of the refugee aid to Jordan follows procedures identical or similar to the UNHCR's. The 1998 MoU between the Government of Jordan and the UNHCR<sup>clviii</sup> enables the UNHCR to practice and execute certain procedures as they normally would during a refugee crisis in a country that is a signatory to the 1951 convention. Jordan hosts the second largest number of Syrian refugees, second only to Lebanon, numbering around 600,000.<sup>clix</sup> Despite this high and increasing number of Syrian refugees in Jordan, the government of Jordan has chosen to stay tolerant of the Syrian refugees. For example, though the Jordanian 1952 constitution reserves the right to work for Jordanian citizens,<sup>clx</sup> the Jordanian government does not regulate Syrian refugees who work without a work permit.<sup>23</sup>

Under international refuge law, the lack of personal identification should not stop a person from obtaining protection.<sup>clxi</sup> If Syrians without identification are stopped at the border by Jordanian authorities, they may be turned away. There are 4 groups to which Jordan denies entry: Palestinians living in Syria, single men of military age, Iraqis living in Syria, and anyone without documents.<sup>clxii</sup> If Syrian refugees hold a valid passport, there is no need for a residence permit or a visa to enter the country and stay.<sup>24</sup> Nor does the government punish most Syrian refugees who entered through unofficial border crossings,<sup>clxiii</sup> which can happen when refugees enter the country without a passport, personal identification, or a visa.<sup>25</sup> Refugees who enter Jordan through unofficial crossings will be met by the Jordanian army near the border, and transported to a refugee camp where their freedom of movement is restricted.<sup>clxiv</sup> Once Syrian refugees enter, the Government of Jordan (GoJ) mandates one of three durable solutions to be found within six months of entry: repatriation, local integration, or resettlement.<sup>clxv</sup> This is mandated through the Jordan Pending Refugee Status Determination (RSD). This mandate also allows Syrian refugees<sup>26</sup> to stay up to six months after they are recognized as a refugee.<sup>clxvi</sup>

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<sup>23</sup> There have been numerous cases where the government has found children working. In response to this, financial assistance is given to families who send their children to go to school instead. This program is being assisted by the UNHCR<sup>23</sup>.

<sup>24</sup> Syrians aren't considered illegal if they enter Jordan without a visa, however, they are considered to be illegal if they leave Syria without an exit permit.

<sup>25</sup> These terms are aimed towards Syrian refugees however, and not the Iraqi minority. As of date, there are no long-term integration or assimilation options for Iraqi refugees in Jordan. The government of Jordan considers Iraqis entering to be 'guests' and not as refugees<sup>25</sup>.

<sup>26</sup> Unlike Syrian Refugees, Iraqis from Syria are required to obtain a visa since May 2011. However, even with a government approved visa, many Iraqis are denied access at borders.

Currently, the GoJ is running their own registration process for Syrians,<sup>clxvii</sup> with assistance from the UNHCR, which handles all registration of refugees. Through the MoU, GoJ adheres to most of UNHCR's 1951 convention, and recognizes the principle of non-refoulment. The GoJ, however, has reportedly deported some Syrians and Iraqis back to Syria.<sup>clxviii</sup> The deportations have been justified by the GoJ on national security grounds.<sup>clxix</sup> In addition, protection is only temporary in Jordan. The GoJ rejects the idea of total integration, and long-term solutions for the Syrian refugees will depend on resettlement in third countries if returning home is impossible.<sup>clxx</sup> Due to the fact that the Syrian refugee crisis is protracted,<sup>27</sup> the idea of denying integration is not feasible for the Jordanian Government. As such, the Jordanian Government must consider Syrian integration.

The GoJ's requirements and eligibilities of refugee status are not clear. It is important that the GoJ establishes clear requirements. "UNHCR's overall objectives are three-fold: first, to maintain and expand the protection space in Jordan by ensuring that persons of concern have access to services (e.g. health and education); second, to provide safety nets in the form of cash for the most vulnerable; and third, and to seek durable solutions by assisting refugees through vocational training and other activities."<sup>clxxi</sup> Due to the fact that the GoJ is not a signatory to the UNHCR's 1951 Convention, they are not obligated to adhere to these laws. As such, the GoJ and the UNHCR need to work together to adopt refugee laws concerning all refugees who seek to cross Jordanian borders. The GoJ will also need to work with the UNHCR to establish a national asylum system to be able to accommodate refugees.<sup>clxxii</sup> By creating a national asylum system and adopting refugee laws, the GoJ will more likely follow humanitarian procedures without excluding minorities or marginalizing certain populations. There is a need for a legal framework to deal with entry, stay and departure from the country. This will also demonstrate GoJ's commitment under the principle of non-refoulment.<sup>clxxiii</sup>

### ***Access to Protection in Refugee Camps***

The Za'atari Refugee Camp for Syrian refugees opened on July 28<sup>th</sup>, 2012. It is the largest refugee camp in Jordan and has become Jordan's 4<sup>th</sup> largest city.<sup>clxxiv</sup> The Za'atari Refugee Camp is mandated under a joint administration between the GoJ's appointed Syrian Refugee Camp Directorate (SRCD)<sup>clxxv</sup> and the UNHCR.<sup>clxxvi</sup> Registration occurs automatically upon entry to the Za'atari Refugee Camp. Fears of growing lawlessness and reports of sexual violence, general violence, extremist recruitment, and the hopes of

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<sup>27</sup> Returning to Syria may take as long as 10-20 years.

finding a job are the driving factors that push Syrians in Jordan out of the refugee camps and into cities, towns, and villages. Many refugees are illegally leaving the camps or ‘bailing out’<sup>28</sup> due to the uncertainty of security in the camps.

There are many people who choose not to present their personal documentation and identification to UNHCR officials and other humanitarian organizations who are trying to register them as refugees. There is a widespread fear among Syrian populations of persecution, sexual assault, and theft. These fears also contribute to the large numbers of urban refugees in Jordan outside of refugee camps. As a result, people may choose to leave the camps or not register as refugees. The UNHCR needs to reduce fears of sexual assault and persecution. Many of these fears come from Syrian interaction with the Jordanian communities and GoJ officers. Many refugees have witnessed incidents of discrimination, exploitation and abuse,<sup>clxxvii</sup> but they are too afraid to go to the police because of their irregular status. To address this concern, the UNHCR should work more closely with the GoJ’s border patrols and field level staff, NGOs and humanitarian organizations that come into contact with Syrian refugees. The UNHCR needs to help train and conduct background checks on all persons and organizations prior to their being permitted to work with the Syrian refugees. Fear of humanitarian aid workers is preventing many people from seeking humanitarian aid. To deal with such concerns or incidents, hotlines and support centers should be more widely present. The UNHCR, in collaboration with the MoI, should create centers where women workers are available to speak with refugees. With more female workers in camps, vulnerable refugee women, who might otherwise be afraid to speak, will feel more comfortable reporting sexual assault.

The UNHCR registers all new arrivals in Raba’ al-Sarhan’s registration facility<sup>29</sup> prior to their arrival at the Za’atari Refugee Camp. The Raba’ al-Sarhan Joint Registration Center opened on December 29, 2013<sup>clxxviii</sup>. Buses from the border to the refugee camps transport the Syrian refugees. The result is a speedy process of registration for refugees. Many refugees in Jordan are registered within 30 days, and some are even seen registered the day they arrive<sup>clxxix</sup>. This speedy registration process should be replicated all over the region in all host countries receiving an influx of refugees. The UNHCR and the International Committee of Red Cross handles all the protection in Jordan.<sup>clxxx</sup> As such,

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<sup>28</sup> It is illegal to leave the Za’atari camp. The only way to leave the camp legally is if refugees go through a bureaucratic process by a Jordanian. This is usually done by family members or friends who hold Jordanian passports. Bailouts have also led to a number of exploitation against women.

<sup>29</sup> Raba’ al-Sarhan is a small Jordanian village near the Syrian border.

these two organizations should work together to locate critical entry points and towns where refugees are entering and start the registration process before they move into urban areas or refugee camps and disappear.

### ***Access to protection in Urban Areas***

Since many more Jordanians are living outside of refugee camps than in them, it is important to address the needs of urban and non-camp refugees. The Cooperative for Assistance and Relief Everywhere (CARE) report suggests that Syrian urban refugees obtain most of their sources of income from work,<sup>clxxxix</sup> both regular and irregular.<sup>clxxxii</sup> The CARE report states that about 44 percent of Syrian refugees' income in urban areas comes from work, 27 percent comes from UNHCR's cash assistance, 18 percent comes from their savings and 10 percent come from other people or from community-based organizations (CBO).<sup>clxxxiii</sup> Syrian refugee households in urban communities are selling food, non-food items and ration cards to get income. As different people require different forms of aid, the distribution of aid should vary from region to region within host communities.

To better relieve the strains on Syrian refugees, the UNHCR needs to reevaluate how and what resources they are giving to Syrian refugees in Jordan. The UNCHR should work with CBOs in Jordan and coordinate the needs and wants of the urban Syrian refugee population. The organizations will need to determine whether or not the current aid of water, rations and materials is too much or not enough for the Syrian population. A re-evaluation should ensure that the needs of Syrian refugees are met and resources are used to their maximum potential. To accomplish this, the UNHCR first needs to work with CARE and CBOs to ask what the refugee population needs. The UNHCR's Jordan Refugee Response Plan (Jordan RRP6) shows that Syrian refugees are only asked what they need during sporadic need assessments.<sup>clxxxiv</sup> As a result, the UNHCR needs to connect with refugees more often, and ask what their needs are more often, not just for the purpose of assessment reports.

Secondly, according to the CARE report, there is a lack of consistency of aid for Syrian refugees. The majority of households receive assistance once or twice from CBO. The only two relief agencies from which the refugees are able to receive food vouchers regularly are the UNHCR and the United Nations World Food Program (UNWFP).<sup>clxxxv</sup> The United Nation's (UN) humanitarian relief agencies, including the UNHCR, must work harder to connect with local communities and organizations who are also relieving Syrian Refugees. As there is a lack of coordination between UN organizations and local organizations, it is possible that there are some households receiving more aid than others.

To offset this imbalance of aid distribution, it is important for the UNHCR to connect with other humanitarian aid agencies, and the humanitarian aid agencies to

connect with the UNHCR. These agencies should work together to organize their combined data to make sure that individuals or families are not receiving too much of one type of aid and not enough of another. It would be beneficial if Lebanon and Jordan adopted Turkey's e-card food program for all Syrian refugees. The program should not be limited to refugees in camps, nor those waiting on registration. Through the e-card food program, each individual family rather than the UNHCR or other organizations will be able to decide what they need. In addition, the UNHCR and other humanitarian organizations will be able to track where Syrian refugees are, and what they are buying. This will mitigate the process of assessing needs for Syrian urban and camp refugees.

### THIRD COUNTRY RESETTLEMENT

By taking in the greatest number of Syrian refugees, Lebanon, Jordan and Turkey are assuming the greatest social, political and economic burdens; yet, Syria and their neighbors are not signatories of the 1951 UN refugee convention and the 1967 protocol that amended it.<sup>clxxxvi</sup> Under international law, groups of migrants should be checked for legitimate asylum claims, rather than being forced back to the country they came from. The burden of the Syrian refugee crisis has fallen on Syria's closest neighbors. Other nations could play a larger role. Unlike other migrants, Syrian refugees are given a 6-month suspension of deportation from the European Union (EU).<sup>clxxxvii</sup> However, this suspension period does not entitle them to a place to stay, food, or medical assistance.

According to the 2013 Frontex Risk Analysis report, about 37,224 people have been detected illegally crossing the border into the EU from Turkey. This is a decrease of about 35 percent from the previous year.<sup>clxxxviii</sup> In August 2012, land border patrols were increased.<sup>clxxxix</sup> The decrease in illegal border-crossing is due to the improved surveillance at the Turkish and Greek border.<sup>cxc</sup> There are less than 100,000 Syrians that have declared asylum in Europe.<sup>cxc</sup> On December 16<sup>th</sup>, 2013, through the Readmissions Agreement, Turkey granted the EU permission to send people back, including refugees, asylum seekers, and Syrians who had illegally migrated to the EU via Turkey.<sup>cxcii</sup> In addition to this, Bulgaria has begun the construction of a 30km fence along the border at Elhovo in response to the influx of refugees. During his visit to Bulgaria, UNHCR António Guterres urged European countries to "keep their borders open. Refugees are not terrorists. They are the victims of terror the ones who suffered."<sup>cxciii</sup> European countries continue to neglect their responsibility pertaining to the Syrian refugee crisis.

The United States announced that there will be no cap on the number of refugees who can enter the U.S. However, in 2013, the U.S. took in a total of 31 Syrian refugees, out of an estimated 135,000 who had applied for asylum in the U.S.<sup>cxciv</sup> The low numbers taken by the U.S. are due to an effort to prevent terrorists, and individuals who pose a threat to the U.S. from entering the country. In Section 2 Article 33 of the 1951 Convention, the article permits states to treat security interests over a refugee's non-

refoulement protection.<sup>cxv</sup> The rejection of such a large number of refugees from Syria has also been justified through the Material Support Bar. The U.S. immigration law has a strict policy of excluding refugees that have provided any form of support to any armed group.<sup>30</sup> However, the U.S. supports the Syrian rebel groups but it will not help those who have helped them.

## CONCLUSION

Lebanon, Jordan, and Turkey are not signatories of the 1951 convention, nor are they signatories of the 1967 protocol that amended it. However, it is these three countries that have taken the heaviest burdens and responded to continuous influxes of Syrian refugees. The efforts to provide humanitarian aid to Syrian refugees are creating economic, political, and social strains on their local communities and governments. The UNHCR should work with more countries in the region like Saudi Arabia, as well as Western countries to find a durable solution for the Syrian refugees. The UNHCR should continue working with the governments of Lebanon, Jordan, and Turkey to continue to provide aid to Syrian refugees while, at the same time, working with governments not limited to this geographic region to further accommodate the growing number of Syrian refugees. With the support of the UNHCR, and the cooperation of other international refugee regimes, Lebanon, Jordan and Turkey will not have to face the burden of providing aid to hundreds of thousands of Syrian refugees.

## RECOMMENDATIONS

### *International*

- The UNHCR should use the e-card program to track what Syrians are buying, and where they are located. This will provide a variety of data for the UNHCR, other humanitarian organizations, business, and development organizations. The information provided could be documented by the UNHCR and used to help coordinate the distribution of important necessities for Syrian refugees or any other populations from mass refugee crises if they occur in the future.
- The UNHCR should conduct refugee surveys more often, and such surveys should not be done only during a needs assessment. Data can be collected through an increase of surveys in urban and camp settings, and through e-cards, phone call, office visits, and video conferencing if accessible.

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<sup>30</sup> Helping armed rebel groups include those who have given cigarettes to them, or even have money as low as \$4 USD stolen from them by rebel groups.

## ***Regional***

- The UNHCR should convert abandoned buildings to house Syrian refugees with the permission of a private owner or the government. This will be in cooperation with shelter and construction organizations like Medair. By doing so, the UNHCR will be able to house urban refugees and will not have to be relocated.
- As the numbers of Syrian refugees in the region continue to grow, the UNHCR needs to focus on reaching out to refugees rather than expecting refugees to find the few UNHCR registration centers and offices by becoming more mobile. The UNHCR and other organizations like AFAD who register refugees will need to utilize resources like mobile registration and video conference calls to connect with refugees, and will need to visit sites and homes for disabled individuals. Outreach should include access to information of refugee rights.
- The UNHCR needs to expedite the refugee registration process for Syrian refugees, similar to Jordanian practice in Raba' al-Sarhan. They will open offices and registration centers in critical entry points near the Syrian border. The UNHCR will cooperate with organizations like the International Committee of Red Cross and AFAD to establish these near border centers.
- The UNHCR should provide the Syrian refugees with transportation buses to move tired, disabled and weakened Syrian refugees from the border and border cities to refugee camps, or refugee establishments under the UNHCR or other humanitarian organizations like AFAD.
- According to international refugee law, the lack of personal identification should not stop a refugee from obtaining protection. Turkey, Jordan, and Lebanon cannot expel or deport refugees coming in from Syria, even if they do not have sufficient documentation. The UNHCR will need to mandate closer regulation on border patrol; they will need to provide education for border patrol and police with the UNHCR Protection Training Manual for European Border and Entry Officials.

## ***National***

### **Turkey**

- The Government of Turkey should extend their e-card program to urban refugees. The UNCHR will work with TRCS, UNWFP, and AFAD to set up more registration centers register and distribute the cards to families. There must be an availability of employees and translators who must be available to translate Syrian Arabic to Turkish and vice versa to expedite the registration process, answer questions, and demonstrate how to use the cards.

### **Jordan**

- The Government of Jordan and the UNHCR must work together to adopt a refugee law, and create an asylum system concerning all refugees. There needs to be a legal framework that deals with entry, stay and departure from the country.

## *Local*

### **Lebanon**

- To work around Lebanon's reluctance towards establishing official refugee camps for Syrian refugees, the UNHCR should target densely populated cities like Beirut and Beqaa and utilize abandoned buildings and convert them into temporary or permanent homes for Syrian refugees. The UNHCR could use abandoned sites as a resource in lieu of creating establishments exclusively for refugees. The created establishments will not be entirely limited to Syrian refugees, but should be aimed towards them.

### **Jordan**

- The UNHCR must continue to regulate who works inside the camps, especially large camps like the Za'atari camp. Field level staff including government officers who come into contact with refugees must to be screened and monitored by the UNHCR or other humanitarian organizations to make sure sexual assaults towards women and exploitation is at a minimum.
- Registration centers mandated by the UNHCR, should employ a greater number of women. The UNHCR needs to draw in more women too afraid to speak up about sexual abuse and reduce the risk of sexual assaults towards women in the camps.

# VOYAGERS AND VIOLATIONS

## *Access to Protection of Forced Migrants in Italy, Greece and Bulgaria*

By: Nick DeRitis

### INTRODUCTION

The International Organization for Migration (IOM) indicated that in 2013 over 45,000 migrants made the dangerous journey across the Mediterranean Sea to reach southern Europe, nearly 43,000 of which landed in Italy.<sup>cxv</sup> The majority of these asylum seekers came from the war-torn states of Eritrea, Syria and Somalia.<sup>cxvii</sup> To manage this massive influx of migrants the EU has worked to adopt the Common European Asylum System (CEAS), which lays the foundation for the establishment of a uniform asylum policy in 2015 throughout its member states.<sup>cxviii</sup> The EU also implemented European Refugee Fund (ERF)<sup>31cxix</sup> in 2000 and the European Asylum Support Office (EASO)<sup>32cc</sup> in 2010 to help EU member states uphold their obligations under the CEAS.<sup>cci</sup> Despite these efforts, nations such as Italy, Greece and Bulgaria have violated EU directives for proper asylum policy, which has undermined the system as a whole. These violations have also had an effect on the majority of EU member states and the stability of the Schengen Area as was evident by the threats of the interior ministers of France and Germany to close their borders in 2012.<sup>33ccii</sup>

Furthermore, many asylum seekers have been unable to access to the protection and efficient asylum procedure afforded to them under the CEAS. Italy, Greece and Bulgaria have not respected the European Convention on Human Rights (ECHR) on a number of occasions: particularly as it pertains to the pushbacks of asylum seekers at sea as well as their mistreatment at reception facilities.<sup>cciii</sup> The inefficiency of the process by

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<sup>31</sup> The ERF gives aid to EU member states as it pertains to accepting refugees and displaced persons as well as the access to fair and lawful asylum procedure. The ERF works to better reception centers and their services, give refugees and asylum seekers legal and social assistance, and instill training programs and organization for proper asylum procedure.

<sup>32</sup> The EASO works to improve cooperation pertaining to asylum procedure among EU member states, monitor EU states and their asylum practices in accordance with the CEAS and provide aid to member states with reception centers and asylum systems in need of help.

<sup>33</sup> In April 2012, the interior ministers of Claude Gueant of France and Hans-Peter Friedrich of Germany threatened to close their borders for 30 days in a letter to the Danish chair of the EU at the time in an effort to prevent the entrance of illegal immigrant entrants into their nations. The ministers argued that the power to close borders should not be left to the European Commission or EU civil service and that the ministers of EU member states who vote on the European Council should have a say.

which asylum seekers attain and receive refugee status in these nations has made it more of a challenge for these migrants to gain refugee status.

Although the EU has implemented policies that have resulted in a strict border protection policy which critics call “Fortress Europe,”<sup>cciv</sup> there have also been attempts in recent years to create a more open asylum system. Despite these attempts, asylum seekers within the EU continue to receive unequal protection within certain nations in the EU. Human Rights Watch noted that European policy responses to the influx of migrants by sea focus on surveillance and deterrence as opposed to prompt rescue of asylum seekers and their safe travel to reception centers.<sup>ccv</sup> The attempts by the EU to create a fairer and more efficient asylum policy will be explored and proposals will be enlisted to make the system function more efficiently within the EU political framework and help to minimize the disparities in protection that exist. This task force will discuss third country resettlement as it has become increasingly important within the EU with the influx of asylum seekers to EU border states and these countries’ struggles to cope with them. The chapter will also document the problems of access to the nations of Italy, Greece and Bulgaria that migrants face along with violations of border protection laws that these nations continue to commit.

This task force will address the challenges that asylum seekers face in both coastal and urban reception centers and camp settings in Italy, Greece and Bulgaria. A number of policy proposals will direct the UNHCR, EU institutions within the international refugee regime and nongovernmental organizations (NGOs) in an effort to make asylum processes more efficient and less problematic for nations within the EU and the asylum seekers themselves. The current inadequate penalties within the EU asylum system have allowed Italy, Greece and Bulgaria to abandon asylum regulations that they agreed to in the CEAS and violate numerous national, international and human rights laws without major ramifications. Therefore, the international humanitarian regime under the guidance of the UNHCR, the EU and other NGOs must mandate that these nations cooperate with the EU to take responsibility for their asylum procedures and implement more efficient asylum protocols and humane reception centers. The EU must also cooperate with the UNHCR and European resettlement organizations to increase the number of refugees to be resettled in third country EU member states to take pressure off the border states Italy, Greece and Bulgaria that face an inflow of asylum seekers.

## **FORTRESS EUROPE**

Since 1999, the EU has worked to develop the CEAS in an attempt to create a standard sets of laws and practices to which all member states must adhere.<sup>ccvi</sup> The EU constructed this system to uphold the Geneva Convention Relating to the Status of Refugees in 1951 as well as the New York Protocol of 1967.<sup>ccvii</sup> Although the EU implemented the CEAS in accordance with the Treaty of Amsterdam in 1999, it will not

go into law until the middle of 2015.<sup>ccviii</sup> The Dublin Regulation<sup>34ccix</sup> is among the most influential sections of the CEAS implemented so far. The EU advanced the Dublin Regulation through the implementation of the Dublin III-Regulation in July 2013 to provide a surveillance mechanism to monitor current asylum systems in anticipation of the adoption the CEAS into law in 2015.<sup>ccx</sup> Despite this, the problem of responsibility among EU member states in Dublin III remains unchanged. The regulation maintains that the nations through which asylum seekers first entered the EU are responsible for their documentation process.<sup>ccxi</sup> This puts further pressure on EU border nations such as Greece and Bulgaria, which face economic hardships and already have overcrowded registration offices that utilize inefficient asylum procedures to document migrants.

The EU also implemented a new EURODAC Regulation to improve the process when European border patrols first identify migrants.<sup>35ccxii</sup> Although this in theory should make the process more efficient, it does not address the important issue of an overall lack of resources in regards to European border patrols. Since the inception of EURODAC, nations such as Greece, Italy and Spain have unofficial “selective enforcement programs”<sup>36ccxiii</sup> and not employed an adequate number border patrol officers. These nations identify only certain portions of the migrant populations based on the resources available to the border patrols at the time. This process skews statistics and makes the challenge to cope with asylum seekers in Europe more difficult. Italy, Greece and Bulgaria often do not properly enforced these conventions and policies and thus the UNHCR must lead the international humanitarian regime within Europe to mandate that EU member states comply at regional, national and local levels. These nations have also committed violations of the ECHR therefore; the European Court of Human Rights (ECtHR) must use its authority to implement harsher penalties on member states.

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<sup>34</sup> The goal of the Dublin Regulation is to give the responsibility of an asylum application to one EU member state, primarily the state through which the asylum seeker first entered the EU. The Dublin Regulation also aims to prevent many asylum claims by the same asylum seeker and decide as quickly as possible the member state that is responsible for his or her asylum application.

<sup>35</sup> The new EURODOC regulation provides deadlines by which member nations must supply fingerprints and information of migrants, and now enables law enforcement agencies and Europol to access this data.

<sup>36</sup> Spanish, Greek and Italian border patrol officers know that there are not adequate resources and officers to manage migrant boats throughout all of the Mediterranean Sea. Therefore, border patrols selectively enforce EU border control policies because they are unable to control all of the thousands of kilometers European coastline.

## THIRD COUNTRY RESETTLEMENT

Third country resettlement is one of the durable solutions for refugees<sup>37ccxiv</sup> cited by the UNHCR and due to the ongoing humanitarian crisis and civil war in Syria for over three years with no end in sight voluntary repatriation is not currently a viable solution for Syrians.<sup>ccxv</sup> The majority of EU states have failed to take responsibility for the relocation of refugees in recent years, particularly those from Syrian and western and central Africa. Nations such as the United States, Canada and Australia have relocated the majority of the 750,000 refugees who have resettled in a third country around the world in the past ten years while EU member states have contributed but in smaller numbers.<sup>ccxvi</sup> To manage the over 8,000 refugees on Malta<sup>ccxvii</sup> the EU established the Intra-EU Relocation from Malta Project (EUREMA) in 2011.<sup>ccxviii</sup> The project proved to be successful on a small scale evident by the resettlement of 319 refugees from Malta to other EU member states in 2012.<sup>ccxix</sup> This limited number of resettlements clearly displays the reluctance of EU member states take on the responsibility of third country hosts of refugees. To address the ongoing Syrian refugee crisis, the European Resettlement Network (ERN)<sup>38ccxx</sup> notes that European states pledged to admit over 15,000 Syrians into the EU during 2013/14; over 10,000 of which Germany offered to accept.<sup>ccxxi</sup> Although the EU plans to resettle an unprecedented number of refugees in the next year, EU member states must do more in the way of refugee resettlement.

Crises in western and central Africa as well as Syria have displaced millions of people. One million Syrian refugees reside in Lebanon alone<sup>ccxxii</sup> and hundreds of thousands have fled Somalia in search of asylum.<sup>ccxxiii</sup> Many of these people look toward the EU for safety and a better life. The EU must prepare resettle a greater number of asylum seekers in future months because they will undoubtedly come. EU member states can cooperate to ease their immigration rules for the resettlement of refugees as the United States announced it would do in regards to its extremely restrictive<sup>39ccxxiv</sup> material

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<sup>37</sup> According to the UNHCR, the three durable solutions for refugees are voluntary repatriation in which refugees return safely to their home country, local integration in which refugees are accepted into society in the host country and resettlement in which refugees are transferred from the original host country to a third nation to reside.

<sup>38</sup> The European Resettlement Network cooperates with the UNHCR, IOM and International Catholic Migration Commission (ICMC) to resettle refugees in a third country within Europe. The ERN works to provide durable solutions these refugees and ensure that they receive support resources to enable them to integrate and gain citizenship their new European societies.

<sup>39</sup> As of early January 2014, only 31 Syrians received asylum in the United States of the 135,000 that applied for it.

support bar policy<sup>40ccxxv</sup> toward Syrian refugees.<sup>ccxxvi</sup> The UNHCR must continue to demand that nations such as the U.S. and EU member states assume larger roles in the resettlement of refugees, particularly those from Syria. This increase solidarity between EU member states and help to maintain the stability of the Schengen Area. Organizations such as the UNHCR, IOM, EASO, ERN and International Catholic Migration Commission (ICMC) must cooperate and advocate that EU member states partake in further efforts toward solidarity and uphold their pledges to resettle refugees to cope with the asylum challenges in EU nations such as Italy, Greece and Bulgaria.

## ACCESS TO PROTECTION IN ITALY

### *Background on the Asylum Situation*

The tragedy off the island of Lampedusa has brought to a global audience the challenges that asylum seekers face in their efforts to gain access to Europe as well as the problems associated with Italy's policies on access to asylum. According to the UNHCR, at the end of 2012 there were a reported 64,779 refugees located within Italy as well as over 6,000 people attempting to gain asylum in the country.<sup>ccxxvii</sup> This number has increased as asylum seekers who flee from human rights violations and armed conflicts, in Syria and Afghanistan as well as Western and Northern Africa, to Italy continue to intensify.<sup>ccxxviii</sup> As of September 6, 2013, 21,870 people had arrived in southern Italy, the majority from Eritrea (5,778), Syria (3,970) and Somalia (2,517).<sup>ccxxix</sup> According to the UNHCR, already 1,700 asylum seekers reached Italy as of January 21, 2014.<sup>ccxxx</sup>

The Italian government has primarily been hostile to asylum seekers in recent years and authorities have often sent boats of forced migrants back to sea and away from Italy. This was evident in the Rome-Tripoli accord instituted by Silvio Berlusconi of Italy and Colonel Gaddafi of Libya.<sup>41ccxxxi</sup> Under this agreement, Italian authorities routinely turned back boats of migrants from Libya without the proper identification procedure to determine whether they were asylum seekers in need of protection.<sup>ccxxxii</sup>

In February 2012, the European Court on Human Rights (ECtHR) ruled that a number these boat pushbacks to Libya were a violation of human rights<sup>ccxxxiii</sup> in the case

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<sup>40</sup> The Material Support Bar policy bans groups that have been identified as foreign terrorists organizations from entering the United States. Under the Patriot Act and Real ID Act, The U.S. government also does not allow people who are part of armed rebel groups not deemed terrorist organizations to enter the U.S.

<sup>41</sup> This enabled the Italian authorities to send boats back originating from Libya without the consideration of their asylum claims.

of *Hirsi Jamaa and Others v. Italy*.<sup>42ccxxxiv</sup> This was a direct violation of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol because Italy disregarded its obligation as a signee to uphold the policy of non-refoulement.<sup>ccxxxv</sup> The ECtHR forced the Italian government to pay a small financial settlement to a number of Libyan migrants in reparations. This penalty did not effectively dissuade the Italians from the institution of further migration restrictions because on April 3 of the same year the Italian and Libyan governments signed a new agreement to continue migration control.<sup>ccxxxvi</sup> Italy's disregard for its obligations under ECHR and the CEAS was manifested in the Lampedusa disaster in October 2013 in which over 400 people died in transit to reach the Island, most of whom were Eritrean.<sup>ccxxxvii</sup> In response, the ECtHR must institute increasingly punitive consequences to hold the Italian government accountable for its human rights violations.

### ***Problems with the Access to Protection at the Lampedusa Detention Center***

In the wake of the Lampedusa tragedy, the mistreatment of asylum seekers by the Italian government has become widely known. The CDA<sup>43ccxxxviii</sup> on the island was originally constructed to temporarily house 850 migrants for a maximum of two days<sup>ccxxxix</sup> but the reception center was often well over capacity. Italian authorities have also abused migrants at the CDA on several occasions after their perilous journey across the Mediterranean Sea. According to reports, Italian border patrols stripped asylum seekers naked and sprayed them with hoses at the detention center.<sup>ccxl</sup> This mistreatment is a violation of the Reception Conditions Directive<sup>44ccxli</sup> implemented in 2003 as a part of the CEAS<sup>ccxlii</sup> and has prompted to the European Commission to threaten legal action against Italy for the violation of EU rules in relation to asylum procedure.<sup>ccxlili</sup>

As was evident in the legal action taken against Italy for the Rome-Tripoli accord, the Italian government has had a history of very restrictive and often violent border practices and has failed to comply with EU policies in the process. According to the Euro-Mediterranean Human Rights Network (EMHRN) this type of mistreatment on Lampedusa has been prevalent for a number of years. A report in 2009 by the EMHRN

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<sup>42</sup> The case found the Italian border patrols to be guilty of the prevention of mass expulsions of migrants from Italy as well as a breach of the principle of non-refoulement.

<sup>43</sup> CDA: Centro di Accoglienza: a “welcome center” for migrants apprehended at sea, after landing, or in transit across Italian territory. There are five located throughout Italy.

<sup>44</sup> The Reception Condition Directive “ensures that there are humane material reception conditions (such as housing) for asylum seekers across the EU and that the fundamental rights of the concerned persons are fully respected. It also ensures that detention is only applied as a measure of last resort.”

detailed the violations of the 2003 Reception Conditions Directive and how the centers at Lampedusa did not live up to, “a dignified standard of living.”<sup>ccxliiv</sup> This report noted the overpopulation within the detention centers on the island as well as the lack of medical equipment and necessary resources for extended stays.<sup>ccxlv</sup> The UNHCR has called upon Italy to establish a more organized and consolidated migrant reception system.<sup>ccxlvii</sup> Although Italy transferred about 200 migrants from the detention center on Lampedusa to other facilities after numerous protests, too many asylum seekers still reside at the reception facility that Italy built to house less than 900 migrants for only two days at a time.<sup>ccxlviii</sup> Italian authorities have somewhat improved in their border patrol practices as is evident by the over 1,100 migrants that were rescued in the Mediterranean Sea on February 6, 2014<sup>ccxlviii</sup> but there is still much progress required to fully protect these asylum seekers in accordance with the CEAS. The UNHCR must mandate that the EU hold Italy accountable and force Italy to adhere its migration protection policies. The UNHCR can also cooperate with the ERF, the EASO and NGOs such as Emergency and the Italian Red Cross to improve conditions on Lampedusa to promote proper legal and ethical practices for the reception of migrants.

### ***Problems with Access to Documentation in Coastal Detention Centers***

Asylum seekers have had trouble with access to the protection afforded to them by law when within an EU member state. On numerous occasions Italian authorities retained asylum seekers at the reception centers on Lampedusa only long enough to identify the migrants and then send them back to the nations from which they fled.<sup>ccxlix</sup> These reception centers are overpopulated; therefore, many migrants have not been able to access the living space within the complex. As a result, migrants are not able to reach the UNHCR for information about the asylum procedure process and must go to the police who they have access to instead.<sup>cccl</sup> This creates a gap in the availability of information to migrants because the UNHCR often cannot contact the asylum seekers directly and is reliant on the police for information about asylum applications.<sup>cccli</sup> In response, the UNHCR must work in coordination with the Italian government, the IOM, The Italian Council for Refugees (ICR), the Italian Red Cross and Médecins Sans Frontières (MSF) among other NGOs to provide valuable information to the asylum seekers at Lampedusa. These organizations should produce asylum procedure handbooks in various languages and employ a greater number of informed translators to cater to the migrants’ needs.

Asylum seekers who leave Greece and enter Italy through its Adriatic ports have also faced similar obstacles to protection. According to Human Rights Watch, asylum seekers do not have access to proper asylum procedure, which violates both Italian and international law.<sup>ccclii</sup> Italian border police did not properly inform migrants about their rights as asylum seekers and authorities often failed to gather information about their age

despite evidence that many were unaccompanied minors.<sup>ccliii</sup> Italian border patrols have violated the rights of asylum seekers because many of the migrants were back to Greece without identification by Italian authorities<sup>ccliv</sup> as is mandatory under Italian law.<sup>cclv</sup> These pushbacks go against the 1951 Convention Relating to the Status of Refugees in regards to the obligation to uphold non-refoulement.<sup>cclvi</sup>

### ***Problems with Access to Documentation in Urban Environments***

There are also difficulties with access to the documentation process for refugees in urban areas throughout Italy. These problems of protection, primarily in cities such as Rome and Milan, reveal that the Italian asylum system is inefficient on its coastal borders and within its largest cities as well. Migrants in these cities often wait months for police headquarters to receive their applications and thus they are unable access the facilities offered to asylum applicants.<sup>cclvii</sup> This prevents the migrants from gaining access to reception centers as well as money and healthcare, which is supposed to be available to pending asylum seekers under Italian law.<sup>cclviii</sup> This waiting period has forced asylum seekers into extreme poverty in slums as well as abandoned buildings and train stations within Italian cities. In addition, centers for identification and expulsion (CIEs)<sup>45cclix</sup> in urban areas such as Ponte Galeria in Rome have held migrants for months without documentation prior to their deportation.<sup>cclx</sup> One migrant who remained there for three months stated that, “people in the center are treated like animals”.<sup>cclxi</sup> These anecdotes reveal many of the apparent gaps in the Italian asylum system that the International humanitarian regime must address in order to ensure that Italian authorities comply with the asylum standards for which they have been signatories.

## **ACCESS TO PROTECTION IN GREECE**

### ***Background on the Asylum Situation***

According to the UNHCR, there were only 2,100 refugees in Greece at the end of 2012 despite the large amount of asylum seekers that numbered over 50,000.<sup>cclxii</sup> Thousands more flee to Greece every month. Most of them are Syrians fleeing the civil war in Syria and entering Greece by way of Turkey.<sup>cclxiii</sup> In response to this influx of migrants, Greek authorities have instituted stricter border controls, particularly the use of

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<sup>45</sup> CIEs: “Centri di identificazione ed espulsione,” are temporary detention centers where “illegal” migrants are sent to be identified by the police.

Rapid Border Intervention Teams (RABITs)<sup>46cclxiv</sup> in cooperation with Turkey in November 2010. Greece and Frontex also instituted the Poseidon Land Joint Operation in 2011 to continue to work of the RABITs on a more permanent basis.<sup>cclxv</sup>

Greek border patrols have engaged in numerous boat pushbacks of asylum seekers that have exposed Greece's inability to adhere to the standards of the 1951 Convention, the 1967 Protocol and aspects of the CEAS such as the Reception Conditions Directive and the Qualification Directive.<sup>47cclxvi</sup> One representative of the Mediterranean Migration Observatory in Athens went so far as to say that Greece feels no obligation to host refugees or even adhere to the Refugee Convention.<sup>cclxvii</sup> The UNHCR must cooperate the EASO and the Greek Council for Refugees (GCR) to remind Greek authorities of their responsibility to adhere to the 1951 Convention, the 1967 protocol and the policies of the CEAS.

Furthermore, a number of reports have revealed how difficult it is for asylum seekers to gain access to Greece. Greek border patrols have treated these migrants brutally and made it more difficult for them to gain access to safety. Some Syrians have stated that they are more afraid of Greek police than the Syrian military from which they fled.<sup>cclxviii</sup> There have been reports of boats of Syrians filled with many women and children who have gone missing after their attempts to reach Greek regions Evros, one of the main entry points for migrants crossing the sea into Greece<sup>cclxix</sup>. The island of Lesbos has also become a popular destination for asylum seekers due to its proximity to the Turkish coast. On Lesbos, representatives from Amnesty international have witnessed the pushbacks of asylum seekers (most of them from Syria, Somalia and Afghanistan) by the Greek coast guard to Turkey.<sup>cclxx</sup> The majority of these migrants come from war-ravaged regions but Greek border patrols often fail to identify them and immediately send them back toward Turkey or apprehend them for interrogation.<sup>cclxxi</sup>

According to Human Rights Watch, twelve women and children died when Greek border patrols attempted a pushback in bad weather conditions off the island of Farmakonisi on January 20, 2014.<sup>cclxxii</sup> The survivors of the incident stated that Greek authorities did not provide them with proper translators and therefore they could not

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<sup>46</sup> Frontex established Joint Operation RABIT in July 2007 to provide technical and operation assistance to EU member states as it pertains to pressure from influxes of undocumented migrants. It also works to increase solidarity between EU nations in dealing with border controls.

<sup>47</sup> The Qualification Directive makes clear the grounds for the provision of international protection and makes it easier for those who receive protection to have the rights and systems of integration available to them.

understand the documents that they required to sign after Greek patrols rescued them.<sup>cclxxiii</sup> The UNCHR, the Council of Europe Commissioner for Human Rights Nils Muižnieks and European Union Home Affairs Commissioner Cecilia Malmström have advised Greek officials to investigate the incident and other similar events.<sup>cclxxiv</sup> Amnesty International, among other organizations such as UNHCR, the Greek Commission for Human Rights and MSF<sup>cclxxv</sup> has widely criticized these Greek pushbacks and accused the Greek authorities of a breach of EU asylum laws.<sup>cclxxvi</sup> Although these organizations have openly criticized the Greek pushbacks, they continue to occur, illustrating the fact that these organizations must do more to curb the frequency with which these pushbacks take place. These organizations can achieve this goal by providing more information to migrants through the distribution of handbooks in a variety of languages and the use of translators to convey information about asylum procedures to them, particularly those who have limited levels of literacy.

Moreover, the Dublin Regulation has resulted in overwhelming the already overcrowded reception facilities in Greece. Although Bulgaria and the majority of EU nations have suspended their Dublin transfers back to Greece, Italy continues to do so.<sup>cclxxvii</sup> The UNHCR can cooperate with other powerful EU member states such as Germany and France and their refugee agencies, which have already suspended Dublin transfers to Greece, to make clear that Italy must do the same.

The ECtHR has reprimanded Greece for its violations of the ECHR. Greek authorities have disobeyed Article 3<sup>48cclxxviii</sup> of the ECHR on a number of occasions but have faced very small punishments for these violations. In 2011, the ECtHR forced Greece to pay only 5,725 euros of compensation under article 41<sup>49</sup> for Greece's violations of Articles 3 and 13<sup>50</sup> case of *M.S.S. v. Belgium and Greece*.<sup>51cclxxix</sup> This was despite the fact the

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<sup>48</sup> ARTICLE 3: **Prohibition of torture:** No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

<sup>49</sup> ARTICLE 41: **Just satisfaction:** If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party. ("European Convention on Human Rights" 2014)

<sup>50</sup> ARTICLE 13: **Right to an effective remedy:** Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. ("European Convention on Human Rights" 2014)

<sup>51</sup> Belgium transferred an Afghan national to Greece under the Dublin II regulation and subject to mistreatment and poor conditions at Greek detention centers. The ECtHR found Greece guilty of violating articles 3 and 13 of the ECHR and forced Greece to pay reparations.

UNHCR contacted the Belgian Minister for Migration and Asylum Policy and requested that Belgium suspend its transfers to Greece under the Dublin Regulation due to inefficient asylum procedures and poor facilities in Greece.<sup>cclxxx</sup> This case shows that EU member states are not taking the UNHCR's recommendations seriously and that the financial penalties instituted by the ECtHR are not severe enough to prevent similar events in the future. The ECtHR also found Greece guilty of violations of Articles 3 and 13 of the ECHR in the decision *B.M. v. Greece*<sup>52cclxxx</sup> in December 2013. The ECtHR forced Greece to pay 8,000 euros in non-pecuniary reparations.<sup>cclxxxii</sup> This financial penalty is too lenient and the ECtHR must implement punishments that are more punitive because relatively small, non-pecuniary payments are not enough to dissuade similar abuses from taking place.

### ***Problems with Access to Documentation in Coastal Reception Centers***

The refugee asylum system within Greece has been in disarray since the onset of the Syrian crisis. Asylum seekers in Greece find it very difficult to access documentation enabling them to legally live and work in Greece. As is the case in Italy, reception centers throughout the border islands of Greece have committed a number of violations of both European and Greek policy. For example, the reception centers on Eastern Aegean islands have not supplied the asylum seekers with the basic needs that Greek authorities are responsible to provide.<sup>cclxxxiii</sup> According to the UNHCR report, Greek authorities did not properly screen and identify the migrants, as is required by both national and international law.<sup>cclxxxiv</sup> Unlike other nations in the EU, interpreters in Greece do not regularly conduct interviews with asylum seekers.<sup>cclxxxv</sup> As a result, migrants must wait extended periods to complete asylum procedures and lack access to information regarding the procedure itself. In response, the ERF gave Greece €14.6 million in 2011 to improve reception facilities and increase access to asylum procedure according to the UNHCR.<sup>cclxxxvi</sup> The ERF must continue to donate money to support the renovation of reception centers and work alongside the UNHCR, EASO, the GCR and NGOs to monitor that Greece uses these funds efficiently.

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<sup>52</sup> An Iranian national Iran after being tortured and arrived in Greece by way of Turkey. In Greece, he faced poor detention conditions and had his asylum application appeal discontinued after he failed to appear for his hearing. The ECtHR found Greece guilty of violations of Article 3 and 13 forced Greece to non-pecuniary reparations.

## ***Problems with Access to Documentation in Urban Environments***

In inland cities such as Athens, migrants confront challenges to assimilate into society due to a lack of documentation, amongst a local population that is often hostile. Current urban reception centers such as the Central Asylum Department at Petro Ralli in Athens do not have the facilities or resources to accommodate the number of asylum applications that they receive.<sup>cclxxxvii</sup> Asylum seekers find it difficult to access asylum procedures and they often wait for months for their applications to be processed. Without the proper documentation, migrants cannot legally work and police often apprehend them, put them in jail for months and treat the migrants brutally because they are undocumented.<sup>cclxxxviii</sup> If asylum seekers in cities such as Athens can escape jail time, they must face other challenges such as an inefficient documentation process as well as the possibility of xenophobic violence.

## **ACCESS TO PROTECTION IN BULGARIA**

### ***Background on the Asylum Situation***

According to the UNHCR, over 9,000 asylum seekers applied for protection in Bulgaria from January 1, 2013 until the beginning of December of that year.<sup>cclxxxix</sup> More than 4,000 of these applicants were Syrians who fled the conflict in their home country.<sup>ccxc</sup> There has been a dramatic increase in asylum applications within the last couple of years in Bulgaria, evident by the statistic that since 2007 only an average of 1,000 asylum seekers applied for protection each year.<sup>ccxci</sup> The Bulgarian State Agency for Refugees (SAR) has struggled to cope with this massive influx of asylum seekers, due in large part to its economic troubles, and has taken to certain measures to prevent their arrival. In November, Bulgarian officials deployed 1,200 border patrol guards to construct a fence and other barriers along its southeast border.<sup>ccxcii</sup> In one weekend alone, the border patrols prevented one-hundred asylum seekers from crossing into Bulgaria.<sup>ccxciii</sup> The European Commission has reminded Bulgaria that such pushbacks are illegal<sup>ccxciv</sup> due to their violation of the CEAS; however, they continue to take place. Soon after the deployment of Bulgarian border officials, the Bulgarian government forced 46 Iraqis back to Iraq on a charter flight and stated that more deportations would take place.<sup>ccxcv</sup> This was a clear instance of refoulement and it has violated a number of agreements to which Bulgaria is a signee.

### ***Problems with Access to Documentation in Urban and Coastal Detention Centers***

The reception centers within Bulgaria have struggled to cope with the mass influx of Syrian asylum seekers. According to the UNHCR, Bulgaria's two major detention centers in Lyubimets (near the Turkish border) and Busmantsi (which is just outside of Sofia) are overcrowded and do not have appropriate facilities or space to accommodate all these people.<sup>ccxcvi</sup> Many migrants must to live in squalid conditions in close proximity to

one another, which has increased tensions among these asylum seekers.<sup>ccxcvii</sup> The same Bulgarian authorities that are in charge of processing asylum claims have imprisoned many of these asylum seekers for months as they wait for deportation.<sup>ccxcviii</sup> In response to this, the UNHCR has called upon the Bulgaria to create new detention centers in an effort to relieve the already overcrowded facilities and release the imprisoned asylum seekers from bondage.<sup>ccxcix</sup> In addition, the UNHCR stated that it would offer more backing and training to Bulgaria throughout the process of asylum, especially in dealings with its refugee camps as well as its registration process.<sup>ccc</sup> The EASO, SAR and Bulgarian Red Cross must working alongside the UNHCR to make these improvements a reality.

### ***Problems with Access to Documentation in Refugee Camps***

Syrian refugees in the Harmanli camp<sup>53ccci</sup> face harsh conditions and have had difficulties in throughout the asylum process. According to Amnesty International, over 1,000 asylum seekers are forced to live in old shipping containers without proper sanitation and do not have access to speedy asylum procedures as is afforded under international law.<sup>cccii</sup> In response, the UNHCR and the SAR need to construct alternative residential facilities to house the migrant that continue to live in deplorable shipping containers. These institutions can petition the ERF to help provide funding for such a project.

According to the director of the SAR, there is no one currently in charge of taking asylum claims at the camp as of November 19, 2013 and a Bulgarian refugee lawyer stated there is no legislation that documents the establishment of the camp itself at all.<sup>ccciii</sup> The Bulgarian refugee regime must address these gaps in asylum procedure and execute the directives of the CEAS to create a more protective and efficient documentation process. Although the EU has donated \$7.6 million to better the conditions within the camp composed primarily of Syrian asylum seekers, the UNHCR has continued to reprimand the Bulgarian authorities for the “deplorable” conditions within Harmanli.<sup>ccciv</sup> It took months for Bulgaria to fingerprint the asylum seekers (under EURODAC system this is supposed to occur when asylum seekers first arrive in Bulgaria<sup>54</sup>) which was a clear

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<sup>53</sup> Harmanli is a converted military base and the largest refugee camp in Bulgaria.

<sup>54</sup> Collection and transmission of fingerprint data 1. Each Member State shall, in accordance with the safeguards laid down in the European Convention on Human Rights and in the United Nations Convention on the Rights of the Child, promptly take the fingerprints of all fingers of every alien of at least 14 years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back.

violation of the EURODAC protocol.<sup>cccv</sup> The ECtHR reprimanded Bulgaria in the decision on the case of Auad v. Bulgaria.<sup>55cccvi</sup> The ECtHR ruled that Bulgaria did not follow articles 5<sup>56</sup> and 13 of the ECHR and would have violated article 3 if Auad had been deported.<sup>cccvii</sup>

Although Bulgaria has made some improvements through its partnership with the UNHCR in the Further Developing Asylum Quality project there is still much to accomplish.<sup>cccviii</sup> One of the main challenges to UNHCR policy implementation is the fact that NGOs and not the UNHCR provide immediate legal and social services for asylum seekers.<sup>cccix</sup> This limits the amount of time that the UNHCR can spend with asylum seekers and displays the need for the UNHCR to continue its cooperation with NGOs and SAR in Bulgaria.<sup>cccx</sup>

## CONCLUSION

Italy, Bulgaria and Greece continue to violate the asylum procedures and basic human rights that they have agreed to uphold. It is essential that the UNHCR take a greater role in working with EU institutions as well as national refugee organizations within these European nations to implement the policies in this chapter. The number of asylum seekers in Europe has increased dramatically in the last decade, and will continue as political and social unrest continue to plague the Middle East and Africa. If not properly addressed, the increase of migrants into the EU has the potential to create a greater divide between EU member states and the possibility to cause the collapse of the Schengen Area in the future. The UNHCR must work in coordination with EU organizations and regional and national refugee agencies and NGOs to institute these policies to the best of their ability and prevent the already overwhelming asylum crisis in southern Europe from becoming uncontrollable.

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<sup>55</sup> Bulgaria accused Auad, (a Palestinian born in a refugee camp near Saida, Lebanon, living in Sofia, Bulgaria) of terrorism and ordered to return to Lebanon. Bulgarian authorities detained him for the maximum of 18 months and was then released in Sofia without being deported to Lebanon. The ECtHR found Bulgaria guilty of violating articles 5 and 13 of the ECHR and that article 3 would be violated if he as deported.

<sup>56</sup> ARTICLE 5: **Right to liberty and security:** 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases in accordance with a procedure prescribed by law:...

(“European Convention on Human Rights” 2014)

## RECOMMENDATIONS

### *International*

- The UNHCR must work in coordination with the IOM, EASO, ERN and ICMC to demand for the increase in refugee resettlement and solidarity in anticipation of the adoption of the CEAS in 2015 by EU member states to relieve the pressure of EU border nations such as Italy, Greece and Bulgaria.
- The international humanitarian regime led by the UNHCR must also call for nations such as the United States, Canada and Australia to be accountable and do more to manage refugee crises around the world, particularly the conflict in Syria.
- The UNHCR, IOM, EASO, ERN and ICMC must promote the continued examination of national and EU resettlement policies to provide an easier way for third nations to resettle refugees as is currently taking place in the United States.

### *Regional*

- The UNHCR must work with the ECHR mandate that Italy, Greece and Bulgaria continue to review their obligations under the 1951 Convention, the 1967 Protocol, the CEAS and the EU law relating to asylum, borders and immigration. The UNHCR can work alongside the ECtHR to hold these nations' authorities accountable to the ECHR and call for legal and financial consequences that are more punitive.
- As the UNHCR continues to advocate; further education must be provided for border patrol officers and police with the UNHCR Protection Training Manual for European Border and Entry Officials. The EASO must work with each state's national refugee agency to mandate that all workers throughout the asylum process attend training and informational sessions provided by the EASO. The UNHCR can work with the Italian, Greek, and Bulgarian state refugee agencies and the ECtHR to hold these officers accountable if they do not meet the standards expected of them under the ECHR and the CEAS by threatening the loss of their jobs, fines and criminal prosecution.
- The UNHCR should cooperate with the international refugee regime in Europe and with national and local refugee agencies to provide a greater number of trained translators in each of these nations. Migrants often find it difficult to access pertinent asylum information in all three states.
- The EASO must continue to improve its training programs for employees of the EU asylum system to ensure that asylum officials are prepared to cope with current gaps in migrant protection and abide by the CEAS regulations. The UNHCR and state agencies can also train documented refugees to provide assistance to asylum seekers in similar situations who speak the same language. This will provide refugees employment and perhaps help asylum seekers to be more comfortable in their interviews as part of the documentation procedure.

## ***National***

### **Italy**

- The UNHCR must mandate that Italian authorities cooperate with the Italian Red Cross and MSF to renovate the reception centers in Lampedusa and place realistic limits on the number of asylum seekers than can be held there to enable all people there to have proper nutritional and medical care as stated under the Reception Conditions Directive. Although Italian authorities transferred a number of migrants to other CDAs throughout Italy, the center is still overcrowded and often migrants do not have access to supplies to accommodate their basic needs, let alone proper and efficient asylum procedure.
- The UNHCR must work alongside the European Commission, the leaders of other Bulgaria and the SAR to demand that Italy suspend its Dublin Transfers temporarily to Greece until Greek authorities are able to manage their asylum system lawfully and efficiently. Although the Italian government has been reluctant to suspend Dublin Transfers to Greece, due in part to the continued struggles of the Italian economy, other Prominent European nations such as Germany and France have instituted this policy and Italy should do the same. This would help to curtail the already massive influx of migrants to Greek reception centers and display that Italy is willing to deal with its refugee situation.

### **Greece**

- Employ the use of video conferencing to conduct interviews through Skype or other means as has been done in Bulgaria. This will speed up the asylum process and grant interviews to more asylum seekers. This will also allow asylum seekers to access to translators and personnel trained in Greek asylum procedure and law if those individuals cannot meet in person.

### **Bulgaria**

- The UNHCR, in accordance with the SAR and the ECtHR, should more forcefully recommend that EU member states suspend their transfers of migrants under the Dublin Regulation to Bulgaria as most EU states have done with Greece. Although conditions have improved at many reception facilities around Bulgaria, they are overcrowded and Bulgarian authorities are still culpable for violations of EU asylum and human rights laws.
- The UNHCR and SAR should work together to set up a border asylum procedure that meets human rights standards. This will help to solve the problems that overcrowded facilities such as Lyubimets face by providing additional areas to house asylum seekers and speed up the asylum process. Migrants would be able to

apply for asylum as soon as they reach the Bulgarian border and enable them to have asylum granted and have access to Bulgarian facilities more quickly.

## **Local**

### **Italy**

- The UNHCR must work to provide more temporary shelters for asylum seekers, especially those in urban environments such as Rome and Milan, to give them a safe place to live while they wait for the asylum applications process to unfold.
- The ERF must contribute more to manage the growing poverty and homelessness among asylum seekers in Rome that the ERF-funded Europe Land of Asylum project documented in 2002. The UNHCR and EASO must coordinate with the ICR to educate these migrants on their rights, opportunities for employment and the facilities available for them by providing handbooks in multiple languages (Arabic, English, Somali, Farsi, Pashto, etc) like the handbooks provided at reception centers along the coast.

### **Greece**

- The UNHCR must cooperate with the EASO and GCR to create more documentation facilities in order to speed up the documentation process of asylum seekers, enabling them to gain refugee status more quickly and look for employment. The current centers such as the Central Asylum Department at Petro Ralli in Athens do not have the facilities or resources to accommodate the number of asylum applications that they receive. These three organizations can work with the ERF to produce a cost-effective plan for the improvement of the reception facilities throughout Greece.

### **Bulgaria**

- The UNCHR must cooperate with the SAR and MSF and call on further funding from the ERF to improve living Conditions at the Harmanli camp. Bulgarian authorities with the help of the ERF should construct alternative residential centers (like those constructed for residents living in tents at Harmanli) so that migrants do not have to live in shipping containers.
- Monitor asylum claims in the Harmanli camp and make sure that there are always officials present to recognize these asylum applications. Therefore, asylum seekers can begin the documentation process and more quickly leave the camp.

# Livelihood

## INTRODUCTION

*By: Quincy Hernan*

Many of the problems refugees face daily are a result of the conditions in which they live while they wait for a durable solution. Current responses to refugee crises are found only in the form of triage reactions, where the immediate problem may be addressed but at the cost of a more permanent or sustainable solution. The majority of countries that host refugees are found in the Global South, and most often are some of the poorest and most underdeveloped in the world. Hosting refugees creates an immense strain on the resources of these countries and often can lead to violence and xenophobia. Recently, however, many refugees are migrating to cities in the hope of finding a more secure livelihood. These urban refugees are often undocumented and unregistered putting them at risk for exploitation.

Refugee camps have become synonymous with the international refugee regime, and have become a permanent fixture on the landscape and reminder of the failure of the IRR to fully address these problems. Refugee camps and the current system of international response to a refugee crisis do not address the changing nature of forced migrations, especially problems faced on a daily basis. Refugees, especially in an urban setting, must find food, shelter, and work in order to support themselves and their families. Often children are sent into the workforce, because education proves to be too expensive and time consuming. Needs of specific refugee groups, such as women, and the disabled are not being met, placing them further in harm's way. Finally, the camp system has been linked to the spread of communicable diseases such as Polio which places children in these camps at even greater risk, and by extension, those who live near these camps and the regions in which they reside. The IRR should focus on creating long-lasting and durable solutions in order to properly provide security and assistance to refugees through greater care and documentation.

# EXAMINING SOURCES OF COLLABORATION

## *Addressing Gaps in Refugee Access to Livelihood*

By: Andrea Karstetter

### INTRODUCTION

The UNHCR's key guiding principles are built on the foundation of refugee empowerment through programs that promote self-sustainability.<sup>cccxi</sup> In order to foster a sustainable refugee regime, access to steady livelihoods and sources of income must be confronted. There are many international and regional conventions and legal instruments that state refugee's right to work, and yet hindrances to livelihood persist. Economic opportunities for refugees are constrained by several factors such as the lack of available employment, documentation, host country policies, and discrimination against refugees.<sup>cccxi</sup> The UNHCR can undertake these challenges by building and strengthening relationships with non-state actors, including the private sector, local communities and NGOs. The private sector should be utilized to create economic stimulation for refugees and the communities where they reside and augment employment opportunities. Local communities must be incorporated to create programs that are mutually beneficial for refugees and locals, which will alleviate resentment and xenophobia. The UNHCR should also collaborate with NGOs in order to address regions or populations with specific needs. This chapter will discuss the challenges refugees in the Middle East and East Africa face when seeking livelihood, as well as demonstrate how the UNHCR's collaboration with non-state actors will enable forced migrants to enjoy higher standards of living including better access to safe and sustainable methods of survival.

The promotion of self-sustainable solutions for forced migrants is an efficient way to allocate the limited budgets of the UNHCR and host countries while also addressing issues such as health, violence and educational concerns. Self-sustainable practices not only facilitate the life of a forced migrant during their stay in a host country; but also provide them with valuable resources during refoulement or third country resettlement. In both circumstances, the countries will be tasked with greater social and economic problems such as an uneducated youth population and an unproductive workforce that is dependent on government and humanitarian assistance.

### FROM CAMPS TO CITIES

While some camps have been more successful in actively supporting productive living conditions than others; refugees often feel vulnerable in camps.<sup>cccxi</sup> <sup>3</sup> One of the principal contributions to this feeling of vulnerability

comes from the lack of livelihood opportunities in refugee camps, including employment and other income generating alternatives.<sup>57</sup> Although camps often have an internal economy, opportunities for income are often limited due to overpopulation of camps and geographic isolation.<sup>cccxiv</sup> Providing jobs to 2,000-4,000 refugees is valuable, but not sufficient in a camp of hundreds of thousands of refugees seeking employment.<sup>cccxv</sup> Similar to the general world population, refugees are following the global trend of urbanization.<sup>cccxvi</sup> Many refugees aspire to move to large cities and urban setting because they expect to find more opportunities for livelihood than they encountered in refugee camps.<sup>cccxvii</sup> Today, more than half of the refugee population lives in urban settings, which indicates the importance in directing specialized attention to this population.<sup>cccxviii</sup>

Strategies for survival can be more challenging for refugees in urban areas than refugee camps. Forced migrants must provide their own food, shelter, sanitary infrastructure and employment. The lack of a concentrated population such as in refugee camps makes it difficult for aid organizations to analyze and attend to the needs of the displaced persons.<sup>cccxix</sup> It is also difficult for refugees to receive social and economic support from host countries that do not have adequate structural and financial resources to provide support for their native population.

## CHALLENGES OF ACCESSING LIVELIHOOD OPPORTUNITIES

Employment opportunities for refugees are often limited to the informal economy. A recent report from the Women's Refugee Commission indicates that two thirds of urban residents in Africa rely on the informal sector as a means of livelihood.<sup>cccxx</sup> Work in the informal economy increases refugee vulnerability to exploitation; work in hazardous conditions, low wages and inconsistent income.<sup>cccxxi</sup> Even when refugees possess proper legal documentation, there are several factors that influence a refugee's decision to partake in the informal economy, such as restrictive local policies, xenophobia and lack of available formal employment.

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<sup>2</sup> Maintaining purity in its political impact refers to avoiding influence from donor states that are based on their political interests of a host country or refugee community.

<sup>3</sup> Productive living conditions refers to the engagement in activities promoting self-sustainability and benefits to the larger community, from local to international social and/or political and/or economic participation.

Local policies and practices often ignore the guidelines set by international legal framework and make it difficult for refugees to earn income.<sup>cccxxii</sup> According to the Women’s Refugee Commission, “while some states do allow the formal and informal economic activity of refugees, a large number of states have restrictive policies that local law enforcement officials use either to justify restricting the displaced from working or permit the exploitation of refugees.”<sup>cccxxiii</sup> For example, credentials and qualifications required for formal and informal work, such as diplomas and experience, are often not translated to the equivalency of local standards.<sup>cccxxiv</sup> This strips migrants of their educational and professional assets, resulting in a decline of economic, political and social productivity for qualified migrants and for the host country, who could benefit from their human capital.

Cultural and racial tensions can also fuel government policies impose hardship and frustration on refugee livelihood even when employment opportunities are abundant.<sup>cccxxv</sup> Last year, Benjamin Netanyahu, the prime minister of Israel, a signatory of the UNHCR 1951 Convention, declared the importance of new state standards to protect the identity of the Jewish democracy.<sup>cccxxvi</sup> In November 2013 Netanyahu told his cabinet, “We are determined to remove the tens of thousands of infiltrators who are here,” which accurately reflects the tensions between locals and migrants.<sup>cccxxvii</sup> Right wing politicians and activists have lobbied to arouse public support and create laws that will reduce migration. This includes the neglect to grant new construction permits after the permitted demolition of buildings used by refugees to support themselves, including booths, garages, fences and building extensions.<sup>cccxxviii</sup> The Israeli government also gives financial incentives for migrants to return to their country of origin.<sup>cccxxix</sup> The strong government resentment reflects the discrimination and refugee resentment locally in the work place and other parts of the public sphere. Joseph Tuto, a Sudanese who has lived in Israel with his family for 5 years, describes the daily challenges. “Life in Israel is very hard for refugees...In Israel you are like a machine. You work from day to night and you face racism from the highest ranked to the lowest.”<sup>cccxxx</sup> The discrimination affects refugees’ ability to find work and economically interact with employers sympathetic to the government’s harsh policies. As a result of the strong resettlement, more than 60,000 migrants, primarily from Sudan and Eritrea, have fled Israel.<sup>cccxxxi</sup> According to Amnesty International, the migrants forced to leave Israel will be exposed to dangerous situations upon return to the country where they originally fled violence, and continue to aggravate the migrants’ ability to find secure employment.<sup>cccxxxii</sup>

Local populations not only resent refugees and other migrants because of cultural and racial tensions but also because there is a widespread belief that refugees contribute to economic strains on local livelihood.<sup>cccxxxiii</sup> Refugees and

local populations often compete for the same scarce employment opportunities, government resources and international humanitarian relief. In Kenya, tension between the locals and Somalian refugees increase as refugees receive aid from organizations, while Kenyans are denied the same services.<sup>cccxxxiv</sup> Although this depiction lacks a comprehensive view of the actual impact of refugees on the local economy, it can generate tension as well as physical and structural violence between the two groups.

As a result of economic hardships, forced migrants often resort to negative alternatives, such as engagement in criminal activity, which makes them vulnerable to exploitation and human rights violations.<sup>cccxxxv</sup> This behavior largely impacts children, who make up half of the global refugee population.<sup>cccxxxvi</sup> Children often become subject to exploitation through child labor, trafficking, and early marriage as a means of providing economic support to themselves and their families.<sup>cccxxxvii</sup> In Jordan, the country with the second largest Syrian refugee population, about half of all Syrian refugee families that reported formal employment in Jordan, confirm that children contribute to household income.<sup>cccxxxviii</sup> According to the Jordanian ministry of labor, 60-70% of child labor in Jordan is made up of Syrian refugees, which indicates the vulnerability of refugee children in contrast to local children who may also be living under conditions that lack secure income generating opportunities.<sup>cccxxxix</sup> In Jordan, children are often more desirable for employment because they receive lower wages.

While 85% of child laborers are boys, girls are more likely to be forced into early marriages.<sup>cccxl</sup> In Lebanon, where half of the 2 million Syrians have sought refuge, more than 50% of girls are married before the age of 18.<sup>cccxli</sup> While in some regions of Syria, it is considered socially acceptable, there are many families that sanction such marriages in order to survive, due to insufficient sources of income.<sup>cccxlii</sup> Hanifa Amar's family, who fled to Lebanon, was forced to arrange her early marriage to their landlord. In return, the landlord would allow the family to continue living on his property.<sup>cccxliii</sup> Fourteen-year-old Hanifa Amar admits, "My whole life is destroyed. I don't want to marry him, but if I do my family can stay in our home."<sup>cccxliv</sup>

Aside from the daily life challenges, the influx of Syrian child labor has significant long term consequences for the future livelihood opportunities of refugees upon return, integration or relocation.<sup>cccxliv</sup> 58

## **BUILDING STRONGER RELATIONSHIPS WITH NON-STATE ACTORS**

Rather than treating refugees as the root of the problem, the international refugee regime should utilize the existing resources to collaborate in the promotion of sustainable economic opportunities for forced migrants. Local and even international companies can benefit from the creation of economic opportunities for forced migrants with larger market demands and a diverse pool of experienced and skilled workers. Such partnership can stimulate the economy, therefore also benefiting the local communities. There are also many non-governmental and non-profit organizations that work closely with forced migrants and local populations in urban settings, with similar goals to those of the UNHCR. The bilateral cooperation between various institutions, organizations and companies can provide more economic opportunities and stable livelihood for forced migrants.

### ***Collaboration with the Private Sector***

Many times the largest obstacle to obtaining employment is not the law, but the dire socio-economic conditions in the host country.<sup>cccxlvi</sup> Therefore it is important to work with local businesses and international companies to support economic development in the community as a whole especially for vulnerable populations such as forced migrants. Host countries and donor states become increasingly hesitant in sustaining these populations, especially with more than 6 million of the world's refugees trapped in protracted situations.<sup>cccxlvii</sup> Therefore, innovative ways of supporting refugees in protracted situations and stimulating local economies must be addressed. The private sector, usually the propeller of innovation, can use its products and services to reach vulnerable populations and create a mutually beneficial economic relationship.<sup>cccxlvi</sup> The UNHCR can encourage international and local companies to participate in activities that economically engage refugees, while benefiting the local community, through the creation of a step-by-step template for businesses to become involved.

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<sup>58</sup> Refer to Chapter 10, "Preventing Lost Generation: Addressing the Education Needs of Refugee Children," for further information on the long term consequences of child engagement in negative alternatives to livelihood.

An example of a successful relationship between the private sector and economic opportunities for refugees is through access to micro-finance institutions.<sup>59</sup> Most refugees lose many of their financial assets and possessions in the “scramble for safety,” so many of them must start anew.<sup>cccxlx</sup> Host countries usually do not provide refugees with access to credit to invest in the economy or build income and savings.<sup>cccl</sup> However, partnerships with financial institutions in the private sector can contribute to filling the gap. In 2012, the UNHCR signed a Memorandum of Understanding with the First Micro Finance Bank of Tajikistan, giving refugees the same opportunities as local citizens.<sup>cccli</sup> The collaboration between local authorities enables refugees to develop small businesses and open bank accounts for micro-credits. This gave forced migrants opportunities to strengthen their income, employ other refugees and local citizens, and contribute to the economy of the host country.

### ***Collaborating with Local Communities***

Although forced migrants are commonly misconceived as burdens; host countries can significantly benefit from large influxes of refugees because they stimulate economic growth and diversity. The negative connotation of forced migrants as burdens has created tension, violence and xenophobia between forced migrants and the citizens of the host country.<sup>ccclii</sup> As stated in the UNHCR, “The State of the World’s Refugees” 1997 report, hosting refugees is, “a luxury the world’s poorest states can no longer afford.”<sup>cccliii</sup> Generating from this kind of discrimination, state and local authorities often restrict the movement and livelihood opportunities available to refugees, with the effort of discouraging further migration to the country.<sup>cccliv</sup> Rather than identifying the already well-exposed challenges of hosting refugees, such as straining the host government’s resources, host communities must recognize the investment in state building and productivity that refugees can trigger. Recent research suggests that forced migrant communities are beneficial to society because they bring in new skills and products to the economy, expand consumption of food, commodities and building materials, attract international aid, create jobs and employment for local individuals and businesses.<sup>ccclv</sup>

Communities with large refugee populations bring media attention and humanitarian aid to the host communities that would otherwise be neglected. The

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<sup>59</sup> Microfinance provides very small loans at a very low interest to individuals, families and entrepreneurs, usually in the developing world, to start or expand very small, self-sufficient businesses. It is a proven tool for fighting poverty on a large scale.<sup>xxv</sup>

attraction of such aid has many beneficial implications for the host community. First, relief supplies require transportation and communication, which many times is fulfilled by local services, which creates jobs for the local population.<sup>ccclvi</sup> Near the Dadaab refugee camp in Kenya, host community members have reaped the benefits of refugee-related operations like increased employment opportunities. Such camp-related employment and trade-related work with the refugee community has increased Dadaab's per capita by 25% from.<sup>ccclvii</sup> Second, the resources required for the refugee communities are not always available and often results in partnerships with local businesses to fulfil the necessity. After the camp was established in Dadaab, many local construction businesses moved to the remote areas surrounding the encampment and were able to benefit from the infrastructural needs.<sup>ccclviii</sup> Third, even after the refugee communities return to the country of origin or relocate and integrate the host country will have gained an effective infrastructure. The infrastructure necessitated by the refugee regime has contributed to the economic strengthening of host communities by enabling the flow of people, goods and services to be dispersed throughout the country.<sup>ccclix</sup> Unfortunately, the real impact of refugees is not widely broadcasted in the international refugee regime. Considering the influential stance that the UNHCR holds in the regime, the agency could initiate a campaign that encourages the under-researched real impact of refugees in their host communities. With a new area of research reflected in UNHCR reports and media, a top down approach could dramatically change global and local perceptions of refugees.

A bottom-up approach can also be used to improve access to livelihood opportunities and employment conditions that are weakened by xenophobia through the incorporation of programs that increase positive interactions between refugees and locals. A great model is one initiated by the Norwegian Refugee Council<sup>60</sup> (NRC)<sup>ccclx</sup>, who has begun a project to fund renovations of local Jordanian homes in exchange for allowing Syrian refugees to stay in their homes.<sup>ccclxi</sup> Although the program was highly criticized, surveys show an increase in local-refugee positive relationships. Abu Fira's family, one of the first to embark on the programs says, "We are very comfortable here. We have four rooms, a kitchen and a bathroom and the landlord is very kind and hospitable. He has been like a brother to us."<sup>ccclxii</sup> Programs such as this improve local-refugee relationships by increasing the standard of living for refugees and improving the homes of the

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<sup>60</sup> The Norwegian Refugee Council is an independent, non-governmental humanitarian organization that provides assistance, protection and durable solutions to refugees and internally displaced persons worldwide.

local population which results in a healthy relationship between forced migrants and local communities.<sup>ccclxiii</sup>

Programs that provide mutual benefits can be further developed with a strong community outreach campaign that enables the UNHCR, businesses and NGOs to work directly with local communities. With direct community engagement, collaborating non-state actors can better evaluate the needs of the community and local compliance of positive measures for refugee access to livelihood opportunities and information. Programs with mutual benefits can also be used as a tool for the UNHCR to reward countries and local community's whose policies encourage an effective RSD process as well as social services, access to information and economic opportunity.

### ***Collaboration with Non-governmental Organizations***

It is important for the UNHCR to also address the specific challenges to each forced migrant population. In this way, the UNHCR can reach the specific needs of important populations that may require more than the broad scope the agency offers, and instead provide a more narrow focus to meet specific concerns. The UNHCR has a broad array of partnerships with non-profit and non-governmental organizations tasked with similar goals. Rather than exhausting the agency's capabilities by duplicating programs and promising more comprehensive protection than it can adequately provide, the UNHCR must create a feasible step-by-step process for NGOs to collaborate with the agency with policy and information sharing to create and strengthen the self-sustainability of specific populations. For example, Heshima Kenya is a nonprofit organization and working partner of the UNHCR with the mission of protecting unaccompanied and separated refugee children and youth living in Nairobi, Kenya.<sup>ccclxiv</sup> The organization provides transitional shelter, medical assistance, legal aid, foster care support, trauma counseling, basic education classes and leadership building and parenting support. The organization also gives youth the opportunity to produce hand dyed scarves to earn a cash stipend, which creates a pathway for employment and acquiring income without taking away their time for education. The relatively new program appeared in a recent newsletter highlighting good practices in the development of livelihood and self-sustainability of refugees in urban settings.<sup>ccclxv</sup> While the UNHCR is not able to provide such a holistic approach to improving the livelihood opportunities of refugee youth, addressing both immediate and long-term employment enhancements, partnerships such as this one enable the UNHCR to become a facilitator to smaller organizations that are tasked with narrower missions. The UNHCR's cooperation with specialized organizations will therefore effectively invest in economic opportunities available to forced migrants.

## CONCLUSION

The biggest problems facing refugees can be decreased through the development of sustainable employment and livelihood opportunities for refugees. As mentioned in a UNHCR management toolkit for refugee livelihood, self-sufficient migrants “lead productive lives, and weave strong social, economic and cultural ties with their host communities.”<sup>ccclxvi</sup> Although the majority of refugees cannot take many material assets to support their livelihood in their places of refuge, they all carry valuable knowledge, experience and skills. When provided with ways to utilize these assets through employment and productive lifestyles, they can become self-reliant. Given that the majority of challenges refugees face happen on a local level, not always in accord with the international legal framework that has been established, it is important for the UNHCR to collaborate with the private sector, local communities and NGOs to tackle the gaps in the refugee regime that are caused by lack of employment opportunities, host country policies, and discrimination.

## RECOMMENDATIONS

### *International*

- The UNHCR should lead the International Refugee Regime in building, improving and facilitating strong relationships with non-state actors.
- International/Regional
- The UNHCR must cooperate with NGO’s to create and allocate resources to specific programs that address economic opportunity for refugees and other forced migrant groups.
- The UNHCR must use programs that benefit both forced migrants and local population as a reward system for countries that have effective RSD processes and refugee integration.
- The UNHCR should encourage the practice of “home sharing” as advocated by NRC because it directly benefits both forced migrants and the local population. This is especially effective in regions that have refugees from neighboring states because of the large number of forced migrants.

### *Local*

- The UNHCR should encourage financial institutions to invest in micro-credit options for forced migrant populations in order to encourage entrepreneurship and give forced migrants access to financial assets.
- The UNHCR should encourage local businesses to reach out to forced migrant communities in order to create economic opportunities. This not only benefits the forced migrants, but also provides a labor source and commodity market for businesses.

# REDUCING THE SPREAD OF COMMUNICABLE DISEASES

## *Improving Responses to Polio Outbreaks Among Refugee and IDP Populations*

By Natalia Charamand

### INTRODUCTION

In October of 2013, the World Health Organization (WHO) confirmed 13-22 cases of polio caused by the wild poliovirus type 1 (WPV<sub>1</sub>) in the Deir al-Zor province of Syria. This province is inhabited by many IDPs. The spread of WPV<sub>1</sub> has the potential to devastate communities worldwide and consequently require a global response.<sup>ccclxvii</sup> The Assistance Coordination Unit, a humanitarian relief organization operating in Syria, has gone so far as to expand the number to 58 cases of polio.<sup>ccclxviii</sup> In May of 2013, poliovirus also broke out in the Dadaab refugee camp in Kenya with sixteen confirmed cases.<sup>ccclxix</sup> These outbreaks exemplify the gaps in protection that forced migrants face regarding their health and well-being. The spread of polio among forced migrants must be addressed because it puts the health of the entire human population at risk.

The health forced migrants, determined by their access to care and protection, affects their survival: the degree to which they are able to overcome obstacles set in front of them and integrate or become successful members of their new communities. Lack of guaranteed rights creates a gap in the quality and extent of the healthcare they receive. This can lead to potentially destructive disease outbreaks that not only cripple and confound these already vulnerable populations but also have the capacity to spread globally. The recent polio outbreaks exemplify the importance and international implications that negative health outcomes migratory populations such as these have on our globalized system. Therefore the healthcare of forced migrants needs restructuring and more international attention and resources.

This chapter will first present the legal framework that defines the refugee health system and stress how health is a human right that refugees should have secured. The chapter will use the two polio outbreaks in the Dadaab camp and Syria to demonstrate how the international refugee regime fails to adequately protect refugee from health concerns. Challenges specific to IDPs and refugee camps will be addressed. The chapter will then provide solutions to the addressed gaps by drawing from the international epidemic prevention regime and previously combatted refugee disease outbreaks.

## REFUGEE'S RIGHT TO HEALTH

Every country, though to different degrees, has signed at least one treaty regarding health as a human right.<sup>ccclxx</sup> The most universally known right to health is laid out in the General Commitments of the International Covenant on Economic, Social and Cultural Rights.<sup>61</sup> In particular Commitment Twelve states,

“1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness”.<sup>ccclxxi</sup>

Specific to refugees, are the rights laid out in the 1951 Refugee Convention that states, “Refugees should enjoy access to health services equivalent to that of the host population.”<sup>ccclxxii</sup> Though the interpretation of this right is up to the states, generally it mandates some degree of health protection.

In addition to human rights laws regarding health, the United Nations General Assembly unanimously adopted a resolution emphasizing universal health coverage as an essential step in international development.<sup>ccclxxiii</sup> This resolution, adopted in December of 2012, urges the international community to ensure that all people have access to affordable health services.<sup>ccclxxiv</sup> There is no single formula for how each member state should adopt this resolution, nor is there accountability of states that do not comply.<sup>ccclxxv</sup> This resolution serves merely as a

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<sup>61</sup> The General Commitments of the International Covenant on Economic, Social and Cultural Rights was produced in 1966 and adopted by the United Nations General Assembly. These commitments are meant to supplement the Universal Declaration of Human Rights and pick up, in the departments of economic, social and cultural rights, where it left off or fell short.<sup>v</sup>

reaffirmation of health as a human right than a policy requiring it. Although the international community has acknowledged the importance of access to health services, forced migrants still do not receive adequate care.

## CHALLENGES TO COMBATING POLIO

Due to the nature and vulnerability of forced migrants and the loose enforcement of hard law policies regarding them, most challenges are rooted in the lack of care and resources provided to these populations. Since there is no single organization or governmental body responsible for the health and healthcare of forced migrant populations the different scopes and capacities of the many actors in this field produces immense strains and gaps in the system. Some examples include over-capacitation in camps, resource limitations, misinformation and even access restrictions. The following sections will outline these gaps and challenges in the specific context of current poliovirus outbreaks in both the Dadaab refugee camp and the current Syrian crisis.

Not only is the international community facing the difficulty of challenges produced by the current international refugee and IDP regimes in fighting this disease but also the many challenges that arise due to the disease itself. Wild poliovirus is difficult to isolate because it often does not produce symptoms.<sup>62ccclxxvi</sup> The virus is transmitted through the oral-fecal route which means it flourishes in unsanitary conditions that forced migrants consistently encounter.<sup>ccclxxvii</sup> About 1 in 100 individuals afflicted with polio will suffer from either weakness or paralysis in their legs and/or arms that can last their entire lifetime or can cause death producing strains not only on the person themselves but their surrounding family and community.<sup>ccclxxviii</sup> Ann Hussey, a Rotary International volunteer who supports international polio immunization efforts explained that the disease not only comes with the physical pain and restrictions resulting from weakened or paralyzed muscles but also social ostracism that can sometimes lead to physical and mental abuse.<sup>ccclxxix</sup> The virus because of its invisibility, ease of transmission and devastating effects, has the potential to become a damaging worldwide epidemic. To make matters worse, there is no cure for polio, which necessitates that all solutions to the following challenges come from prevention and containment methods.

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<sup>62</sup> Polio mainly affects children under the age of five though symptoms of the disease can resurge up to 30 or 40 years later in their life. Since symptoms are not always apparent the actual number of carriers is unknown.<sup>x</sup>

## ***Restrictions to Healthcare***

The most devastating challenge regarding the Syrian polio outbreak is the restrictions that international aid donors and other organizations such as the UN and WHO have faced while trying to access Syrian IDPs and provide them with vaccines and care. Due to the ongoing conflict in the region, a humanitarian crisis has emerged and many organizations have been unable to send in aid. Though international humanitarian law dictates that both parties of the conflict must allow for the free flow of medical supplies to civilians, there have been discrepancies in Syria regarding aid allotted and received aid.<sup>ccclxxx</sup> Medical kits have been destroyed at military checkpoints and convoys carrying medical supplies have been denied passage.<sup>ccclxxxi</sup> Safety of medical workers has also become an issue for organizations working in this area. For example, a Syrian surgeon working MSF was killed in September 2013, seven International Committee of the Red Cross (IRC) employees were abducted in October 2013 and five MSF workers went missing this last January.<sup>ccclxxxii</sup> Though these organizations are still working to aid Syrians, the political violence occurring has produced setbacks and has even barred them from accessing the children most vulnerable to a polio infection.

Speculation has risen in the untimely detection and confirmation of the first case in the Syrian polio outbreak. Many news sources criticize the WHO for obstructing samples and taking roughly three months to identify and confirm WPV1 in the Deir al-Zor province.<sup>ccclxxxiii</sup> The critics, led by Adam Coutts, a researcher at the London school of Hygiene and Tropical Medicine, and Fouad Fouad, a Syrian doctor, argue that confirmation was prolonged because the WHO was working exclusively with the Syrian government that obstructed access to stool samples from rebel-occupied areas.<sup>ccclxxxiv</sup> Only after a Turkish health team collected the samples, which produced positive results, was the outbreak confirmed.

The internationally led vaccination response to the outbreak was also met with its own set of delays and the same governmental resistance. Since the UN only delivers aid through sovereign states, it took months of negotiations and pressure for the Syrian government to address the polio outbreak and start to distribute the vaccinations.<sup>63ccclxxxv</sup> The NGOs working on this problem had to

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<sup>63</sup> Meaning the U.N. aid, such as vaccines, must go through Damascus and be distributed by the Syrian government who, at this time, are not keen on giving any sort of aid to the rebels. Since the Northern Province is both home to high numbers of rebels and the polio outbreak, those with the greatest need are having the most difficulty accessing care.<sup>xx</sup>

establish ties with both parties to even begin to address the problem since the spread is most concerning and at its highest numbers in rebel areas.<sup>ccclxxxvi</sup> Though there have been recent successful campaigns in the Dier al-Zor province with 180,000 vaccines being provided, it is still not enough coverage for all those that are vulnerable.<sup>ccclxxxvii</sup>

Thus, as exemplified through the polio outbreak in Syria, one of the leading challenges the international community faces when dealing with IDP health care is safely accessing patients and providing them with timely aid.

### ***Overcrowding and Overcapacities***

Dadaab Refugee Camp in Kenya is the largest camp in the world; it houses over close to 500,000 people—4 times its original capacity.<sup>ccclxxxviii</sup> Dadaab's resources have been stretched too far and because of this, access to necessities such as adequate food, water and hygiene standards have suffered.<sup>ccclxxxix</sup> In 2006, the UNHCR conducted a review of the camp and determined unacceptable rates of acute malnutrition among residents and especially among children.<sup>cccxc</sup> When children do not have adequate diets and do not receive a variety of foods, they develop vitamin deficiencies that in turn, causes their immune systems to weaken drastically and their risk of contracting diseases to increase. Access to clean water is also difficult in a camp setting and with contaminated water comes disease. There is a shortage of latrines for sanitary means of waste disposal and a shortage of chlorine to help disinfect the water supplies.<sup>cccxc</sup> With the shortage of soap and other means to clean oneself and their surrounding environment as well, it is hard to uphold prevention methods and a proper standard of hygiene. Diseases, such as polio, spread and grow more easily because of the vulnerability and compromised immune systems of the refugee populations that reside in unsanitary camps such as Dadaab.<sup>cccxcii</sup>

Another challenge arising from overcrowded camps such as Dadaab is the ease with which diseases spread simply due to the proximity of occupants and lack of space and sanitation.<sup>cccxciii</sup> This is especially pertinent in poliovirus outbreaks because it is a communicable disease, which spreads through contact with sneezes, coughs, feces and contaminated water.<sup>cccxciv</sup> The rainy season in Kenya during October and November, also contributes to the ease and spread of water borne diseases because Dadaab floods and water becomes contaminated.<sup>cccxcv</sup> With camps forcing refugees to live so closely to one another, they are creating environments conducive to the spread of disease and unhealthy conditions.

### ***Misinformation and Resistance***

In all spheres of forced migration misinformation and resistance to prevention and/or treatment programs becomes an issue. It is apparent in both the

IDP situation in Syria and the camp setting in Dadaab that many forced migrants are unaware of their rights.<sup>cccxcvi</sup> They are unsure of what services they have access to and sometimes, even when they do, mistrust of the health intervention or of the people administering them can lead to resistance to the services.<sup>cccxcvii</sup> This can be due to an array of challenges including ambiguity of the information they are provided about services they have, lack of proper documentation, linguistic barriers, disparate health practice beliefs and cross-cultural communication, mistrust of vaccinations and even potentially the limited cultural sensitivity of the provider of health care programs.<sup>cccxcviii</sup> For example, IDPs in Syria were, and many still are, unaware that the outbreak is even taking place.<sup>cccxcix</sup> In Kenya, round one of the vaccination program in Dadaab was met with a great deal of refugee resistance due to misinformation. Many refugees thought that polio does not affect adults and so, adults did not feel the need to vaccinate themselves.<sup>cd</sup> Also, there is a fear and mistrust of the vaccination itself since many have never experienced Western medicine before. Rumors ranging from vaccines being a part of sterilization projects to causing deaths have floated around this region causing parents to avoid vaccinating themselves and their children.<sup>cdi</sup>

Misinformation and resistance have become a root challenges in prevention methods and since prevention is currently the only means of combating polio, this necessitates that education and community outreach to distribute health knowledge and reduce feelings of unease then become the starting point to filling in gaps in protection of refugee and IDP health care.

## SOLUTIONS

It is vital that the international community pays more attention to refugee and IDP health because these populations are so migratory. Forced migrant populations are already vulnerable to the disease because the lack of quality care they receive and the weakened state of their immune systems they have become perfect carriers for these illnesses. For example, the polio outbreak in Syria could spread not only the surrounding Middle Eastern countries of Jordan, Turkey and Lebanon but also European countries where there may be pockets of unvaccinated children and therefor broad opportunities for polio to transmit and spread.<sup>cdii</sup> This news is startling and should incite an urgent global response because, as WHO states, “As long as a single child remains infected, children in all countries are at risk of contracting polio.”<sup>cdiii</sup>

Efforts to thwart this disease have been almost universally successful. Global campaigns and billions of dollars have been pumped into eradication creating very successful surveillance and prevention programs.<sup>cdiv</sup> By ignoring the gap in protection of refugee and IDP children’s health overall, children are left without qualitative comprehensive care which makes them more vulnerable and

susceptible to communicable diseases. The following solutions, though tailored to eradicating polio, can have broader positive impacts on the refugee and IDP health systems as a whole and help to fill gaps in protection these people are facing in regards to their health.

### ***Examples of success: India***

Arguably one of the biggest success stories regarding health in recent years has been the eradication of polio in India.<sup>cdv</sup> First thought to be the most challenging state to have a successful eradication campaign in due to the high population density, low sanitation, infrastructural problems and high polio infection rates, the eradication of polio in India proves that it can be possible anywhere.<sup>cdvi</sup> WHO credits the success of the eradication program to the extensive surveillance system implemented in India in the late 90s'.<sup>cdvii</sup> With this system, the Indian government and WHO were able to enroll more than 40,000 health facilities (from all sectors—public, private and informal) to aid in the detection and classification of polio cases. WHO and the Indian government were then able to pinpoint different types of polio outbreaks and the marginalized populations they were affecting and create tailored responses to vaccination coverage programs.<sup>cdviii</sup> Other successful points of the initiative in India include the extensive communication strategies developed regarding spreading information, be it through media, through social mobilization and/or political advocacy.<sup>cdix</sup> By applying what we have seen work in India to refugee and IDP situations along with solutions specific to each outbreak location, polio can successfully be contained and eventually eradicated in Dadaab and Syria.

### ***International Solidarity, Information and Documentation***

First and foremost, members of the international community need to be reminded of the commitments they made to provide every human being with basic health rights. It is the duty of the UNHCR and the civilian population to lobby states and NGOs to adhere to the conventions and treaties they have signed on to. The following recommendations provide ways in which those involved in the refugee health regime can uphold their commitments and take steps to fill gaps in protection the current system has incurred.

Borrowing from the success of the polio eradication in India, extensive communicative strategies need to be deployed in both Syria and Dadaab to enhance information sharing on the outbreak itself and how one can protect their child from it. These are perhaps some of the easiest and most effective prevention methods and include improvements in health surveillance systems and documentations and health training and general education programs.<sup>cdx</sup> Through these forums, the healthcare system can inform the international community about disease spread patterns, identify populations most at risk and identify who

has received vaccinations. It can also be used to inform refugees on means to improve their sanitary conditions and how to take the steps to take to reduce the likelihood of transmission of a communicable disease.

The health surveillance system developed in India for the tracking and eradication of polio has been revered around the world. It has surpassed international standards of health surveillance and is being credited as the number one reason polio eradication was possible there.<sup>cdxi</sup> India utilized the latest technologies to document and track the virus then used that research to fine-tune their response plans.<sup>cdxii</sup> The extensive network developed linked the UNHCR, international NGOs, the Indian government and hundreds of thousands of health care facilities and workers to unite them in this single effort.<sup>cdxiii</sup> Currently, Kenya has been taking steps to improve their health systems though its surveillance remains minimal due to the lack of health infrastructure and human resources while Syria's, in the midst of a civil war, has crumbled and can barely attend to emergency health services.<sup>cdxivcdxv</sup> If a health surveillance system, similar to India's but tailored to the specific needs of Kenya and Syria, are put in place the threat of the spread of communicable diseases will be weakened and we may possibly see the eradication of polio in these regions. To accomplish a system such as India's in Kenya and Syria, international cooperation is needed. UNHCR should partner with and provide support to the top players in the health field such as WHO and Rotary International to provide aid to the ministries of health in these two countries so that they may have the latest ideas, technologies and funding while establishing and improving their health surveillance systems run by the state governments.

Cooperation and solidarity needs to be expanded into the realms of resource management and distribution of aid and to regional information sharing as well. 'Diseases do not respect borders,' and as such, it is vital that the governments of Syria and Kenya, and the NGOs working within those countries as well, work closely with Ministries of Health in the surrounding countries. This will help to increase surveillance means at borders and control and contain polio so it is unable to spread into new countries and to new populations. The international community must also provide support to fill gaps in resources that have been proven successful in preventing the spread of communicable diseases. The over-capacitation of Dadaab and the collapse of many Syrian government-run health structures have put immense strains on the UNHCR, these governments and the surrounding governments as well as NGOs.<sup>cdxvi</sup> Other countries, such as EU members and the US must relieve some of this burden by allotting funding and/or resources towards prevention methods such as the improvement of sanitation and nutrition and increasing the number of vaccines. The most improvements will come when the international community is working as a unified whole to fill gaps for refugee and IDP populations.

It should be the responsibility of any actor participating in vaccination campaigns, such as states, UNICEF, Red Cross, etc., to provide the forced migrants with documentation of vaccinations and health services they have received. It is common during mass vaccination campaigns for patients to not receive any sort of documentation.<sup>cdxvii</sup> Forced migrants are then left without a comprehensive report of their health status which can produce challenges in accounting for vaccination coverage and how many shots of the series the child has received, and can produce challenges during third country resettlement. By providing members of these communities with documentation on their vaccination status it will be much easier for the international community to track disease and vaccination status and for the forced migrants to better understand their health and the services they have received.

The UNHCR should assist in the aid and support of education campaigns directed at providing refugee and IDP populations with comprehensive health education. These systems should standardize the rhetoric of the outbreak, be translated in all of the languages each setting may have and be culturally appropriate. For example, Film Aid, which currently works in Dadaab camp, holds screenings of short films that are rich in important health and security information for newly arrived refugees while still maintaining an entertaining quality.<sup>cdxviii</sup> Projects like Film Aid will trigger attention to the camps overrun capacities. Film Aid must also expand to include topics such as vaccinations and polio outbreaks. These projects should not be restricted to films, however, but include all the arts such as short theater plays, songs and dance, and visual arts. Through this, forced migrants can engage in entertaining and meaningful means of increasing their health education. Though many of these programs already exist, the NGOs that provide them are short in resources and funding and therefore cannot reach the entirety of the populations at risk.<sup>cdxix</sup> More funding and support will provide these organizations with the means to expand their educational services.

Another opportunity for information sharing in the forced migrant healthcare regime is the training of members from these populations to become health workers for themselves and their community. This eases the stress on the international community to provide costly healthcare workers, reduces the cross-cultural miscommunications and provides the migrants with job training and skills they can use later in their lives be it in a third country of resettlement or back in their homeland.<sup>cdxx</sup> The most important job they can have in situations such as these are participating in door-to-door campaigns ensuring that every family know about the outbreak and every child becomes vaccinated against it.<sup>cdxxi</sup> The international community and NGOs working in providing health services in refugee camps and need to focus on building human capacities and professionals among these populations as well as serving the general populations. The UNHCR

should provide assistance to this program either by providing facilities and resources for training in camps or funding means to expand already existing programs. By training local health workers these people become valuable resources and catalysts for providing accurate health information to the community and hopefully for change any resistant sentiments that remain.

International cooperation and solidarity in coming together to fill gaps in health surveillance systems and resource allotment should be on the forefront of the refugee regime's agenda. Ensuring that the refugee and IDP populations are aware of their rights to care, comprehend the outbreak, in terms of both transmission prevention and treatment methods, and understand how to access care is the most vital component in filling gaps in their health protection.

## CONCLUSION

The devastating effects that negative health outcomes have on not only the refugee and IDP populations themselves but also the international community are vast. If one is suffering from a crippling disease such as polio, they then become dependent on the society surrounding them. They may not be able to attend school or find work, decreasing their livelihood standards dramatically. They are no longer self-sufficient: they must rely on others to support them essentially making them an unproductive member of society. If polio is combatted successfully, the international community will not only prevent disease and untimely deaths but also make great strides in development. As estimated by the Global Polio Eradication Initiative (GPEI), the global efforts to eradicate polio will generate “net benefits of US\$40 billion to US\$50 billion over the two decades following eradication, with approximately 85 percent of the net benefits in low-income countries.”<sup>cdxxii</sup> The effects of disease eradication on monetary gains and development have been vastly researched and highlighted by the UN Assembly and the international community. It is now time for the international organizations, states and civil society to take these initiatives and put them into action.

Though this chapter is focused on polio outbreaks in refugee and IDP populations, the challenges that arise in combating the disease are the same ones that occur in other disease outbreaks that cause numerous negative health outcomes as well. The solutions presented in this chapter then, once applied universally or specific to another disease, will bridge gaps in health protection for forced migrants.

## RECOMMENDATIONS

### *International*

- The UNHCR and states should place and pressure on States to uphold the conventions they have signed regarding universal health coverage.
- The UNHCR and States should coordinate to appropriately distribute resources, such as vaccines, that have been proven to be essential in disease prevention methods, to even the burden and fill coverage gaps for forced migrants.
- The UNHCR and other NGOs must help to provide States with information, technology and resources needed to improve their ability to detect and respond to disease outbreaks.
- Vaccine documentation should be provided to those who are vaccinated in order to streamline the process of vaccination.
- The UNHCR, and other international actors must provide support for NGOs that currently provide health education in media, theater, and arts campaigns, in culturally appropriate contexts, so that they may expand their programs and create more awareness and knowledge in forced migrant communities on health topics such as polio.

### *Regional*

- Neighboring states' Ministries of Health must work together to ensure that communicable diseases, such as polio, do not cross borders and that the steps each country takes in combatting these diseases are coordinated with one another.

### *National*

- Increase number of participants in training programs for members of refugee and IDP populations to become community health workers.

# PREVENTING LOST GENERATIONS

## *Addressing the Educational Needs of Refugee Children*

By: Martha Snyder

### INTRODUCTION

According to the UNHCR, close to half of the world's refugees are children. After the primary needs of food, shelter, and health care are addressed, the most pressing need for children is education. In addition to the classic "reading, writing, and arithmetic" schools can provide psychosocial support<sup>64</sup> and give a sense of stability and normalcy to children whose lives have been uprooted.<sup>cdxxiii</sup> Children who do not receive education risk becoming a part of a "Lost Generation," unable to fully participate in society, whether through economic or political participation.<sup>cdxxiv</sup> Education is vital for a child's ability to be an active participant in society, whether they return home (repatriate), remain in their host community (integrate), or move on to a third location (resettle.) School also serves as a safe space for children to receive counseling for the trauma they have experienced in fleeing their homes and atrocities they may have witnessed.

Right now, many refugee children are not receiving adequate education. A 2011 UNHCR report estimates that 76% of primary age (5-11 years) refugee children were enrolled in school while only 36% of secondary age (12-18 years) children were enrolled.<sup>cdxxv</sup> Additionally, concerns about quality of education received by refugees have been raised. This chapter will argue that the International Refugee Regime (IRR), led by the UNHCR, must do more to ensure universal access to quality education for refugees. First, the mandate for education according to international human rights law will be briefly examined. Next, challenges to accessing education will be discussed. Then educational programs in Turkey, Lebanon, Jordan, and Kenya will be analyzed in search of solutions to the

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<sup>64</sup> The Red Cross defines psychosocial support as "An approach to victims of violence or natural disasters to foster resilience of both communities and individuals. It aims at easing resumption of normalcy and to prevent pathological consequences of potentially traumatic situations." Psychosocial support has been described as a method of transforming passive victims into active survivors.

previously discussed problems. Finally, a set of solutions aimed at improving both the availability and quality of education for refugees will be presented.

## THE RIGHT TO EDUCATION

The Universal Declaration of Human Rights, Article 26 states: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”<sup>cdxxvi</sup> While this declaration is not legally binding, it has served as a basis for subsequent binding conventions. These include the 1962 Convention against Discrimination in Education, the 1967 International Convention of Economic, Social, and Cultural Rights, and the 1989 Convention on Rights of the Child. Article 22 of the 1951 Convention Relating to the Status of Refugees states that: “The Contracting States shall award to refugees the same treatment as is awarded to nationals with respect to elementary education.” The 1951 Convention also calls for states to give refugees equal treatment in pursuing education beyond the elementary level and to recognize foreign certifications of education.<sup>cdxxvii</sup> Achieving universal primary education is one of the eight United Nations Millennium Development goals aimed at ending poverty.<sup>cdxxviii</sup>

The right to education for all, including refugees, is clearly stated in international human rights law and advocated for by various United Nations organizations.

## CHALLENGES TO ACCESSING EDUCATION

One of the first challenges refugees face is getting appropriate documentation. Article 27 of the 1951 Refugee Convention calls upon states to provide refugees with documentation of identity.<sup>cdxxix</sup> In 1977, the UNHCR executive committee recommended that this documentation also include a confirmation of refugee status. Host countries who are signatories to the 1951 Convention generally have systems in place for issuing such documentation. In non-signatory countries, the UNHCR often provides the necessary documentation.<sup>cdxxx</sup> It is important for refugees to have identity papers stating refugee status in order for them to access the protections accorded to them by the 1951 Convention and other international human rights laws. Acquiring this documentation can be difficult for some refugees, including those who flee to urban areas rather than refugee camps, and minors who travel without adult family members.

The increasing urbanization of refugee groups is another challenge in providing education. According to the UNHCR, more than half of the refugees

they currently provide services for are living in urban settings. In “traditional” refugee camps, the process of setting up schools and providing materials is well-rehearsed and generally successful. Getting urban refugee children into schools is much more difficult. First of all, many urban families are simply unaware of what options for education exist and do not know how to find information.<sup>cdxxxix</sup>

Transportation to and from school is another challenge that urban children face, as many families live in unofficial settlements on the outskirts of cities. Walking long distances to school exposes children to bullying which can often escalate into violence. Local children often feel hostile towards refugees, particularly in places where resources are scarce to begin with and refugees are seen as additional competition for what little there is to go around.<sup>cdxxxix</sup> Families attempting to integrate children into local school systems often cannot afford to purchase the necessary uniforms and supplies or pay school fees. Aid organizations have programs in place to meet these gaps, but have often had difficulty reaching urban refugees.<sup>cdxxxix</sup>

The financial burden of education on refugee families prevents many children from attending school. Part of the financial picture must include a discussion of child labor, which can be the only form of income available to refugee families. Children feel obliged to work instead of go to school, particularly if their parents are unable to work. Common jobs for children include janitorial work, trash picking (sorting through refuse dumps for reusable/sellable items), construction, and street vending. Agricultural work and domestic labor are also common, particularly for girls. These occupations place children in danger, both from physical risks such as construction work and harassment from locals who resent the presence of refugees. Girls in domestic labor are at a particular risk for sexual violence from male employers. The UNCHR estimates that one in ten Syrian refugee children are engaged in labor which prevents them from attending school.<sup>cdxxxix</sup>

Children end up engaging in labor for a number of reasons. Parents fleeing from war-torn countries may have injuries that prevent them from working. Often, only one parent is present with the children and must stay home to care for younger kids, sending elder siblings out to work. Many host countries forbid refugees from working, denying labor permits to adults and putting them at risk of detention or loss of rights if they get caught. While child labor is illegal in many places, including Jordan and Lebanon where the problem of Syrian refugees engaged in child labor is growing, it is often hard to catch and punishments are mild. Families perceive children getting caught working as a much lesser risk than an adult getting caught working without a permit.<sup>cdxxxix</sup>

Overstretched and/or inadequate resources at existing educational facilities are another challenge to providing education. In Lebanon, where refugee camps

are forbidden, many families look to the Lebanese public school system as a place to send their children. However, the total number of Syrian refugee children in Lebanon outnumbers the amount of Lebanese children in public school (the majority of Lebanese children attend private school).<sup>cdxxxvi</sup> While the government has allowed Syrian children to enroll in school, space is limited and instruction is largely in French and English, whereas instruction in Syria is in Arabic. These barriers greatly limit access to education. Those who do attend schools have difficulty adjusting to new languages and are often placed with much younger children, which can be very embarrassing for already traumatized kids. Resources are scarce and children often go without textbooks or share a single textbook among groups of five or more (the preferred maximum ratio of children to books is 3:1). Teacher-to-student ratios are often as high as 70:1.<sup>cdxxxvii</sup> Resentment, bullying, and violence from locals creates an environment that is hostile to learning and one that refugee children loathe to return to.<sup>cdxxxviii</sup>

There are also issues of gender disparity in educational access. Many refugees come from cultures where early marriage is common. There are numerous accounts of girls leaving school to get married at ages as young as thirteen. Early marriage often increases in refugee crises as families see it as a way to “take care” of their daughters. Another factor that keeps girls out of schools is competition for limited family resources. Boys are often given preference if families cannot afford to send all of their children to school. Children of both sexes with health problems and disabilities are also underrepresented.<sup>cdxxxix</sup>

The majority of Syrian refugee children in Lebanon are unable to access public schools. For the 2012-2013 school year, 33,000 Syrian children enrolled in Lebanese public schools. During that same period approximately 300,000 registered Syrian children were present in Lebanon (actual number is probably higher due to gaps in registration). Some children have been able to attend private schools, either through scholarships or family means. The UNCHR is facilitating informal education for another 80,000 children.<sup>cdxli</sup> The majority of children are not receiving any education at all. For Syrian children living in refugee camps in Turkey, the school enrollment rate is 60%, however, the enrollment rate for urban refugees in Turkey is only 14%.<sup>cdxlii</sup> In Nairobi, Kenya, the UNHCR estimated that in 2008 around 40% of refugee children were registered in primary school.<sup>cdxliii</sup> Because urban refugees are hard to track and many are not registered, the UNHCR believes that the actual percentage of urban refugees in Nairobi receiving education is much lower.

## HOW TO ADDRESS GAPS IN ACCESS TO EDUCATION

There are two main ways in which refugee children receive education. The first is integration into the school system of the host country. In its most recent

policy statement on education for refugee children, the UNHCR declared this to be the preferable option.<sup>cdxliii</sup> However, in situations such as the Syrian refugee crisis host countries are simply unable to accommodate the huge numbers of children coming in. The time needed to update school systems, including expanding infrastructure and personnel, would leave children without options for far too long.

Informal refugee led community schools have proven to be successful in camp settings and are popping up in Syrian refugee groups in urban settings.<sup>cdxliv</sup> Adults from the refugee community with prior experience serve as teachers in whatever space can be found. NGOs also provide educators as well as materials. These informal schools serve as important but temporary solutions while host country systems are upgraded and expanded to better serve the needs of refugee students. However, many of these schools do not have adequate space and resources to provide for all children in need. The IRR needs to ensure that informal schools are provided with supplies such as UNICEF's School-in-a-Box and provide funding and training for teachers.<sup>cdxlv</sup>

Expansion of host country schools must be done in a way that provides long-term benefits to the host country and does not place additional burdens upon the host country. Since the majority of refugees are living in developing countries, education systems are generally already underfunded and ill-equipped to handle influxes of new students.<sup>cdxlvii65</sup> Accommodation of refugee students should be incentivized with funding from the IRR for infrastructure improvements, teacher salaries, and classroom materials. Right now, the countries with the most pressing need for aid are those dealing with the Syrian refugee crisis. The UNHCR and its operating partners should provide funding for additional teachers and training at public schools in Lebanon, Jordan, Turkey, Egypt, Iraq.

One method that local schools have used to improve access for refugee students is the creation of "second shifts."<sup>66cdxlvii</sup> Local students are taught regular curriculum in the mornings while refugee students come in for the afternoon shift. Often, second shifts focus on language training in cases where refugee students are not familiar with the language of local instruction. However, teachers are often

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<sup>65</sup> A 2011 UNHCR report stated that 80% of the world's refugees are found in developing countries.

<sup>66</sup> In response to the influx of Syrian refugees, public schools in Jordan, Lebanon, and Turkey have implemented afternoon shifts to accommodate refugee students.

not trained in language instruction and few, if any, language instruction materials are available, therefore little progress is made. Additional training and/or teachers and materials need to be made available to improve the success of these programs. Another option has been to provide summer sessions for refugee students when local students are out of school.<sup>cdxlviii</sup><sup>67</sup> This can help students catch up in order to be ready for the start of the next school year.

Teachers also need to receive training<sup>68</sup> on how to address the special needs of refugee students.<sup>cdxlix</sup> Many refugee students have experienced trauma and have behavioral problems as a result. Cultural differences can also pose a challenge, as well as differences in curriculum between students' country of origin and their host country. Counselors should be brought in to help children deal with trauma and adapt to their new surroundings. Art programs have been particularly successful in helping refugee children process and adapt.<sup>cdl</sup>

School fees, supplies, and uniforms or appropriate clothing can be major hurdles for refugee families accessing host country schools systems. While some host countries have generously waived fees for refugee students (Lebanon & Jordan), assistance must be made available for families.<sup>cdli</sup> For teenage girls, lack of sanitary materials related to menstruation is another problem that can keep them away from schools.<sup>cdlii</sup>

Issues of unequal access due to gender discrimination and/or disability must also be addressed. Organizations with previous experience in closing gaps in access due to discrimination must be involved in helping Syrian refugees throughout this crisis. The Cooperative for Assistance and Relief Everywhere, better known as CARE, is a leader in helping girls access education worldwide and should provide their services for girls struggling to access education in the Syrian refugee crisis.<sup>cdliii</sup> Similarly, Jesuit Refugee Service has been a staunch advocate for those with disabilities and should continue this practice in its efforts with Syrians.<sup>cdliv</sup>

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<sup>67</sup> In Jordan, UNICEF is facilitating summer schools to help students catch up. A coalition of 17 NGOs are running a similar program in Lebanon.

<sup>68</sup> The International Rescue Committee's (IRC) Healing Classrooms Initiative is a program that has been successful in helping teachers identified refugee children's special needs and address them in the classroom. Kirk, Jackie, and Rebecca Winthrop. 2007.

Language of instruction poses a challenge for Syrian refugee students attending public schools in Turkey and Lebanon. As mentioned previously, public schools in Lebanon use French and English language instruction for some subjects and Arabic language for others. Most Syrian children have little to no knowledge of French and English and struggle to learn these languages.<sup>cdlv</sup> While it is tempting to advocate for separate instruction of Syrian students in the language they are accustomed to, particularly when so many express desire to return home, it is not likely that repatriation will be happening in the near future. Negotiations to end the conflict have been wholly unsuccessful; there is no end in sight.<sup>cdlvi</sup> Decisions about language and curriculum must keep in mind that while Syrian children may eventually be able to repatriate, their stays in host countries will be protracted and appropriate language training is necessary for successful participation in their host communities. In Lebanon, additional resources are needed to help Syrian children learn French and English. Accelerated learning programs focusing on language training should be facilitated by NGOs to help Syrian children be prepared for Lebanese schools. Similar programs should be implemented in Turkey to prepare children for education in the Turkish language.

Transportation to and from school is another problem that must be addressed. The formation of “walking buses” (large groups of students walking together) is a valuable method for helping children who are threatened by violence and harassment get to school (and home) safely. In Turkey, funds have been raised for buses to take children to school.<sup>cdlvii</sup> In places where public transportation is available (and safe), passes can be provided to refugee students. Aid organizations must be aware of this challenge and work with refugees to find workable solutions to transportation issues.

Organizations like the UNHCR and UNICEF as well as other NGOs are working hard to help families solve these problems, but are often unable to reach all refugees in need. Dissemination of information about educational opportunities and available resources is crucial to expanding access. Improvements to registration with the UNHCR and host country governments can help more people be reached. Refugees who are already in contact with aid organizations can be recruited to help spread the word to families still seeking assistance. In the Za’atari refugee camp in Jordan, UNICEF and Save the Children have teamed up on a project that recruits refugee youth to serve as “education ambassadors.”<sup>cdlviii</sup> These youth volunteer their time to let others know about educational opportunities and available aid resources. An adaptation of this program could be very useful in urban settings, although additional safety considerations would be necessary. Refugee children often have access to others that government and aid organizations might not, due to fear of discovery and detention/refoulement.

When local school systems are unable to serve all refugee students, temporary informal schools are key to filling in the gap. Adults from the refugee community along with workers from aid organizations can provide basic education. These community-based schools help keep children in the habit of learning and attending school, even if there is no official recognition of achievement. They provide a venue for social interaction and can provide a sense of routine and normalcy for children who would otherwise feel alone and adrift. Educational kits from NGOs can be quickly deployed to areas of need providing basic supplies like paper and pencils. One major challenge for the formation of informal schools is locating a suitable space.<sup>cdlix</sup> Local governments should work with the refugee community and aid organizations to find and equip spaces for temporary schools or provide land for set-up of prefabricated school buildings supplied by donor countries and NGOs.<sup>69 cdlx</sup>

Because informal, community schools lack recognition from government and do not have certifications of achievement, it is important that they be used as a temporary resource until children can access public education. The ultimate goal should always be enrollment in a school that has recognized certification. However, in countries such as Lebanon, total enrollment of refugee students into local schools could very well be totally out of reach, due to the high numbers of refugee students and limited capacity of the public school system. In these sorts of scenarios, it may be beneficial for an education certification program to be developed outside of the public school system.

Creating a certification program for informal schools will require cooperation not only among UN organizations such as UNHCR and UNICEF, but also among states. If such a program is to be successful, states must recognize the legitimacy of certifications from informal refugee schools. Basic standards for literacy and mathematics will need to be set and agreed upon by all states involved (including refugee countries of origin, host countries, and resettlement countries.) The UNHCR and UNICEF should work together to create universal certificates of primary education that would be widely accepted by states. A successful program will keep the UN's Millennium Development Goals in mind. In addition to working towards providing universally recognized certification outside of state schools, the IRR should strive to provide them with well-trained teachers and

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<sup>69</sup> In Iraq, Peace Winds Japan provided prefabricated schools in four different camps. The United States has funded prefabricated schools in Turkish refugee camps.

proper educational materials. The Inter-Agency Network for Education in Emergencies' (INEE) "Minimum Standards for Education in Emergencies" is an excellent resource for NGOs involved in providing education for refugees.<sup>cdlxi</sup>

Child labor issues must also be addressed. The United Nations Convention on Rights of the Child condemns child labor, and nearly all countries that host refugees are signatories (Somalia is not a signatory, the United States and South Sudan have signed but not ratified.) Protections for children exist in theory, but can be difficult to enforce in practice. In order to effectively curb child labor, the underlying causes must be addressed. Refugee children work because the income they provide is necessary to their families' survival. There are two ways to address this gap: provide financial assistance to cover the needs of refugee families or allow adult refugees to legally participate in labor. A UNICEF program in Jordan is working to move children from the workforce to schools by giving families cash to make up for the wages children were earning. The UNHCR is also working to provide financial assistance to the most vulnerable Syrian refugee families (single parent households and households where adults are unable to work due to disability, illness, or injury.)<sup>cdlxii</sup> Implementing recommendations for improving labor rights and livelihood opportunities discussed in the previous chapter will also help curb child labor.

Along with labor rights, adult education and vocational programs can help refugees thrive in new settings. One exciting program recently got underway in the massive Dadaab refugee camp in Kenya. Borderless Higher Education for Refugees (BHER) is an initiative to bring university educations into refugee camps.<sup>cdlxiii</sup> In this program, refugees are able to get college degrees in education without leaving the refugee camp. BHER's program is focused on teacher training, which is doubly helpful in that it provides highly trained and qualified teachers to work in refugee camp schools. Turkey has generously allowed Syrian refugees to enroll in its state-run universities, even waiving fees for refugee scholars.<sup>cdlxiv</sup> In Jordan, JRS is offering higher education in the form of a community service learning track with specializations in law and medicine, among other subjects. Students have the opportunity to continue education online and receive diplomas from Regis University in the US.<sup>cdlxv</sup> Innovative programs that take advantage of new online technologies can and should be more widely used to create opportunities for refugees to achieve higher levels of education.

"Education for Peace" programs have been used in refugee situations by the UNHCR, UNICEF, and other organizations like the NRC. While the overall utility of these programs has been questioned, it is important to include them in discussions of refugee education. Peace education programs are popular with both donors and refugee leaders. They generally include study of communication skills, human rights education, promotion of tolerance and guidelines for conflict

resolution. Programs usually target primary school-age children. Critics of peace education programs argue that if they are to have any hope of changing the future, the scope must be broadened to include refugees from all age groups. Others point out that these education programs are often based on Western cultural norms and ideals and need to be better adapted to their setting. Another worry is that peace education programs draw funding and focus away from basic primary education.<sup>cdlxvi</sup> While all of these criticisms are valid, they can also all be overcome. Peace education should be offered to all refugees in a context that meshes with their own cultural norms and ideals.

Finally, the valuable contributions that refugees themselves can offer should be addressed. In an editorial for the Guardian, Alexander Betts wrote a brief and powerful plea for innovations in the work of refugee protection and stressed the importance of including refugees in developing new programs.<sup>cdlxvii</sup> Involving refugees in decision-making and empowering them to create their own programs for advancement must be a part of any successful refugee aid agenda. In terms of education, refugees have shown a strong drive to participate in setting up schools, often holding informal classes just days their arrival.<sup>cdlxviii</sup> The UNHCR should embrace refugee ideas and innovations and use its resources to strengthen refugee-led programs. Refugees should always have a seat at the table.

## RECOMMENDATIONS

### *International*

- The International Refugee Regime, led by the UNHCR, must make education a priority when responding to refugee crises. Donor countries should be encouraged to increase funding for educational programs. Rapid deployment of educational materials through UNICEF's School-in-a-box program must be backed up with funding for teacher training and salaries as well as school infrastructure. The UNHCR must strive to coordinate efforts between host governments and aid organizations to ensure that all children are able to access quality education.
- The UNCHR and UNICEF should provide certification for informal schooling, which would allow refugee children who do not have access to formal schools to have documentation of their educational achievements.

### *Regional*

#### **Syrian Refugee Crisis (Jordan, Lebanon, Turkey, Iraq)**

- Support expansion of host country public school systems through additional teacher training programs, infrastructure updates, and supply of educational materials. (IRC, UNICEF, Host Country Ministries of Education) Ensure host countries are receiving adequate monetary aid to support the increased burden on public schools. (UNHCR, Donor Countries)

- Empower refugee-led informal schools by providing safe spaces, learning materials, teacher training and salaries. (IRC, UNICEF, JRS)
- Ensure universal access to education by creating and supporting programs that inform refugees about educational opportunities and how to access them. Provide safe transportation options for students. Provide appropriate supplies, including clothing, notebooks, pencils, and sanitary materials. (UNICEF, Save the Children)
- Combat child labor by increasing financial aid to refugee families with children participating in labor. (UNHCR, UNICEF)
- Integrate peace education into existing programs and hold community peace education programs for all to attend. Encourage host community members to engage with refugee populations and facilitate programs that combat xenophobia. (UNHCR, NRC)
- Ensure non-discriminatory access to education for girls through outreach programs. (CARE)

### **Lebanon**

- Implement accelerated learning programs for Syrian children to learn French and English in order to prepare them for Lebanese public schools. (UNICEF, Save the Children)

### **Turkey**

- Implement accelerated learning programs for Syrian children to learn Turkish in order to prepare them for Turkish public schools. (UNICEF, Save the Children)

# Non-Convention Forced Migrants

## INTRODUCTION

*By: Louisa Johnson*

Unfortunately, the 1951 Convention discussed in the previous two sections fails to provide protection and legal definitions for all forced migrants. The reason behind this derives from different categories of forced migrants emerging after the creation of the Convention as well as the UNHCR's fear of over-stretching its mandate. Populations of concern not defined in the 1951 Convention include IDPs, Stateless persons, environmentally displaced persons (EDPs), and socio-economic forced migrants. Although IDPs receive some assistance from the UNHCR, there are still gaps in protection such as lack of aid from the international refugee regime in comparison to Convention refugees. Statelessness has been an issue for hundreds of years and the international humanitarian regime is just recently campaigning to end this phenomenon by placing pressure on states to adopt nationality laws and grant citizenship to stateless populations within their borders. Environmentally displaced persons are becoming more common as climate change accelerates and due to their ambiguous definitions, many are denied protection and assistance from the international refugee regime. The last population of non-Convention refugees, not even holding an internationally-recognized term, are socio-economic migrants who are forced to flee due to environmental change, natural disaster, food insecurity, famine, drought or state fragility and not necessarily direct persecution. Although these four groups of forced migrants are not defined under the 1951 Convention, they still hold rights as defined by the Universal Declaration of Human Rights. As long as the human rights of forced migrants are being violated, whether Convention or not, the international refugee regime must work to ensure that they receive full protection and are able to find a successful pathway to security.

# FALLING BETWEEN THE CRACKS

## *Addressing gaps in protection for IDPs in Syria and Colombia*

By Da Som Bark

### INTRODUCTION

The number of Internally Displaced Persons (IDPs) worldwide has reached 28.8 million with an additional 3000 being added every day.<sup>cdlxix</sup> This means that the population of IDPs outnumbers international refugees recognized by the UNHCR, which totals 11 million.<sup>cdlxx</sup> Even though IDPs face the same challenges and hardship as other recognized refugees, there is little to no institutional protection for them.<sup>cdlxxi</sup> This is because they do not fall under the protection of the 1951 Refugee Convention and its 1967 Protocol which defines refugees as those who are forced to flee across the borders of their homeland due to violence and conflict. IDPs remain within the borders of their homeland and the weak jurisdictions of their home governments. To respond to the rising concern of IDPs, the United Nations OCHA issued the Guiding Principles on Internal Displacement in 1998, which is based on international human rights and humanitarian laws.<sup>cdlxxii</sup> These principles clearly indicate that they are non-binding and that “national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction”<sup>cdlxxiii</sup> making it difficult for the UNHCR and the international humanitarian regime to operate in these situations.

Many times, the UNHCR and other NGOs face political struggles to operate mechanisms such as the Cluster Approach<sup>70</sup> in countries of concern because governments do not grant access to the region for aid organizations.<sup>cdlxxiv</sup> For example, the ongoing Syrian Civil War starting in 2011 has created the highest number of IDPs in the Middle East, but international aid organizations could not access Syrian IDPs until a year later due to the restrictions set by the Syrian government. At the end of 2013, the number of Syrian IDPs that still suffered from limited aid reached 6.5 million.<sup>cdlxxv</sup> Across the globe, Colombia has the highest

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<sup>70</sup> The Cluster Approach introduced by the Humanitarian Reform of 2005 has increased capacity, predictability, accountability, leadership and partnership among humanitarian organizations (UN and non-UN), governments, and NGOs. Each humanitarian organization directs different sectors of humanitarian actions (OCHA, “Cluster Coordination”, 2008). For example, UNHCR is co-leading the global camp coordination and camp management cluster (CCCM) with IOM, and the global emergency shelter cluster with IFRC (UNHCR Global Appeal 2008).

number of IDPs at 5.2 million, who are also generated by internal armed conflict.<sup>cdlxxvi</sup> Even though those two countries have relatively similar situations of violence and high numbers of IDPs, their policies and efforts to deal with the crisis are completely different at the international and national levels. While the Syrian government has been reluctant to take action in regards to protecting IDPs, the Colombian government has attempted to develop legal, social, and economic mechanisms to address the gaps in protection. This attitude of each government toward international humanitarian aid is also significant in the amount of assistance that populations of concern receive in each country. In 2011, about 1.5 million persons of concern in Syria received a total assistance of US \$198 million, whereas those of 4 million in Colombia received US \$ 1 billion.<sup>cdlxxvii</sup> Therefore in order to fill in the gaps of national policies to protect IDPs and delivery of humanitarian assistance in Syria and Colombia, the willingness of the governments to safeguard IDPs is of utmost importance.

The case studies of Syria, where IDPs lack humanitarian aid, and of Colombia, where the government is constructing legal frameworks, strengthening municipal authorities, and allowing full access to humanitarian organizations highlight the discrepancies in the international refugee regime concerning IDPs. The Syrian government should work towards adopting policies and frameworks similar to those in Colombia while Colombia can still improve its effectiveness in responding to IDPs through better infrastructure and means of communication.

## **SYRIA**

### ***Background***

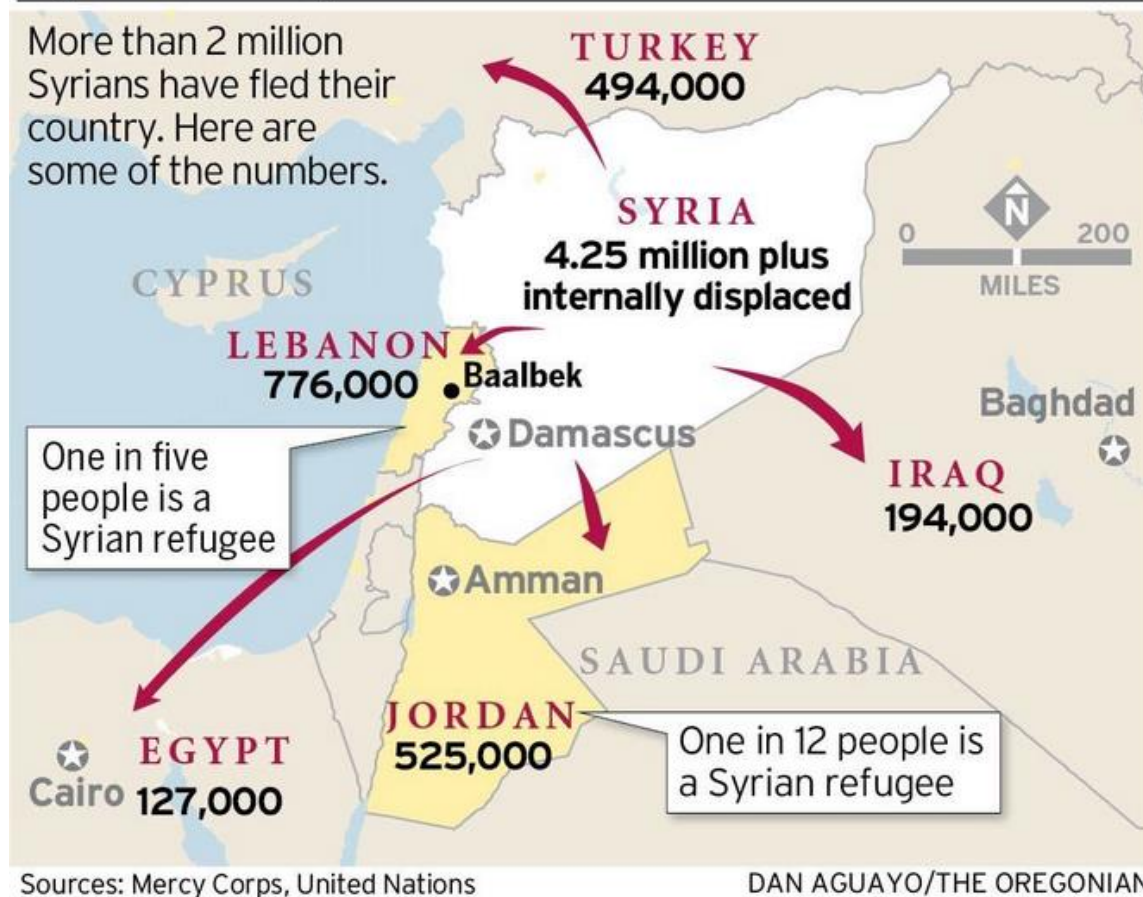
The 6.5 million IDPs in Syria were displaced due to a protracted situation from an earlier crisis before 2011 and also due to the new intensifying armed conflicts since 2011 between the government of President Bashar al-Assad and armed anti-government protestors.<sup>cdlxxviii</sup> To make things worse, the Syrian government ignored the former UN Secretary-General Kofi Annan's Six-point Peace Plan<sup>71</sup> in 2012,<sup>cdlxxix</sup> and refused to negotiate with the opposition delegations during the Syrian peace talks in Geneva in January 2014.<sup>cdlxxx</sup> Due to the political

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<sup>71</sup> The former UN Secretary-General Kofi Annan proposed a six-point peace plan in February 2012 to convince Syria to pull back its military forces from populous cities. With agreement of Syrian government, UN deployed 300 military observers to monitor implementation of the plan. However, the peace plan was suspended on June 2012, because it was never carried out and failed to protect the Syrian civilians.

instability, the Syrian government does not provide basic rights for its citizens resulting in a growing number of IDPs.

## Syrian refugees



**Figure 1:** Syrian Refugees, 2013 (Source: The Oregonian)

The escalating crisis between the Syrian government and the armed protestors is creating high civilian casualties particularly in the cities of Dara'a, Tel Kalakh, Jisr Al-Shughur, Homs and Idlib.<sup>cdlxxxii</sup> As demonstrated in Figure 1, only about one third of the victims have fled to neighboring countries, such as Lebanon, Turkey, Jordan, Iraq and Egypt, while the majority remained in host municipalities within the national border. Yet IDPs inside Syria receive less international aid than Syrian refugees in neighboring countries. For instance, even though the number of IDPs is twice the number of refugees, each group appealed the same \$190 million for assistance of humanitarian emergencies in 2012.<sup>cdlxxxiii</sup> This aid is significant in assisting IDPs in Syria because many have lost their sources of income and the prices for food, cooking gas, heating oil and electricity are rapidly rising due to the war.<sup>cdlxxxiii</sup> The lack of aid leads to Syrian IDPs living in insecure dwellings, being vulnerable to violence, and competing for scarce

resources. The limited visibility of Syrian IDPs on the world stage is primarily caused by the Syrian government and its reluctance to allow free access to humanitarian aid organizations.

International humanitarian organizations and governments have tried to provide aid to IDPs in Syria beginning in early 2012 when the Syrian government finally relaxed their restrictions on international assistance.<sup>cdlxxxiv</sup> Using international human rights and humanitarian laws as a basis, the primary goal of humanitarian assistance in Syria is to provide basic protection for IDPs by delivering items such as food and shelter.<sup>cdlxxxv</sup> However, the Syrian authorities do not allow direct aid deliveries, but instead collect aid in Damascus and redistribute throughout the affected region.<sup>cdlxxxvi</sup> They also limit certain aid deliveries to the regions where conflicts occur. This is problematic to IDPs because many of them resettle in those limited areas. For example, during peace talks in January 2014, the UN found out that food and medical aid did not reach Homs because the Syrian authorities would not allow admission of aid convoys in this region.<sup>cdlxxxvii</sup> Because the Syrian government does not fully allow assistance for its IDPs, the UNHCR is currently operating its offices according to the Guiding Principles, the Universal Declaration of Human Rights, and the Convention of the Rights of the Child,<sup>cdlxxxviii</sup> which makes it difficult to provide more than emergency aid.

There are also other factors that interrupt humanitarian aid. Recognizing the urgency of the IDP crisis in Syria, the UNHCR joined non-UN inter-agency operations, with the approval of the Ministry of Foreign Affairs of Syria in 2012.<sup>cdlxxxix</sup> Within inter-agency operations under the framework of the Syrian Humanitarian Assistance Response Plan (SHARP), UNHCR has provided non-food items including shelter, clothing, fuel, financial and health assistance, community services and protection sectors.<sup>cdxc</sup> Supplying these items is often difficult in Syria because of its poor basic infrastructure and information. During operations, UNHCR staff also face the danger of displacement, mortar attacks, shelling, and kidnapping.<sup>cdxci</sup>

Recently various media commentators and politicians have suggested that one durable solution to protect the populations of concern is creating safe zones inside Syria where they can receive safety, and emergency support.<sup>cdxcii</sup> The advocates of this solution argue that safe zones would host fleeing refugees and displaced persons that will relieve pressure on refugee and IDP hosting communities.<sup>cdxciii</sup> However, this plan of safe zones has strong opposition that demonstrate complexity of the Syrian crisis. First of all, the number of refugees and IDPs is too high; countless numbers of safe zones and enormous financial support will be needed, which is completely unfeasible. Most importantly however, is that safe zones require military and political intervention, whether it is led by the United Nation or a partnership of different countries, because safe zones have

to defend population of concern from any violence and armed conflicts by employing military forces which could violate Syria's state sovereignty.<sup>cdxciv</sup>

### **Problems**

Syrian authorities reject the idea that their involvement in the crisis is an act of violence that causes displacement, and they justify their attack on many innocent civilians as a battle against terrorism. Ignoring Kofi Annan's Six-point Peace Plan as well as international human rights law and international humanitarian law on the Guiding Principles demonstrates their unwillingness to protect their citizens' human rights, freedom and security. If the Syrian government continues to disregard its duties and responsibilities, IDPs will never receive a durable solution. Currently, many IDPs in Syria depend on the emergency aid of the international humanitarian agencies because they lack protection from the government and sources of income.

The UNHCR and other humanitarian agencies face many challenges to effectively deliver emergency assistance and aid because the Syrian regime restricts their access in certain areas of the country and supervises their activities. Syria does not have efficient infrastructure and communication networks, which makes it even more difficult to operate inter-agency approaches effectively. Furthermore, the durable solution to create safe zones is too costly and politically controversial. Even though this solution will guarantee safer lives to some Syrian refugees instantly, it will not resolve the fundamental problem of the crisis that creates more and more IDPs every day. Syrian IDPs are in need of policies that can cover larger numbers in different regions and can increase the abilities of IDPs to be less dependent on emergency assistance.

In Syria, violence and armed conflict between the government and armed opposition groups create IDPs. The Syrian authorities do not take responsibility to provide protection for its vulnerable population, and is reluctant to allow access to humanitarian agencies. In fact, this is not only a problem in Syria, but of many countries with IDPs. Colombia has a similar situation as Syria with ongoing violence, armed conflicts, and a growing number of IDPs, however, the Colombian government puts far more effort into developing better strategies and instruments in order to protect the populations of concern.

## **COLOMBIA**

### **Background**

Similarly to Syria, most displacement in Colombia occurred during armed conflict between the government and military groups such as the Revolutionary Armed Forces of Colombia (FARC) and its revolutionary cousin, the National Liberation Army (ELN).<sup>cdxcv</sup> During five decades of continuing conflicts, Antioquia,

Nariño, Cauca, Valle del Cauca and Córdoba are the most affected areas and consequently generate the most IDPs in the country.<sup>cdxcvi</sup> In January 2014, the Colombian government of President Juan Manuel Santos and FARC held peace talks in Havana, Cuba to discuss the issues of land reform and armed conflicts.<sup>cdxcvii</sup> FARC demanded full rights to participate in Colombian politics in exchange for ending the use of violence, which can affect the upcoming local government election of next year. Aside from the political tension still present in the country, the Colombian government has had relative success in protecting the IDPs caused by the FARC conflicts. Although mechanisms and programs to protect IDPs are still under development, successes have included legal protection, strengthening municipalities, and international humanitarian assistance.

### ***Legal Protection***

Colombia is a democratic country that has the world's most progressive IDP legislation. While the United Nations began the legal and justice processes for IDPs in the late 1990s, such as the Guiding Principles on Internal Displacement, Colombia had already been achieving human rights provisions in its Constitution as early as 1991. These provisions were the first legal recognition of IDPs in Colombia as they aimed to protect its vulnerable population by providing a wider access to the administration of justice.<sup>cdxcviii</sup> Also in 1997, Congress of Law 287 specifically addressed the crisis of IDPs.<sup>cdxcix</sup> Composed of 33 articles, this Law increased visibility of IDPs by recognizing the problem of IDPs and distinguishing their special situation that was different from classic humanitarian emergencies.<sup>d</sup> Even though there was a significant gap between the Law and its implementation, it officially raised awareness of the crisis and created systems such as the National System for the Integral Attention to the Displaced (SNPAD) and Central Registry for the Displaced Population (RUPD).<sup>di</sup>

In 2004, the Colombian Constitutional Court reviewed human rights cases of IDPs and declared that IDPs are in an “unconstitutional state of affairs” and identified major gaps between the policies and implementation on the ground.<sup>dii</sup> In fact, there was no plan on the national level; some regional policies did not have implementing agencies, or specific goals, and those provisions and laws were ineffective.<sup>diii</sup> The official statement of an “unconstitutional state of affairs” enabled the Court to issue complex orders to protect the rights of IDPs.<sup>div</sup> The orders included filling in gaps of administrative practices, organizational and procedural flaws, relevant legal framework, and budgetary procedures to guarantee the fundamental humanitarian rights at risk.<sup>dv</sup> The Court cited Guiding Principles as a basis for its judgments to define the fundamental rights, and to outline necessary orders for the protection of IDPs.<sup>dvi</sup> This demonstrated that the Colombian authority admitted protection tools for IDPs developed by the international humanitarian regime.

The number of IDPs has increased due to ongoing violence and conflict despite the efforts of the government to construct legal frameworks to protect their rights. The situation has been protracted for so long that the displaced population has been suffering from poverty and discrimination in host communities similar to Syrian IDPs. To alleviate the economic and social problems of IDPs, Colombia government passed the Victims and Land Restitution, or Law 1448 of 2011.<sup>dvii</sup> The law is expected to restore and return lands and properties of IDPs, and to provide reparations to victims of human rights violations and infractions of international humanitarian law.<sup>dviii</sup> The Victims Law showed the enthusiasm of President Santos and the Colombian Congress to adopt advanced instrument to protect the victims of concern. Successful application of the Victim Law will depend on the Colombian authorities' capacity to protect displaced communities from the powerful armed groups that oppose the restitution of the lands they illegally occupied.

At the same time as the Colombian government is passing pro-human rights legislation for IDPs, its military has also blatantly abused the human rights of its own citizens as in Syria. However, different from the Syrian authority, the Colombian Constitutional Court rejected a controversial bill<sup>72</sup> in June 2013 that would have granted impunity to militants who killed innocent civilians during armed conflicts.<sup>dix</sup> The bill was harshly criticized by both human rights and international organizations who pressured the government to fulfill its responsibility to protect and to respect human rights of Colombian citizens, including IDPs. This decision of the court is significant because it proved the Colombian government's respect for human rights and security for its vulnerable population, which the Syrian government does not.

### ***Socio-Economic Assistance***

Legally recognizing the definition of IDPs and their special situation not only defined their rights as humans and citizens but also provided them socio-economic assistance from the SNAIPD and the Acción Social, the presidential agency for social action and international co-operation.<sup>dx</sup> This assistance includes food, hygiene items, psychosocial care, and rent and is given to the registered IDPs in the RUPD during the first three months of registration. After those months of

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<sup>72</sup> The bill involved "members of Colombia's military killing nearly 4,000 civilians and dressing them up as enemy combatants in order to boost numbers of deceased militant hostiles. (Freeman, 2013)

emergency stage, IDPs receive education, health training and participate in income-generating projects to achieve financial stability.

This national assistance program has a flaw in that only registered IDPs can receive this aid. Many IDPs have limited access to RUPD because they have settled in municipalities near conflict lines where they suffer from scarce resources as well as the threat of rebel groups and paramilitary forces.<sup>dx1</sup> One strategy that the Colombian government has developed in order to help those IDPs in rural areas is to strengthen local municipalities.<sup>dxii</sup> This is important because strong municipal authorities are important components of preventing violence and protecting not only human rights but also civil and socio-economic rights of IDPs.<sup>dxiii</sup> The aforementioned constitutional and judicial reforms require transparent and accountable local governments that can implement those legal protections for IDPs. This attempt to build stronger municipalities faces many obstacles such as corruption, lack of resources and infrastructure, hostile communities to IDPs, and violence.<sup>dxiv</sup>

The Colombian government is supporting economic development projects for IDPs with international organizations in different regions. For example, through “Etanol Caribe Colombiano,” the Colombian government, the U.S. Agency for International Development (USAID) and the International Organization for Migration (IOM) employed 1,500 IDPs in Bolivar, Cordoba and Sucre region to produce sugar for exportation (Biopact 2008).<sup>dxv</sup> An additional 4000 IDPs were hired in indirectly related industries.<sup>dxvi</sup> Another example is the “Sustainable Solutions for Displaced Population” that is a project started in March 2013 and is expected to end in April 2016.<sup>dxvii</sup> The project is directed by the UNHCR with the partnership of the Colombian and the Canadian governments, in order to help IDPs become permanent residents of host communities with vocational training, agricultural development, and business planning and supports.<sup>dxviii</sup> These projects indicate that the Colombian authorities try to put in efforts to assist IDPs socio-economically by developing their abilities to be self-sufficient in specific host communities.

### ***International Humanitarian Regime in Colombia***

The Colombian government is building partnerships with many international agencies to deliver better assistance for IDPs and to fill in the gaps of its limited capacity. Those international humanitarian agencies consider IDPs in Colombia as populations of concerns in emergency situations. As a result, Colombia began to receive humanitarian assistance from the clusters of humanitarian organizations at the end of 2007.<sup>dxix</sup> The protection includes 21 international organizations in Colombia and is co-led by UNHCR and Norwegian Refugee Council.<sup>dxx</sup> As an example of the international humanitarian regime’s

operation, UNHCR has worked to provide advisory and technical assistance to national and local authorities in Colombia as seen in Figure 3. This duty also includes helping the Colombian government with the Victims and Land Restitution Law in 2011 “by signing memoranda of understanding with key State entities charged with assisting IDPs.”<sup>dxxi</sup> UNHCR also maintains a close relationship with the Ministry of Foreign Affairs and the Presidential Programme for Social Prosperity and the National Protection Unit and with related ministries such as the Ministries of Agriculture and Interior, the Colombian Institute for Family Welfare, the Vice-President’s Office, local administrations and community-based organizations.<sup>dxxii</sup> This relationship between the UNHCR with national and local level authorities demonstrates that many Colombian authorities are willing to engage with the UNHCR and other international humanitarian agencies in order to assist IDPs.

Providing assistance for IDPs sometimes fails due to similar reasons in Syria, such as lack of infrastructure and communication with communities of concern.<sup>dxxiii</sup> The international humanitarian regime, including the UNHCR, has over stretched its original mandate which has increased the population of concern for which it is responsible. Most importantly; protracted violence and armed conflicts that threaten innocent civilians and create IDPs have not ended. To solve these issues, Colombian national and local authorities, NGOs, and international agencies have to continue to seek for more effective and accountable humanitarian response by improving coordination, funding and leadership.

## CONCLUSION

Even though the international humanitarian regime has begun to recognize the crisis of IDPs in the 1990s, no durable solution has been found because the national governments of states that contain a large population of IDPs have the primary responsibility to protect this population of concern. Both the Syrian and Colombian governments are in violent conflicts with armed revolutionary groups which generate a high number of IDPs. The Syrian authority takes a reluctant position to provide aid to Syrian IDPs and restricts access to the international humanitarian organizations. In contrast, the Colombian government has developed legal protection, socio-economic projects, and relationships with humanitarian agencies. Colombia still has gaps in protection that require better strategies and a stronger partnership with international agencies. In order to reduce the gaps in IDP protection in Syria and Colombia, this chapter proposes the following recommendations:

## RECOMMENDATIONS

### *International*

- The UNHCR must ensure that all nations are aware of the Guiding Principles for IDPS and implement them in their national refugee regimes.
- The UNHCR must pressure states with large IDP populations to open to the UNHCR and other international aid organizations in order to create effective programs through cooperation.
- International aid agencies and the UNHCR can work together to implement development projects in areas of need that will benefit IDPs as well as the local population.
- The UNHCR and international aid agencies must provide vocational training and education for IDPS in order to help IDPs to create economic opportunities.

### *National*

#### **Syria**

- Allow wider access for humanitarian agencies including physical access to regions with large populations of IDPs; expedite the process of humanitarian worker visa applications, and direct aid delivery to affected regions.
- Set specific goals for the UNHCR operating in Syria to implement clearer and efficient humanitarian projects and aid.

#### **Columbia**

- The UNHCR must cooperate with the Colombian government to build effective infrastructure and means of communication with rural IDPs in order to reach marginalized IDPs and implement policies designed to protect IDPs.

# SOLVING STATELESSNESS

## *Providing Protection and Documentation for Stateless Persons*

By: Hailey Oppelt

### INTRODUCTION

As political tensions rise between Myanmar and Bangladesh, the Rohingya, a minority stateless group in the region, is increasingly being pushed out of settlements and subjected to violence. In January of 2009 the Thai army seized thousands of Rohingya and abandoned them in the Indian Ocean with little supplies, supposedly in fear that they would support the nation's Muslim separatist groups. It is estimated that over 500 of these individuals died, and many Rohingya continue to be targeted for violence today.<sup>dxxiv</sup> As many stateless persons like the Rohingya have no country to protect them and few resources to defend themselves with, they are essentially at the mercy of the international community. Stateless individuals must be protected because they are often the target of violence, have limited access to resources, and many experience the constant threat of being displaced or deported from their current settlements. They are seen as a problem in many nations because they are oftentimes poor and can bring instability. Aiding stateless persons to gain permanent settlement and citizenship will help decrease these problems seen in some countries, which will then decrease the amount of violence directed toward them and increase their standards of living. This chapter will discuss the primary reasons behind statelessness, international laws, treaties and charters in place to protect stateless persons, the steps taken by the UNHCR to advance on these issues, and recommendations for improving upon these tools using the Rohingya in Southeast Asia, the Roma in Europe, and Nubians in Kenya as case studies.

In order to improve conditions for the world's stateless populations, it is imperative that the UNHCR improve its identification, prevention, reduction, and protection of stateless persons. Tailoring surveys for specific stateless populations and making these surveys more easily understandable for those filling them out will help identify these populations. Encouraging *jus soli*<sup>73</sup> nationality laws in more nations will help to prevent growth in stateless populations. Pressing states to reform their nationality legislation to create easily navigable frameworks through which stateless persons can identify themselves and gain citizenship will reduce

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<sup>73</sup> *Jus soli* refers to laws that bestow citizenship to individuals born in the country, whereas *jus sanguinis* refers to laws that bestow citizenship to individuals born to parents with citizenship.

the number of stateless individuals. Finally, encouraging state policies in which persons are not persecuted for identifying themselves as stateless, and improving laws that discourage discrimination will help to protect stateless persons.

## CAUSES OF STATELESSNESS

Persons become stateless in four primary ways: state succession, administrative obstacles, conflict of laws, and discrimination. Statelessness as a result of state succession can oftentimes involve administrative obstacles and discrimination as well, placing migrants and ethnic and social minorities at a higher risk of statelessness than other groups. However, it can also result from less intentionally malignant sources, including a lack of public information, where individuals are unaware that they need to file the appropriate paperwork to gain nationality.<sup>dxxv</sup>

### *International*

A conflict of laws is a rather complicated source of statelessness, as it involves multiple nations. The primary source of these conflicts arises from a difference in how the states bestow citizenship, through either *jus soli*, *jus sanguinis*, or a mix of the two. States employing *jus soli* give citizenship to those born within its borders, with few exceptions, and those employing *jus sanguinis* declare only the children of its nationals to be citizens. However, *jus sanguinis* can be quite restrictive, in some cases only giving nationality to those with fathers from that country or those born in wedlock. If a child is born to migrants in a country employing *jus sanguinis* law, and does not receive citizenship from the parent country due to its restrictions on *jus sanguinis*, they can easily become stateless. A child's risk of being stateless is also heightened if one parent lacks citizenship as well, but these cases enjoy some protection from the UNHCR's 1961 convention.<sup>dxxvi</sup>

### *Regional*

Statelessness as a result of a change in governance is another issue, which can be seen in the plight of the Rohingya in Myanmar. When British Colonial rule ended in the mid twentieth century, hundreds of thousands of individuals belonging to the Muslim minority that resided between current day Myanmar and Bangladesh became stateless, and to this day they live in poor camps along the borders.<sup>dxxvii</sup> Approximately 725,000 Rohingya are now living in this region, called North Arakan or Rakhine State. According to Physicians for Human Rights, their living conditions in their settlements are very poor, with little food, work, or healthcare.<sup>dxxviii</sup> No country will provide them citizenship, and they have long been subjected to inhumane treatment including forced labor, rape, 'ethnic cleansing', and forced removal from their settlements.<sup>dxxix</sup> Much of their struggle started in the 1960's, when the military-socialist regime in then-Burma expelled hundreds of

thousands of Rohingya from the country. In 1978, two hundred thousand were pushed into Bangladesh during Operation Dragon King, which resulted in an estimated ten thousand dead from starvation and disease. In 1982 a new citizenship law was introduced, which refused citizenship to the Rohingya and set other discriminatory policies in place. Many other instances of forced migrations have occurred between the Rohingya and the government of Myanmar since, often resulting in mass deaths and the destruction of settlements as they are pushed into Bangladesh, Thailand, and other neighboring countries.<sup>dxxx</sup> When they are encountered in these nations, they are oftentimes 'returned' to Myanmar, where the cycle begins again. Many also willingly migrate out of Myanmar, paying smugglers to bring them across the Thai and Malaysian borders in search of work. Unfortunately, this has proven to be dangerous. In recent years, it has been reported that the Thai government is detaining Rohingya on a remote island, later abandoning them in shark infested waters.<sup>dxxxii</sup> Assistance to the Rohingya has been very limited, with only two of their settlements designated by the Bangladeshi government as official UNHCR assisted refugee camps. As of 2010 only 29,000 Rohingya individuals in Bangladesh have been granted refugee status, out of the 200,000 to 400,000 Rohingya there.<sup>dxxxii</sup> In mid-2013 the UNHCR had information on 808,075 stateless individuals in Myanmar and 506,197 in Thailand, but the proportion of Rohingya in these figures is unclear. Though there has been a move to allow Rohingya in Myanmar to participate in elections using temporary identity cards, the xenophobia many in Myanmar feel against the Rohingya may result in such a strong reaction against the cards that it could further destabilize the country.<sup>dxxxiii</sup>

Nomads are also at a very high risk of statelessness, because their populations move across borders and are considered unstable. The Roma of Europe are a strong example of this, with nearly 7% at risk of being stateless.<sup>dxxxiv</sup> There has been a long history of discrimination against the Roma, and part of this has been the denial of citizenship. When the Czech Republic was formed, citizenship laws were amended in such a way that made it significantly more difficult for Roma to become nationals, and those that did apply were oftentimes refused service or given false information in an effort to prevent their procurement of citizenship. This left approximately 100,000 persons stateless, and resulted in intense international scrutiny by The Helsinki Citizens' Assembly, The Council of Europe, The Organization for Security and Cooperation in Europe, and the United Nations Human Rights Commission for Refugees.<sup>dxxxv</sup> This pressure forced the Czech Republic to amend its citizenship laws over the next few years, providing a strong example for the effectiveness of international 'shaming' techniques. However, as the statistics still indicate, there remains a large percentage of stateless Roma today, and it is important that international pressure and criticism from organizations such as the UNHCR and other international actors continue to

be focused on any nation that systematically denies them or any other population citizenship that they are rightfully entitled to.<sup>dxxxvi</sup>

### ***National***

Administrative obstacles are also a common factor in cases of statelessness, despite the fact that many of these individuals have a legal right to citizenship. Issues range from simply not registering a child at birth to being unable to fill out paperwork. The reasons for this could be due to an inability to read, pay the fine to file it, complete it under a deadline, or living in a region too remote to reach a civil registry. Though many individuals do not have registration for these reasons and are still considered citizens by their country, those belonging to marginalized groups may be discriminated against and denied citizenship.<sup>dxxxvii</sup>

For example, stateless Roma have faced many issues regarding national laws in Italy. Many Roma are unable to acquire citizenship from their native countries, as many come from the former Yugoslavia, and the Italian legal procedure for declaring statelessness is complicated and inadequately regulated.<sup>dxxxviii</sup> For these reasons many individuals never begin their paperwork, or never complete it. There are also many complications for children born to stateless parents in Italy; the law requires them to have documentation from their parents' country of origin, despite their possession of an Italian birth certificate. This has resulted in thousands of Roma remaining stateless and undocumented in Italy, unable to access even basic rights.<sup>dxxxix</sup>

Discrimination is also an important cause of statelessness, if not the most. It can be seen in all other sources of statelessness, and is most often based on religion, ethnicity, or gender. As previously mentioned, a mother may not be able to have the same citizenship as her child because her country only bestows citizenship to those fathered by nationals. Many women are also forced to take the nationality of their husband when married. This is the result of the belief that a family should be unified under one country, both to ensure their loyalty and because of required military service. Though Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women declares that women have equal rights to acquiring, keeping, or changing citizenship as men, over 40% of countries continue to discriminate against women in these ways.<sup>dxl</sup> For instance, in Jordan when a Jordanian woman marries a foreign man, neither her husband nor her children can obtain Jordanian citizenship.<sup>dxli</sup> In 2009 it was estimated that there were approximately 66,000 married couples in this situation. However, Jordanian men can marry foreign women and transfer their citizenship onto them and their children.<sup>dxlii</sup> This situation can lead to cases of statelessness for children of multi-national families or refugees.

Ethnic and religious discrimination are also important factors in the denial of citizenship for many. Though there are instances in which individuals belonging to certain populations are blatantly denied citizenship through law, there are many other ways in which a country can deny nationality to a given population. As stated earlier, refusing citizenship to an individual during state succession or administrative struggles because of their ethnicity or religion is not uncommon. Populations of concern include those that were brought to a country to work during the colonial period, who are often shunned by the national majority despite the fact that it was a forced migration.<sup>dxliii</sup>

The Nubian population in Kenya is one of these colonial populations, consisting primarily of the descendants of Sudanese that were ex-conscripts in the British army in the early 20<sup>th</sup> century. They were left in Kenya upon demobilization, and by that time no longer had claim to Sudanese citizenship.<sup>dxliv</sup> As a result, they have remained in Kenya, and have been one of the most economically, politically, and socially marginalized groups in the country. They number in the hundreds of thousands, and do not have citizenship, are not counted in the census, and do not enjoy legal recognition as a community or stateless population.<sup>dxlv</sup> The UNHCR had information on only 20,000 stateless individuals in Kenya as of mid-2013, and the percentage of these that are Nubian is unclear.<sup>dxlvi</sup> Their settlements are all considered temporary, and they are regarded as squatters wherever they reside.<sup>dxlvii</sup> However, the Kenyan constitution has a provision that allows for someone born in Kenya, but not to Kenyan parents, to apply for citizenship.<sup>dxlviii</sup> This has allowed other groups, such as European or Indian settlers, to achieve citizenship. Unfortunately, the Kenyan government has not made many efforts to solve the issue of statelessness in the Nubian population. This is primarily due to land related issues, their link to the former British Empire, and their previous status as an enemy.<sup>dxlix</sup>

Both the Nubians of Kenya and the Roma of Europe are populations that have experienced issues with statelessness for years, but that makes them no less currently relevant than the Rohingya. When the statelessness of a population is protracted, in which generations are born and die without documentation, the issue must be approached with the same gravity and urgency as any recently emerging issue. The longer a population goes without representation, the worse their conditions will be, and as a group with minimal access to education, work, healthcare, and food, they are more likely to contribute to a region's instability. As these situations grow both more dismal and politically entrenched, the international community's voice diminishes. Therefore it is important to have a framework in place that identifies and addresses these prolonged issues.

## IMPROVING SECURITY

There have been many international frameworks created to prevent statelessness and protect those that are already stateless, and this has led to great strides forward for stateless persons. They include UNHCR's 1954 and 1961 conventions, as well as a number of other international and regional conventions and charters.<sup>74</sup> However, despite this wealth of international laws and conventions, many of the documents are not legally binding, and those that are may oftentimes be ignored. This has resulted in many gaps in protection for stateless populations, including discrimination, limited access to resources, poverty, unreasonable difficulty in attaining information or paperwork, and as we have seen with the Rohingya, a frequent violation of their human rights.

The Universal Declaration of Human Rights also pertains to stateless persons, and there have been many instances in which these rights have been denied. Article 15 directly states that “everyone has the right to a nationality”, and that “no one shall be arbitrarily deprived of his nationality”.<sup>d1</sup> This conflicts directly with statelessness, and there are other articles that are violated because they

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<sup>74</sup> The 1954 convention was created as an addition to the 1951 convention, which rushed through the subject of statelessness due to its complexity and an urgent need to produce the document quickly. It provides the definition of a stateless person that is now used in customary international law, and thus applies to even those states that did not sign the convention.

The 1961 convention's purpose is to help prevent statelessness by placing an obligation on states. It places responsibility on nations to ensure that children are not born stateless, encourages them to prevent statelessness when individuals change nationality, and provides a common set of rules for when there is a conflict of laws regarding how nations grant citizenship. Though it has few signatories, it holds great international influence, and many of its principles have been adopted by countries that did not sign the convention.

Non-UNHCR international conventions regarding statelessness include The International Covenant on Civil and Political Rights, The International Convention on the Elimination of all Form of Racial Discrimination, The Convention on the Elimination of All Forms of Discrimination Against Women, The Convention on the Rights of the Child, The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and The Convention on the Rights of Persons with Disabilities.

Non-UNHCR regional conventions and charters include The African Charter on the Rights and Welfare of the Child, The American Declaration on the Rights and Duties of Man, The American Convention on Human Rights, The European Convention on Human Rights, The European Convention on Nationality, The Arab Charter on Human Rights, and The Covenant on the Rights of the Child in Islam.

oppose issues that are inherent of statelessness as well. For instance, Article 3 declares that “everyone has the right to life, liberty and security of person”, Article 13 that “everyone has the right to freedom of movement and residence within the borders of each state”, Article 17 that “everyone has the right to own property”, Article 25 that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family”, and Article 2 that everyone is entitled to the rights discussed in the declaration, without discrimination.<sup>dli</sup> These violations are almost universal amongst stateless populations, and yet little has been done to solve these issues by the states in which they reside. Other violations have occurred due to the actions of nations against stateless populations. Article 5 asserts that “no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment”, and Article 9 declares that “no one shall be subjected to arbitrary arrest, detention or exile”.<sup>dlii</sup> These both have been breached in Myanmar, Bangladesh, and Thailand’s dealings with the Rohingya. The extensive human rights violations against stateless persons are well known, and yet they continue to occur. Much like the international conventions and charters designed to protect these populations, the Universal Declaration of Human Rights has been ignored in favor of state sovereignty.

In order to aid stateless populations, the UNHCR has identified four areas on which to focus its attention: identification, prevention, reduction, and protection.<sup>dliii</sup> Identification is crucial because many stateless persons go unreported, making it impossible for them to reap the benefits of international aid. This can be out of a lack of information or a fear of persecution from the state, in some cases justifiably so. Another issue is often stateless persons are not concentrated in one region or country; many are spread across the globe.<sup>dliiv</sup> This could be as a result of their statelessness occurring because of personal circumstance, such as a conflict of international law, or they are a part of a nomadic population, much like the Roma. Many nations also make little effort to identify these individuals. Stateless persons are not an administrative burden when they remain unknown, and their identification would mean that they would have to be incorporated into the national system and likely given aid, and this is not in the interest of the country.<sup>dliiv</sup> Perhaps as a result, few countries have a legal structure set in place to identify stateless persons (or allow them to declare themselves) that will provide aid or help determine citizenship. In mid-2013 it was estimated that there could be as many as 10 million stateless persons in the world, but the UNHCR had information on only 3.5 million of them.<sup>dlivi</sup> Surveys, censuses, and mapping have been helping to identify these individuals, and though some projects have been successful, there are still issues faced with self-identification amongst stateless persons and making these projects effective. Mapping in particular is an expensive, time intensive process. Fortunately, there has been great improvement in recent years. By mid-2013 the UNHCR had information on

stateless persons in 73 countries, over double compared to the previous decade.<sup>dlvii</sup> However, it is still important to note that many stateless persons remain unidentified, and it is vital to improve upon these processes in order to provide them aid.

### ***International***

A strategy that could be used to improve the situation of the stateless is increasing international pressure and monitoring nations' adherence to conventions that they have signed onto, as well as the Universal Declaration of Human Rights (UDHR). The Committee on the Rights of the Child and the Human Rights Committee have chastised few states for their failure to follow the Convention on the Rights of the Child and the Covenant on Civil and Political Rights, respectively, in regards to statelessness.<sup>dlviii</sup> The Committee on the Elimination of all Forms of Discrimination Against Women has also never admonished a nation for failing to comply with its convention in matters dealing with statelessness. And the treaty body charged with monitoring the Covenant of Economic, Social, and Cultural Rights rarely focuses on the part of the convention dealing with statelessness, and this covenant along with the Convention on the Rights of the Child are two human rights treaties most commonly ratified.<sup>dlx</sup> Though the Committee on the Rights of the Child and the Human Rights Committee have provided recommendations for improving policies for stateless persons, it dulls the edge of the scrutiny provided when placed under such a name, and thus limits its potential for change.<sup>dlx</sup> An example of this failing can be seen in Thailand's handling of the Rohingya. The nation is party to many international conventions and commissions<sup>75</sup> and falls under the UDHR, which obligates them to protect the rights of stateless individuals within their borders.<sup>dlxi</sup> As is evident

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<sup>75</sup> Party of; The International Covenant on Civil and Political Rights; The International Covenant on Economic, Social, and Cultural Rights; The Convention on the Elimination of All Forms of Discrimination against Women; The Convention on the Rights of the Child; The Convention on the Elimination of All Forms of Racial Discrimination; The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; The Convention on the Rights of Persons with Disabilities; The UN Convention against Transnational Organised Crime and its Protocols on Trafficking and Smuggling.

Member of; The Association of Southeast Asian Nations; The 2012 ASEAN Human Rights Declaration; ASEAN Inter-governmental Commission on Human Rights; the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children.

from their treatment of the Rohingya, Thailand is not upholding the obligations detailed in these conventions and commissions. If the international community were to make Thailand's failure to adhere to these documents more visible, there may be a significant change in their dealings with the Rohingya. Bringing attention to the failure of states to protect and provide for stateless populations within their borders should be done through strong criticisms and use of the international media. This shaming technique will spur the offending countries to action. An example of successful criticism was seen in the Czech Republic when international pressure was placed upon its government to improve the citizenship laws denying many Roma a nationality, those laws were amended. International media should replicate this technique for other situations of statelessness.

Another possible avenue for convincing states to be more hospitable toward stateless populations would be to highlight the instability that statelessness can bring, and the benefit of incorporating such a population into a functional part of the larger social, economic, and political organism. This can be done by stressing this point in recommendations made to countries dealing with stateless populations, and in the reports that delineate the position of stateless populations. Though this instability is the primary reason that many states expel stateless populations, it does nothing but to delay solving the problem, and in the interim period precious resources are used to try and control these populations. One of the primary reasons stateless populations are so poor is that they lack the protection and legal recognition a government can give them, limiting their ability to become educated and find legal work. They are also already a part of many nations' economies, and pushing them out of the country usually results in them returning, as is the case of the Rohingya in Myanmar and Bangladesh. Allowing these populations to become a permanent part of a nation may result in some negative effects at first, but as new generations integrate themselves into the nation's mechanisms, they will become a productive part of the nation. For this reason the answer is not to deny stateless persons citizenship and to marginalize them, but to incorporate them into the nation and provide them with the citizenship that they are entitled to, which will benefit both stateless populations and the nations in which they reside.

It is also important to increase the visibility of stateless persons. As a relatively small portion of the global population, they are an easy target for marginalization and neglect. Some large stateless populations have garnered international attention, but they are oftentimes overshadowed by other, larger humanitarian crises. The needs of stateless persons are unique as their access to resources is not only limited by economic hardship, but by a lack of documentation. They may be denied aid for this reason, despite the fact that it would otherwise be available; much like the Rohingya in Bangladesh, where a

small fraction of the Rohingya population was granted refugee status and given access to the UNHCR assisted refugee camps while the rest remain undocumented and the target of violence and deportations. At the very least, pushing states to allow stateless persons to have access to international aid will help to partially alleviate the struggles of both the stateless individuals and the nations they live in. This can be done using strong international pressures and critiques, as well as focusing on the benefits to the nations. Unfortunately it may prove difficult to get countries to place stateless persons as a group on par with refugees, as in many places this will at the most force them to provide some kind of aid, and at the least indicate fault in their dealings with the population.

### ***Regional/National***

The identification of stateless persons can be improved upon by tailoring surveys and mapping projects for specific populations, and making them more easily understandable for those filling them out. Surveys should be adjusted to better serve diverse populations by including multiple languages, clear explanations of statelessness, and legal implications of answering the survey as well as provide verbal translators for the illiterate

Prevention and Reduction deal primarily with the nations in which stateless persons live. This includes convincing these nations to provide newborns citizenship, helping to smooth the transition during state succession, encouraging frameworks to be created to allow stateless persons to gain citizenship, and other previously mentioned issues. Unfortunately, these goals oftentimes cannot be achieved without state cooperation, which has proven to be a difficult thing to achieve.<sup>dxii</sup> For instance, Italy's complicated legal processes have effectively prevented thousands of Roma from accessing citizenship or declaring their statelessness.

Prevention and Reduction efforts can be enhanced by clarifying these legal processes and encouraging nations to create frameworks for stateless persons to identify themselves and seek aid, or to strengthen those already in place. It is also important to make these frameworks easily navigable by keeping processing fees low or nonexistent, deadlines long or nonexistent, keeping processing times at a reasonable length (less than a year), making the necessary paperwork easily accessible (less than a day's travel from any given village or town), ensuring that paperwork is available in the reader's language, or provide a translator if this is not possible or they are unable to read, not requiring proof of documentation where it is unreasonable to expect it, allowing for the appeal of a decision, making the instructions to complete paperwork clear, and involving international organizations such as the UNHCR to provide further aid and ensure that these individuals have access to their rights. For instance, as the Roma are a nomadic

group the languages they speak vary, though Romani is amongst the most popular, and their language may not be spoken in the nation they reside in. For this reason it is important for the host nation to investigate what the primary language is of the Roma population that lives within their borders, then provide information in that language to ensure that the population is able to access it. Where women are involved, ensuring that they are able to retain their nationality upon marriage and to transfer this onto their children is of the utmost importance. In instances of state succession, it is important that successor nations provide nationality to those that have lived in the territory for five years or more before the current government, and those that were citizens under the previous government. One example of this is the Rohingya, who have had a presence in modern day Myanmar for many years prior to the rule of the current government, and yet are denied citizenship because they are seen as ethnic outsiders and are the target of much xenophobia. It is also vital that the new government not revoke individuals' citizenship if they have not formally claimed it, or require the normal documentation from those that would otherwise be stateless if the new government did not grant them citizenship. Though this will likely be very difficult to achieve due to a lack of solidarity and state avoidance of responsibility for stateless persons, it is important that the UNHCR begin to encourage these policies and move toward binding legal documents for them.<sup>dlxiii</sup>

As it is strongly tied to the decisions of individual states, the protection of stateless persons has proven difficult. Policies that are especially important include improving laws against discrimination and preventing the persecution of individuals that self-identify or are otherwise revealed to be stateless. For example, the Roma face much discrimination in Europe as they are denied citizenship and proper documentation. By creating a positive discourse and focusing on the potential benefits of helping the Roma settle or gain citizenship rights, the governments and stateless populations can work towards creating durable solutions.

## CONCLUSION

The Rohingya, the Nubians, and the Roma all provide examples of vulnerable populations that struggle with poverty, violence, deportation, and limited access to aid due to their stateless status. The primary struggle in solving the issue of statelessness is cooperation between countries and international organizations, and adherence to the laws, treaties, and conventions that are designed to protect these populations. The limited visibility and small numbers of stateless persons also contribute towards the neglect or discrimination that many stateless individuals experience in many nations. It is vital that the UNHCR continues to protect and aid stateless persons and to increase these efforts as time goes on.

## RECOMMENDATIONS

### *International*

- The international refugee regime should bring attention to the failure of states to protect and provide for stateless populations within their borders.
- The UNHCR should place pressure on countries to adopt *jus soli* nationality laws.
- The UNHCR should place pressure on countries to adopt laws that allow women to retain their nationality when married, and to be able to transfer it to their children.
- The UNHCR must place pressure on states to reform their nationality legislation to clarify laws and to create easily navigable frameworks through which stateless persons can identify themselves and gain citizenship.
- "The UNHCR should redirect some of its existing resources toward already existing frameworks designated to help end protracted situations of statelessness, rather than focusing all energies on currently emerging issues. This could include increasing aid money to those in such situations and directing more publicity toward these issues.
- The international refugee regime should create a positive discourse around stateless persons and the potential benefits of incorporating them into nations.

### *Regional*

- Improve upon currently existing surveys to distribute in possible stateless communities to determine their needs. These surveys must be available in several languages and translators must be provided when needed.

### *National*

- Keep processing fees low or nonexistent.
- Keep deadlines long or nonexistent.
- Keep processing times at a reasonable length (within one year).
- Make the necessary paperwork easily accessible (within one day's travel of a village or town).
- Ensure that paperwork is available in the reader's language, or provide a translator when necessary.
- In nations with stateless Roma populations, provide information in Romani or the dominant language.
- In instances of state succession, nations must provide citizenship to those that have lived in the territory for 5 or more years or who were citizens under the previous government.

# DISASTERS AND DISPLACEMENT

## *Limited Legal Protection for Environmentally Displaced Persons*

By Jinhee Hur

### INTRODUCTION

More than 30 million people worldwide fled from their homes in 2012 due to sudden disasters such as floods, storms and earthquakes.<sup>dlxiv</sup> This statistic does not take into account the quantity of displaced persons due to slow-onset disasters such as drought, desertification, and soil degradation. Environmentally Displaced Persons (EDPs) encompasses both of these populations, which far outnumber the amount of refugees fleeing from persecution and violence.<sup>dlxv76</sup> While mounting scientific evidences underscores even more increasing intensity and frequency of climate change-induced disasters and its impact on migration, the international community, including the UNHCR, are reluctant to renegotiate the definition of a refugee or provide comprehensive and coherent policies that would uphold the fundamental human rights of EDPs. Given that the legal gaps in the protection of EDPs are likely to pose a range of humanitarian threats including violation of fundamental human rights and possibility of relocation/resettlement for populations of low-lying small island States, it is imperative to strengthen existing policies and principles in the context of natural disasters and to come up with new approaches to fill the protection gaps for EDPs.

By applying the cases of the 2010-2011 Somali Drought crisis, the Philippines' 2013 Typhoon calamity, and the inundation due to sea-levels rising that the Pacific islands face, this chapter will address the gaps in protection for EDPs including lack of inclusive definitions, limited legal protection, the inability to provide assistance, and delays in aid distribution.

### PROBLEMS OF DEFINITION

Vulnerable populations displaced outside their national borders due to slow-onset as well as sudden-onset disasters lack a globally recognized term with legal implications. Since EDPs lack a clear legal definition that addresses their status, they do not receive the protection of international human rights law depriving them of their fundamental rights.<sup>dlxvi</sup> Therefore they do not have the

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<sup>76</sup> As of the end of 2012, 15.4 million refugees were in situations of displacement.

right to stay or work in the country of arrival and live with the constant fear of deportation and exploitation.

The essential issue of including EDPs in international refugee laws such as the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problem in Africa, is that EDPs do not satisfy the criteria defining a refugee. While some of those who have been affected by armed conflicts or violence triggered by the effects of natural disasters may fall into this criteria, people who have been forcibly displaced due to sudden and slow-onset disasters will not be protected under the current international refugee regime's framework because natural disasters are not presented as one of the factors that create a well-founded fear of persecution. Although there is a case in which the government of Kenya admitted and provided refugee status to Somalis who crossed the border during the 2010-2011 drought crisis due to the presence of generalized violence and starvation, the government of Kenya stated that "the influx of refugees is of Somalis seeking food not running away from violence."<sup>dlxvii</sup> The majority of Somalis who were interviewed said that they had come to the Kenyan refugee camps as a result of the drought and famine.<sup>dlxviii</sup> The problem of accepting EDPs as refugees is that with the Refugee Consortium of Kenya, it may undermine the prima facie status that the government of Kenya adheres to in the long term.<sup>dlxix</sup> Lack of clarity on the definition of EDPs not only violates their fundamental human rights but also undermines the existing international refugee law.

Although there has been some discussion among some scholars and activists to redefine the term "refugee" to include EDPs, the UNHCR opposed the initiative mainly because it may pose serious risks to the international refugee protection system due to overstressing its mandate.<sup>dlxx</sup> The UN Guiding Principles on Internal Displacement, which is based on international human rights and humanitarian law, as well as refugee law, includes people uprooted by sudden-onset disasters that remain within their national borders.<sup>dlxxi</sup> Yet, the Guiding Principles is limited only to people affected by sudden-onset disasters. Although the Kampala Convention on Internal Displacement in Africa extends its limit to the people affected by slow-onset disasters, there are no international agreements regarding the status of IDPs affected by slow-onset disasters.<sup>dlxxii</sup> Furthermore, there is a lack of definitional clarity on the population of small island states facing potential displacement due to rising sea levels. They are in a situation where in the near future they will not only be the world's first mass movement of displacement due to climate change, but also will potentially be stateless due to climate change.<sup>dlxxiii</sup>

Due to the fact that it is far more difficult to define the status of persons who cross borders or flee their homes due to slow-onset disasters, it is imperative

to come up with an initiative to define their status to protect them from the violation of fundamental human rights. Recognition that forcible displacement will be inevitable for low-lying island States and providing status for the population faced with risks of being submerged is also necessary.

### ADOPTING GLOBALLY RECOGNIZED DEFINITIONS REGARDING EDPs

Adopting an internationally recognized definition that clarifies and classifies the status of EDPs is essential in establishing effective international laws that guarantee the fundamental human rights of EDPs. The first step in addressing the complex issue of forced migration due to natural and man-made disasters is a classification system such as the one presented below.

**Table 1** – Classification of Environmentally Displaced Persons<sup>dlxxiv77</sup>

	<b>Disaster</b> An unintended, catastrophic event triggers human migration		<b>Expropriation</b> The willful destruction of environment renders it unfit for human habitation		<b>Deterioration</b> An incremental deterioration of the environment compels migration as constraints to human survival increase	
<b>Sub-Category</b>	<b>Natural</b>	<b>Technological</b>	<b>Development</b>	<b>Ecocide</b>	<b>Pollution</b>	<b>Depletion</b>
<b>Origin</b>	Natural	Anthropogenic	Anthropogenic	Anthropogenic	Anthropogenic	Anthropogenic
<b>Intention</b>	Unintentional	Unintentional	Intentional	Intentional	Unintentional	Unintentional
<b>Duration</b>	Acute	Acute	Acute	Acute	Gradual	Gradual

The international refugee regime will be able to respond effectively to any future displacement triggered by environmental factors if the international community adopts these classifications. Sudden-onset disasters will be placed under “Disaster” whereas slow-onset disasters will be classified under “Deterioration.” Those fleeing due to the inundation of small island states as well

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<sup>77</sup> The disasters, the first motive of forced migration, are described as “[a]cute disruptions in the environment that cause unplanned human migration[...].” Sudden-onset Disasters such as earthquake, tsunami and hurricanes are classified as natural disasters whereas man-made disasters such as Fukushima incident is considered as a technological disaster. The expropriations, the second motive of forced migration, indicate “[...] the permanent displacement of people whose habitat is appropriated for land use incompatible with their continued residence”<sup>77</sup> The expropriations is divided into two sub-categories, Development (building a dam, urban expansion in natives’ territory) and Ecocide (“[...] intentional destruction of human environments in order to strategically relocate a target population during a period of war”) The deteriorations, which includes displacement triggered by slow-onset disasters, has two sub-categories; Pollution (e.g. global warming) and depletions (e.g. deforestation)<sup>xii</sup>

as displacement triggered by drought will be classified as “Deterioration-Pollution” as it is the result of climate change.<sup>dlxxv</sup>

Adopting the two new genus – the Environmentally Persecuted Persons and the Environmentally Displaced Persons *Stricto Sensu* – under the category “Environmentally Displaced Persons” will also specify which individuals or groups are displaced due to certain motives and how best to protect and assist these<sup>dlxxvi</sup> populations.<sup>dlxxvii</sup><sup>78</sup> The difference between the Environmentally Persecuted Persons and the Environmentally Displaced Persons *Stricto Sensu* is in ‘the presence or absence of the fear of Environmental Persecution.’<sup>dlxxviii</sup> That is, persons who fall into the Expropriation – Ecocide are categorized as Environmentally Persecuted Persons whereas the rest categorizations fall into Environmentally Displaced Persons *Stricto Sensu*.

Within the category of “Environmentally Persecuted Persons”, two sub-categories “Environmental Refugee” and “Internally Displaced Person due to Environmental Persecution (IDPEP)” differentiate the types of displacement. Likewise, two sub-categories of “Environmentally Displaced Person *Stricto Sensu*”, “Externally Displaced Person due to Environmental Disruption (EDPED)” and “Internally Displaced Person due to Environmental Disruption (IDPED)” address the difference between population migrating internationally and internally. Adopting these categories into the international refugee regime will enable the international community to avoid the risks of reopening the negotiations of the 1951 Convention regarding the definition of the refugee. The 1951 Convention, the 1967 Protocol and the OAU Convention will only, thus, apply to the newly interpreted “Environmental refugees”.

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<sup>78</sup> Environmentally Displaced Persons: [...] those who have been forced to leave their traditional habitat temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected that quality of their life.

Environmentally Displaced Person *Stricto Sensu*: the person that is forced to leave or internationally, temporarily or permanently, due to a specific Environmental Disruption (natural and/or anthropogenic) that compromises his/her existence and/or seriously affects his/her quality of life, without configuring Environmental Persecution

Environmentally Persecuted Person: the person who, owing to well-founded fear of Environmental Persecution that compromises his/her existence and/or seriously affects his/her quality of life, is forced to leave his/her traditional habitat, temporarily or permanently.

## PROBLEMS OF LEGAL PROTECTION

Although the scope of Guiding Principles on Internal Displacement extends to IDPED as it cites “natural or human-made disasters” as a cause of forced internal migration, governments sometimes refuse to apply the protection set forth by the Guiding Principles to IDPEDs. The government of Pakistan in 2005, refused to apply the Guiding Principles to IDPEDs uprooted by an earthquake, stating the principles only apply to refugees uprooted by conflict and persecution.<sup>dlxxxix</sup> The UNHCR, likewise, has only recently proposed to extend its scope of responsibility regarding the protection of conflict-generated IDPs to include those uprooted by disasters.<sup>dlxxx</sup>

Due to governments’ reluctance in the application of the Guiding Principles to IDPEDs, Inter-Agency Standing Committee (IASC) adopted the Operational Guidelines for the Protection of Persons affected by Natural Disasters in 2010 to provide practical guidance to humanitarian actors on how to assist governments carrying out their responsibilities for those affected by disasters within their own borders.<sup>dlxxxi</sup> However, neither the Guiding Principles nor the Operational Guidelines apply to IDPs affected by slow-onset disasters. Although the Kampala Convention, which came into force in 2012, encompasses both IDPs affected by slow and sudden-onset disasters under the IDP umbrella, it may take time incorporating such Convention into the State parties’ national policies.

Likewise, although the 10 Principles on Climate Change and Cross-Border Displacement, devised as the outcome of the 2011 Nansen Conference on Climate Change and Displacement, primarily target EDPs affected by sudden-onset disasters, they are not legally binding and do not include EDPED by slow-onset disasters.<sup>dlxxxii</sup> The participants of the Pacific Consultation, the first-ever regional consultation of the Nansen Initiative, held in 2013, identified protection needs for small island States in the context of potential external displacement due to climate change and adaptation strategies.<sup>dlxxxiii</sup> However, they are only at an initial stage to build consensus on a protection agenda for EDPED. Overall, there is no normative framework, not even a regionally-binding treaty tailored to the needs of EDPEDs.

## ADOPTING A CONVENTION ON THE INTERNATIONAL STATUS OF EDPs

Drafting a new, internationally binding agreement on the rights of EDPs, including EDPED is one of the hard law approaches the international community can undertake. The Draft Convention of the International Status of Environmentally-Displaced Persons, drafted by experts in the field of environmental displacement, describes rights bestowed to EDPs and argues the need of creating institutional mechanisms and frameworks to enforce their

rights.<sup>dlxxxiv</sup> This draft convention focuses on EDPS but includes IDPEPs, IDPEDs and EDPEDs. . The draft Convention lays out the scope of application, human rights laws guaranteed by international law, recognition of the status of EDPs and responsibilities of State Parties, as well as new institutions such as the World Fund for the Environmentally-Displaced (WFED) and World Agency for Environmentally-Displaced Persons (WAEP).<sup>dlxxxv</sup> The international experts, including the UNHCR's Policy Development and Evaluation Services (PDES) and Division of International Protection (DIP) must develop criteria that distinguish the point in which gradual environmental degradation force people to uproot and when a sudden and slow-onset environmental issue becomes too much to bear. Examining social-ecological indicators helps draw fine lines between voluntary and forced migration. Social indicators would therefore include presence of risk to life or safety during disasters; loss of critical infrastructure; government's inability to protect its citizen; and threats to public health. Ecological factors would include rate of land degradation, erosion, sea-level rise and loss of drinking water due to salinity.<sup>dlxxxvi</sup>

Given the fact that implementing and enforcing such a convention is a greater challenge than drafting a convention paper, the international community may take soft law approach and alter the draft convention as the Guiding Principles. Although not binding, it will detail the specific meaning of the general human rights and humanitarian law guaranteed for EDPs. Following the footsteps of the Kampala Convention, which is now a regional instrument that binds governments to provide legal protection for IDPs, including those uprooted by sudden and slow-onset disasters; the new EDP convention will start out as Guiding Principles and make concrete progress over time.<sup>dlxxxvii</sup> Although it is not explicitly legally binding, it will have political impact and result in the emergence of rules of customary law, much like the Guiding Principles of IDPs.

## **REGIONAL SOLIDARITY REGULATING THE STATUS OF EDPS**

The provision of venues for regional regimes to openly discuss cross-border displacement due to environmental viability is an important step in identifying the existence of EDPED and the legal protection gap this vulnerable population faces. In December 2013, Central American countries met in San Jose, Costa Rica for the second regional Nansen Initiative Consultation on "Disasters and Cross-Border Displacement in Central America: Emerging Needs, New Responses." This Consultation highlighted the importance of regional coordination and discussed methods to prevent displacement, EDP protection and durable solutions for cross border displacement. The Consultation also discussed the idea of promoting the use of humanitarian visas for the admission of persons displaced by disasters.<sup>dlxxxviii</sup> For the next regional Nansen Initiative consultations, which will be held in Horn of Africa, Southeast Asia, and South Asia over the course of 2014, regional

countries should not only discuss how to promote the use of humanitarian visas but also how to implement the visas more effectively and systematically within the region as well as how to draw a distinction between voluntary and forced movements in regards to external displacement due to sudden and slow-onset disasters.

### ***Granting Complementary Protections***

There are currently a variety of national policies that provide complementary protections for EDPEDs. Unlike temporary protection, which is awarded on a discretionary basis, complementary protection for EDPs is a legal obligation of states to individuals, prohibiting the states from repatriating external migrants to areas of danger.<sup>dxix</sup> The Pacific Access Category (PAC), a New Zealand policy that allows people from low-lying Pacific islands (75 citizens of Kiribati, 75 citizens of Tuvalu and 250 citizens of Tonga each year) to permanently work in New Zealand, for example, is targeting low-lying islands affected by the rise of sea level and sudden-onset disasters.<sup>dx</sup> Although the government of New Zealand does not mention threat of climate change as one of the factors that led the creation of the policy and has a list of requirements the applicants must meet, it may open possibilities for other states to consider adopting a similar “migration program” without reopening the complicated legal definition of asylum policy and refugee system. Actors at all levels, including climate and social scientists, representatives from vulnerable states and potential host countries and the international organizations such as the UNHCR and International Labour Organization (ILO) should prepare an international dialogue on adopting an alternative labor migration policy, specifically aiming the states at-risk of disappearing due to the rise of sea level.

Many states in Europe, including Sweden, Norway, Finland and Denmark already recognize the need to be able to grant residence permits to applications who come from an area affected by natural disasters.<sup>dxci</sup> Finland is an exemplary case out of all that provides most tangible complementary protection. The scope of the Finnish Aliens Act includes external displacement triggered by both natural and human-induced disasters. Although the policy has not been used before, it is a milestone as it brought necessary attention to the plight of EDPEDs and provided legal protection through its policy.<sup>dxcii</sup> Closely examining the existing Finnish Aliens Act and other complementary protection policies, Member States of European Union should take a pioneer role in adopting comprehensive, regional binding agreement on providing legal protection for those externally displaced by natural disasters and human-made disasters. Regional consultation should be planned to have a common understanding of the issue, the challenges of adopting such a comprehensive, regional binding legal protection for EDPEDs, and

recommendations on the roles and responsibilities of relevant actors and stakeholders.

### ***Raising Awareness of Climate-Related Disasters***

Many humanitarian actors, including the UNHCR, have recently identified the ever growing effects of climate change and its impacts on human mobility. Through the Nansen Conference on Climate Change and Displacement held in 2011, humanitarian actors, climate change scientists, policy makers and delegates from all over the world convened together to develop a common understanding of emerging climate-induced challenges and pressed the need to manage climate-changed induced displacement.<sup>dxcciii</sup> In order to influence ongoing climate change negotiations the UNHCR must raise awareness about EDPs and their displacement dynamics. The UN Climate Change Conference meeting, which will be held in September 2014 in New York, must include research on the exacerbated livelihood, social and economic status that EDPs face due to effects of climate change.<sup>dxcciv</sup> Providing evidence of climate change repercussion not only on nature but on innocent populations will enlighten the parties who will attend the summit and may present positive effects on their national contribution towards the 2015 global climate agreement.<sup>dxccv79</sup>

### ***Bottom-up Approach***

In order to create better EDP policies at the international, regional and local level, the voices of EDP's must be included in policy creation. International organizations need to consult with EDPs to help construct policies so they address what those populations find most challenging. It will not only empower the affected EDPs, but also provide a clear direction on how policy should navigate through to support EDPs. Moreover, inviting them to take part in the decision-making process will give them a better understanding of how state laws operate toward them. For example, Afghanistan held a national consultative workshop in July 2012 regarding its national IDP policy reform in which government officials asked IDP communities to participate<sup>dxccvi</sup> It should be considered good practice to invite local EDP leaders to participate in decision-making processes as well as visit EDPs dense areas to conduct surveys and interviews in regards to their livelihoods and violation of fundamental rights. Involvement of EDPs in planning and

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<sup>79</sup> By the first quarter of 2015, countries must set out their targets on curbing greenhouse gas emission from 2020. The final agreement in Paris, in 2015 will be a new universal climate agreement.

implementing durable solutions will help policy makers to provide more realistic and targeted laws.

## **PROBLEMS OF PREVENTIVE MEASURES AND ASSISTANCE**

Thousands of lives are saved when adequate preventive measures are taken by the government when facing inevitable natural disasters. The Philippine government's lack of preventative measures for typhoon Haiyan highlight the importance of taking preventive measures which lessen catastrophic damage and death tolls. The Philippine government repeatedly broadcasted warnings of a storm surge but failed to educate people how much destruction a storm surge would cause.<sup>dxcvii</sup> The government also failed to mobilize its local government units for forced evacuations to higher and safer ground.<sup>dxcviii</sup>

Often times when a nation undergoes a civil war and faces humanitarian crisis due to natural disasters, armed groups hinder humanitarian access and announce a ban on the operations of aid agencies in areas under their control. The Kampala Convention on Internal Displacement in Africa and the Guiding Principles stress the importance of State Parties granting “rapid and unimpeded” access to humanitarian organizations in the event of humanitarian crisis.<sup>dxciix</sup> However, many reported cases show that adhering to such principle is difficult. In 2011, Somalia, experienced the worst drought in 60 years. In a country where conflict and violence was already pervasive, scarcity of essential food sources due to worsening environmental variability acted as a multiplier effect for more insecurity and human rights violations and, as a result, it caused an estimated 1.6 million Somalis to be uprooted from their homes.<sup>dc</sup> A ban on the operations of several UN and international aid agencies imposed by Al-Shabaab militants, who controlled most of southern and central Somalia, restricted aid agencies from operating and accessing vulnerable populations.<sup>dcii</sup> As a signatory country to the Kampala Convention, the government of Somalia should have supported rapid and unimpeded access to humanitarian organizations but the instability of its government created a barrier.

### ***Building Capacity for Preventive Measures***

Building capacity for disaster preparedness work is the most essential task for the prevention of disaster-induced displacement. Effective disaster planning, preparation and dissemination of early warning information lead to a minimal death toll as shown in the case of India's Odisha state in 2013.<sup>dciii</sup> After a ferocious cyclone hit eastern India, causing 10,000 death in 1999, the local and national authorities and international donors and aid agencies cooperated with one another to increase disaster preparations by building shelters, developing evacuation planning and dissemination of early warning information.<sup>dciii</sup> As a result, when Cyclone Phailin swept the same region in 2013 with comparable intensity, the

reported death toll from Phailian was a low 38 people.<sup>dciv</sup> Preventive actions taken in the state of Odisha, which remarkably reduced the number of death toll, can be applied to the Typhoon Haiyan and other disasters.

Prior to the landfall of Phailin, Odisha used several means and methods of communication to reach and inform a large population. It included constant news coverage, providing information on coordinates of location, intensity and timing of impending cyclones; use of email, fax, telephone, text message and print media to communicate warnings and alerts; loudspeakers used in various districts to warn residents; and distribution of satellite phones to representatives in the 14 most vulnerable districts to ensure that warning communications continued during the storm.<sup>dcv</sup> Adopting these various methods that include disseminating information on intensity of the storm and checking on local authorities to ensure warning communications continued during the storm will remarkably lower the death toll. Asking the World Bank National Cyclone Mitigation project<sup>80</sup>, which supported the Odisha government with preparation actions, to help the government of Philippines to increase disaster preparedness and early warning communication is recommended.<sup>dcvi</sup>

## **STRENGTHENING HUMANITARIAN ACCESS**

When national authorities either lack power to deliver humanitarian assistance due to national insecurity or reluctant to do so, aid agencies should negotiate with the party blocking the delivery of humanization aid. One successful example of this would be the effort of the OCHA, which led to develop trust between armed groups in Sa'ada governorate and humanitarian agencies. OCHA provided avenue for de facto authorities and other state actors to participate in coordination and explain the importance of humanitarian principles, child protection as well as development of a joint inter-agency response plan with humanitarian partners.<sup>dcvii</sup> The outcome was positive that it increased humanitarian access and created opportunities for practical solutions<sup>dcviii</sup>. Aid agencies should continue contemplating multidimensional coping responses so that protection and relief assistance can be delivered when and where it is needed.

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<sup>80</sup> The World Bank National Cyclone Mitigation Project, facilitated by the World Bank, helps Indian coastal communities to build preparedness capacity against cyclones and other natural disasters. The goals are to improve early warning and communication systems as well as to enhance the capacity of communities to respond to disasters. Improving access to emergency shelter, evacuation, and protection against effects of disasters are, likewise, objectives of the project.

Multilateral peace talks regarding the access of unlimited humanitarian aid to inform the importance of humanitarian assistance is therefore called upon the international community. While taking a neutral stance that it would not intervene the war or give advantages towards one side, the international community must put in effort to make a point that the delivery of humanitarian aid is crucial for its vulnerable population.

### ***Delay in Aid Distribution***

Decision makers of international aid agencies often times respond too late to early warning signs, thus they are managing only the crisis, and not trying to prevent it. The media tends to break stories of a crisis when it reaches its most dangerous level. Delay in aid distribution also drives up the cost of aid. At the initial stage of the 2004-2005 Niger emergencies, for instance, the food deliveries cost US\$7 per beneficiary, but it had risen to US\$23 when the situation reached crisis.<sup>dcix</sup> Fear of getting it wrong, fear of being too interventionist and fear of engaging in too many emergencies may refrain international aid agencies from responding to early signs.<sup>dcx</sup> However when there are clear indications that an impending crisis is about to occur, all actors should assess those early warning signs more swiftly and take actions immediately.

Somalia is an example of delayed responses to early warnings of drought, which contributed to the displacement of hundreds of thousands of affected populations in 2010-2011. Many lives, especially those of women and children, could have been saved if the aid agencies had reacted to early warning signs which forecasted the impending drought and its consequences from as early as in August 2010.<sup>dcxi</sup><sup>81</sup> Starvation that drove people to death was already pervasive in July 2011 when the UN finally declared famine in two regions of Somalia.<sup>dcxii</sup> As a result, during the 2010-2012 drought, nearly 260,000 people died in Somalia, which assuredly save many lives if assistance was delivered on time.<sup>dcxiii</sup>

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<sup>81</sup> As early as in August 2010, the early warning system (EWA) forecasted that there will drought and its consequences due to the La Niña phenomenon. In early November 2010, it again indicated worsening situations as the October to December short rains were forecasted to be poor. In December 2010, the Food Security and Nutrition Working Group for East Africa (FSNWG) warned the humanitarian community to prepare actions to avoid crisis. In March 2011, the Famine Early Warning System Network ( FEWSNET) stated that if the March to May rains were as poor as expected, it would make the already alarming situation even worse, turning into a major crisis. Save the Children, Oxfam. "A Dangerous Delay." Last modified 01 18, 2012. Accessed February 17, 2014.

## EARLY WARNING SYSTEM NETWORK

Noting that early warning signs provided by the Famine Early Warning Systems Network (FEWSNET) and the Food Security and Nutrition Working Group for East Africa (FSNWG) accurately predicted the Somali famine crisis, a good communication between the forecast, climate change scientist and humanitarian agencies are called upon to translate early warning information into early humanitarian responses. Ongoing monitoring and trend analysis at the local level will be great resources when assessing a potential crisis and will draw more attention from all actors when drafting outline proposals for response. Development actions that enhance vulnerable populations' ability to absorb impacts of environmental disasters are also required as it will support more people to stay in their homes which will also be safer for them and cost-effective for aid agencies. While supporting communities with disaster risk reduction activities which include water resource development, environmental conservation, and sustainable livelihoods support, should continue, the humanitarian regime, including the Somali Red Crescent Society (SRCS) should focus on providing alternative vocational training that could substitute pastoralism, a way of life that makes up around 60 percent of the Somali population.<sup>dcxiv</sup> Because the pastoralist lifestyle, which mainly depends on good rains and pasture, is under threat due to recurring climate change-induced droughts, vocational training, especially for the youth, is critical so that they have broader economy and livelihood options other than agro-pastoralist livelihoods.

## CONCLUSION

Climate change induced natural disasters show no signs of stopping. It is evident that climate change and natural disasters will create massive waves of displacement throughout the world and legal gaps in protection for EDPs are severely lacking, putting the lives and livelihoods of many at risk. In order to protect the vulnerable populations from the risk of fleeing their homes and the violation of their fundamental human rights, collaborative work between actors at the national, regional and international level is imperative. While the international community compromises its legal responsibilities and roles in protection of EDPs, examining, strengthening and extending existing policies toward EDPs are needed.

## RECOMMENDATIONS

### *International*

- The international refugee regime must adopt a more comprehensive and legal definition for EDPs.
- The UNHCR should adopt the Convention of the International Status of Environmentally-Displaced Persons and place pressure on states to sign and ratify.
- Representatives from international organizations, academia, civil society as well as environmentally displaced populations should attend the next UN Climate Change Conference meeting to raise awareness of increasing climate-related disasters and its impact on human mobility.
- Actors at all levels, including climate and social scientists, representatives from vulnerable states and potential host countries and the international organizations such as the UNHCR and ILO should prepare an international dialogue on adopting an alternative labor migration policy that permits permanent residency, specifically aiming the states at-risk of disappearing due to the rise of sea level.
- International aid agencies and donors should focus on early warning signs while also supporting disaster risk reduction activities.

### *Regional*

- Nansen-initiative Consultations, regional nations should not only discuss how to promote the use of humanitarian visas but also how to implement it effectively and systemically.
- European regional consultation should reflect the Finnish Aliens Act to become binding legal protection for EDPs.

### *National*

- Disaster-prone nations must educate their population about the intensity of disasters and their impact.
- Nations should ask for international support on disaster risk reduction strategies is recommended for countries vulnerable to both poverty and disasters.
- Nations must allow international humanitarian aid organizations to access populations of concern.
- Nations should create surveys to identify EDPs and their needs. These surveys should be tailored to fit the population's language and translators must be provided when needed.

# RE-CONCEPTUALIZING THE REFUGEE REGIME

## *Addressing Gaps in Protection for Socio-Economic Migrants*

By Aya Yousuf

### INTRODUCTION

At the peak of the crisis in 2008 and 2009, only 10 percent of Zimbabweans were recognized as refugees in South Africa and only those who were persecuted because of direct political links to the opposition group were targeted by the government; the majority of Zimbabwean claims were regarded as “unfounded.”<sup>dcxv</sup> The majority of the estimated 2 million Zimbabweans<sup>82</sup> fleeing to neighboring countries left because of socio-economic reasons that fall outside of persecution as a result of one’s “race, religion, nationality, or membership of a particular social or political opinion.”<sup>dcxvi</sup> These five grounds provide a definition of a refugee based on the international refugee regime. However, the causes of migration have evolved significantly from the early years since its establishment. Environmental change, natural disaster, food insecurity, famine, drought and state fragility all resulting in the collapse of livelihoods, are among new reasons for displacement.<sup>dcxvii</sup> With an increase in the number of fragile states, more people are fleeing their homelands because of human rights deprivations from weak governments that are unable or unwilling to ensure basic rights. The term “survival migrant,” crafted by Alexander Betts, describes “people who are outside their country of origin because of an existential threat for which they have no access to a domestic remedy or resolution, whether as a result of persecution, conflict or environmental degradation.”<sup>dcxviii</sup> Poor governance structures in countries affected by economic and environmental crises reduce the chances of a successful solution to internal problems. There is a need for the development of a new framework to address the needs of “survival migrants,” who can otherwise be described as those who are forced to leave the country of origin because of a weak government that cannot provide basic rights to livelihood in the case of a political or environmental crisis.

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<sup>82</sup> Estimating an exact number is difficult: The South African Department of Home Affairs estimates 2 million Zimbabweans entered South Africa, while the numbers are difficult in other countries to predict due to un-documented status (Betts, Alexander. “Survival Migration: A New Protection Framework.” *Global Governance* p. 367)

This is a critical issue for the UNHCR during a time with several devastating crises occurring around the world.

Essentially these groups of irregular vulnerable migrants are those who flee serious deprivation of their socio-economic rights that make it impossible to sustain basic livelihood. Since they fall outside of the UN definition of a refugee there is little “legal precision over states obligation to people fleeing socio-economic deprivation.”<sup>dccix</sup> As a result, protection is inconsistent, unpredictable and inadequate with many gaps at the institutional, international, and national/local level. Covering these gaps is important for ensuring human rights; all survival migrants have rights under international human rights law yet there are no institutional mechanisms that exist to ensure that such rights are available in practice.<sup>dccx</sup> Covering gaps is also important in maintaining regional and international security, while also preventing xenophobic-fueled violence within the country. This chapter will focus on the human rights of this group of forced migrants, the gaps in protecting them, and offer recommendations at the international, regional and national level to the organizations that have responsibility in protecting forced migrants. Using the case study of Zimbabwean refugees fleeing political and economic collapse to neighboring countries, this chapter argues that there are many gaps in protecting non-traditional vulnerable migrants. There is a need for reforms that builds on existing human rights norms and new strategies for implementation of policies at the local level along with partnering with humanitarian and aid agencies to address gaps.

## GAPS IN PROTECTION

The main gaps surrounding protecting this group of vulnerable migrants can be divided into institutional, international and domestic gaps. Institutionally, lack of refugee status means lack of protection guaranteed to those fleeing human rights deprivations as a result of economic and political collapse. There is also a lack of institutional clarity in relation to the human-rights based claims of people who cross borders; there is already a set of guidelines based on human rights law that address the gaps of internally displaced people.<sup>dccxi</sup> These guidelines could be expanded to cover gaps in socio-economic migrants. Internationally, there is a need for a clear set of obligations that each UN agency or NGO has to address the common problems experienced by “survival migrants”; for example Zimbabweans often have difficulties with access to health care, especially HIV/AIDs medications, getting robbed and tortured at the border, access to food and other humanitarian needs. This lack of material assistance forces Zimbabweans into exploitation in domestic or agricultural labor.<sup>dccxii</sup> Organizations responsible for migration issues must work together with humanitarian agencies and state governments to create clearer obligations to ensure material assistance. At the national level, there is no legal definition of states’ obligations to people fleeing deprivations outside the

conventional understanding of persecution. It is evident that most of the response towards migrants comes at the national level with South Africa and Botswana responding differently to the influx of migrants. South Africa has “stretched” its refugee policy to adhere to Zimbabwean migrants but they still face xenophobic violence and lack of material assistance while Botswana has taken a stricter stance deporting non-Convention refugees in masses. It is important to regularize the protection of “survival migrants” and prevent detention and deportation.<sup>dcxxiii</sup>

### ***Background***

The case of Zimbabweans fleeing economic collapse as a result of actions by the government is a classic example of how socio-economically vulnerable migrants lack protection in host countries. This case highlights the international refugee regime’s inability to respond to the protection needs that arise from modern realities of forced migrations. Recommendations from this case can be applied to other cases, such as Haiti or Libya, where people are fleeing human rights deprivations in fragile states as a result of a natural disaster or state fragility.<sup>dcxxiv</sup> Leaders at the international level through the UN agencies or NGOs must work with governments of countries that host these group of migrants to extend protection to populations fleeing forms of deprivation that are not defined as persecution.

Under the UDHR, everyone has the right to “life, liberty and security,” and as previously described “survival migrants” are forced to flee their country as a result of social and economic consequences that prohibit these basic rights.<sup>dcxxv</sup> Recognition is guaranteed in the UDHR although states often bypass this requirement in offering protection to “survival migrants,” since they fall outside the 1951 Convention definition.<sup>83</sup> No international organization has assumed responsibility for this group although the UNHCR has recognized mixed migration as an increasingly important issue.<sup>dcxxvi</sup> The UNHCR defines mixed migration as “people travelling in an irregular manner along similar routes using similar means of travel, but for different reasons,” therefore including survival migrants.<sup>dcxxvii</sup> The UDHR shows that all migrants should be protected under Human Rights norms but the problem is implementation.<sup>84</sup> Article 25 is also important to refugees

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<sup>83</sup> Article 6: “everyone has the right to recognition everywhere as a person before the law.”

<sup>84</sup> Article 14: states that “everyone has the right to freedom of movement and residence within the borders of each state” and that “this may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.”

because it ensures access to livelihood and implies that if the state is unable to provide their right to adequate living standards, they can find protection in another host society.<sup>85</sup> Based on these articles it is evident that on paper, forced migrants are entitled to basic rights of livelihood. The host countries of Zimbabwean migrants, South Africa and Botswana, are not signatories of the UDHR but it is evident that they have violated a number of rights listed in this document regarding the rights of migrants.<sup>dcxxviii</sup>

There have been regional conventions with the attempt to expand the definition of a “refugee” from the 1951 Convention definition in Africa and Latin America with the 1969 OAU Refugee Convention and Cartagena Declaration. The goal of the 1969 OAU Convention is to provide legal protection to individuals fleeing many symptoms of state fragility, including poor governance, widespread insecurity, poverty and lack of basic services but this extension of protection has not been successful in this regard.<sup>dcxxix</sup> It has successfully provided legal protection to persons who have fled state fragility where there has been the presence of armed conflict, as seen in Somalia, but not for the socio-economic implications of state fragility like those previously mentioned.<sup>dcxxx</sup> In South Africa, the government and decision-makers are under the impression that Zimbabweans cross the border to South Africa with the intention of accessing better employment and education opportunities, in other words “economic migrants.”<sup>dcxxxi</sup> An economic migrant is one who willingly leaves their home country seeking better economic or social opportunities elsewhere, in contrast to “survival migrants” who are forced to leave their home country because their government has deprived them of basic rights to livelihood and they leave as a survival mechanism. The South African Refugee Appeal Board does not recognize Zimbabweans as refugees because of the stability of law and order in the country, which means they would fall outside of the 1969 Convention. This questions whether a “new normative framework would be necessary to address the Zimbabwean influx or whether it could have been dealt with under existing legislation had it been put to practice.”<sup>dcxxxii</sup> Botswana also does not recognize the 1969 OAU Convention because its own 1967 Refugee Recognition and Control Act was enacted prior to the regional convention.<sup>dcxxxiii</sup> Although the OAU Convention is specific to the region, it is important when understanding the failings of the refugee regime in

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<sup>85</sup> Article 25: states “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”

protecting migrants leaving due to lack of basic livelihood options as a result of economic and political consequences.

Millions of Zimbabweans fled the country from 2005-2009 to develop survival strategies in the context of a “politically and economically collapsing state, in which the complex interaction of state fragility, livelihood failures, and agricultural decline have left the majority of the population without access to subsistence, employment or health care services within the country.”<sup>dcxxxiv</sup> Foreign sanctions, land invasions and drought led to massive decline in agriculture productivity and economic collapse. Hyperinflation made the Zimbabwean dollar worthless and the US dollar and the South African rand were the only recognized sources of currency to buy food. The majority of Zimbabweans did not have access to such foreign currency making purchasing basic subsistence to survive impossible. The informal sector also expanded with the collapse of the formal economy after 2000. Survival strategies were adopted, mainly the “kukiya-kiya” system based on “getting by” in an informal economy.<sup>dcxxxv</sup> As a part of this strategy, people chose to leave the country to survive or sent family members abroad temporarily to send back remittances, therefore signifying the importance of migration. In the 1990s, the Movement of Democratic Change (MDC) began to rise as political opposition to Robert Mugabe’s government. With the rise of this opposition group, the Zimbabwean government became even more repressive and the forcible eviction action called “Operation Murambatsvina,” destroyed the homes and livelihoods of about 700,000 people living in the high-density suburbs of Zimbabwe’s cities where many members of the MDC resided.<sup>dcxxxvi</sup> Around 2 million people were affected by this operation and Zimbabweans fled to South Africa in large masses because they were without the basic necessities to life.<sup>dcxxxvii</sup> The circumstances surrounding the migration of Zimbabweans to neighboring countries show that there are important reasons outside of persecution that force people into displacement. When people were unable to purchase food because of lack of agricultural productivity or get access to health care because of political actions that had devastating economic consequences, they were forced to seek refuge elsewhere.

## HOST COUNTRY RESPONSES TO FORCED MIGRANTS

South Africa and Botswana both responded to Zimbabwean migrants differently demonstrating the devastatingly inconsistent and inadequate protection of this group of migrants. Around 1.5 million Zimbabweans migrated to South Africa during this crisis with a much lesser amount migrating to Botswana. As previously mentioned, the government sees these migrants as voluntary “economic migrants.” Though the UNCHR has consistently regarded most Zimbabweans as not being refugees, specific NGOs or UN agency employees have

worked as “hidden protection actors” on the ground ensuring some basic forms of coordinated assistance in areas that larger organizations lacked assistance.<sup>dcxxxviii</sup>

### ***South Africa***

UNHCR has avoided the influx of Zimbabwean forced migrants in South Africa because it lacks the staff and financial resources to address the issue. It has avoided adopting it as their issue and subsequently passed responsibility on to other NGOs. The OHCHR has little presence in the country. The Office for the Coordination of Humanitarian Affairs was involved with the situation of immigrants in South Africa but did not regard the situation as a humanitarian crisis. The IOM has been able to get involved with only specific projects but because of low funding, it has not provided any protection to Zimbabwean refugees in South Africa. The Red Cross in South Africa has provided material support and basic humanitarian assistance but it is also limited in its budget and is overstretched.<sup>dcxxxix</sup>

Since 2007, MSF, has played an important role in addressing the problems of healthcare experienced by refugees in South Africa. MSF has successfully covered gaps in health care access in the past by opening mobile clinics in the border town of Musina and a permanent clinic at the Central Methodist Church.<sup>dcxli</sup> The Musina Project was started in response to the flow of asylum seekers and migrants fleeing Zimbabwe. Most patients were migrant workers on the farms along the border, 50 kilometers from Musina. Many migrant workers tested positive for HIV but were not receiving the necessary treatment even though it was available in town. Taxi fares to a clinic were too expensive and gangs stalked the area to torture those who walked the distance.<sup>dcxli</sup> Undocumented asylum seekers and survival migrants also feared xenophobia fueled violence or being deported so they avoided interaction with government officials, including medical staff in hospitals and clinics.<sup>dcxlii</sup> Mobile clinics addressed these gaps by bringing the clinics to these populations and providing them with HIV medication. In 2013, the South African Department of Home Affairs (DHA) assumed responsibility of this program.

Xenophobic violence is still present in South Africa with police attacking a crowd of one thousand asylum seekers outside of a Cape Town refugee office in May 2013<sup>dcxliii</sup>. Victims of these attacks are those that were waiting outside of the Refugee Reception Offices (RROs) to renew their asylum-seeker permits. During the Zimbabwean refugee crisis in 2009, Zimbabweans often faced police harassment and risked deportation traveling to RROs to renew asylum seeker permits.<sup>dcxliv</sup> Amnesty International has called on the South African authorities to stop “squeezing out” asylum seekers. According to Netsanet Baley, Amnesty International’s Africa Director, “there is intolerable pressure building up on

asylum-seekers and refugees in South Africa, undermining the protection to which they are entitled under domestic and international law.”<sup>dcxlv</sup> Violence against foreign owned businesses continues to occur.<sup>dcxlvii</sup> This violence shows that there is negative sentiment towards foreigners making it hard for the government to make the reforms necessary.

The refugee regime has “stretched” in South Africa to help solve the Zimbabwean refugee crisis. Anyone who is waiting for a refugee status determination is provided an asylum seeker permit, allowing thousands of Zimbabweans the temporary right to remain in the country and work. The government has also temporarily suspended deportations and even proposed some form of temporary protection, although implementation is inconsistent.<sup>dcxlviii</sup> Overall, in South Africa, Zimbabwean irregular migrants do not have formal status and lack economic and social rights although the government has allowed them to work in the country temporarily. International NGOs have filled protection gaps to provide basic assistance. This response shows that there is a need for a more inclusive framework to ensure the protection of this group that can apply in other similar situations elsewhere.

### ***Botswana***

In Botswana, most Zimbabwean migrants choose to bypass the asylum system. They have received no assistance and face the risk of arrest and deportation.<sup>dcxlix</sup> The UNHCR and other UN agencies have provided assistance to the small number of refugees in the asylum system and because Botswana is a “middle income country,” UN agencies are limited in their influence.<sup>dccl</sup> Convention refugees can only live and work in camps while non-Convention refugees risk deportation. Botswana regularly deported Zimbabwean nationals through the crisis, even though they are required, as signatories of the 1951 Convention, to protect refugees by not sending them back to a dangerous hostile country. But if most Zimbabwean migrants do not process through the asylum system, they are open to deportation. Botswana continues to deport Zimbabweans and deportations have intensified in recent years because of lack of proper travel documentation.<sup>dccli</sup> The UN agencies present in the country have no mechanism or advocacy protection or assistance for Zimbabweans outside the asylum system. Migrants depend on “hidden protection actors” such as MSF and the Red Cross for protection as seen in South Africa with mobile clinics.<sup>dcclii</sup>

Similar to South Africa, there is no legal basis on which to recognize Zimbabweans outside the 1951 refugee convention in Botswana. There have also been strong “electoral” incentives preventing the government from stretching the national refugee regime to protect this group and domestically, there is widespread xenophobia and anti-immigration sentiment has led the government

to emphasize deportation.<sup>dclii</sup> Since an institutional framework does not protect this group of vulnerable migrants, governments are within their rights to deportation. At the international level, Botswana has followed all the rules of international refugee law and has no incentive to protect vulnerable migrants. Botswana has a strict encampment policy that restricts the freedom of movement of refugees and asylum seekers, which makes it difficult for them to become self-reliant.<sup>dcliii</sup> Furthermore, foreigners are seen as competitors for scarce economic opportunities; this fuels xenophobia and creates a negative environment to protect refugees. Refugees outside the camp without valid permits are in danger of detainment for long periods, which has led to social problems, including survival sex, sexual-gender based violence, high school dropout rates and substance abuse.  
dcliv

## RECOMMENDATIONS

Based on the experience of Zimbabwean forced migrants that did not flee persecution, it is evident that reform to the existing refugee protection process is necessary. The economic consequences of political actions resulted in millions of people fleeing because they were unable to keep the most basic conditions of life. Due to the existing international refugee regime, the majority received limited assistance, if any, and many risked deportation. Human rights is at the core of the issue; this group is not protected legally by any institution so they are open to human rights abuses although the right to livelihood was the reason they left their country of origin. The term “survival migrants” helps to highlight the gaps in current institutional implementation of existing protection processes.<sup>dclv</sup> Many legal scholars argue that refugee law should be seen in relation to the wider body of human rights law, referring to the treaties comprising the “International Bill of Rights”- the UDHR, International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which could provide a framework for measuring whether the nature and seriousness of harm in a specific case can be considered “being persecuted.”<sup>dclvi</sup> This approach of a human rights framework has been used to argue for the incorporation of socio-economic rights with RS) processes as well as building up “soft law” and supplementary protection frameworks that rely upon other human rights treaties and the non-refoulement obligation incorporated in the ICCPR.<sup>86dclvii</sup> Human rights law complements international refugee law and

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<sup>86</sup> Article 7 of the ICCPR: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

international rights treaties can offer additional protection in different situations, therefore strengthening the application of human rights norms in states can ensure that the needs of socio-economic migrants are met.<sup>dclviii</sup>

### ***International***

Instead of creating new laws to solve protection gaps, international organizations and states must work together to build on existing norms. This would involve interpreting and consolidating the application of existing international human rights standards to the situation of vulnerable irregular migrants. Also using the experience of the development of the Guiding Principles on IDPs; instead of being a new “hard law” treaty, it was based on the consolidation of existing international human rights and humanitarian law standards, and the universal recognition of those consolidated principles.<sup>dclix</sup> These human rights standards are based on existing human rights treaties including those composing the “International Bill of Rights.” Gaps in protecting IDPs were filled effectively and the Guiding Principles should be used as a model when looking to fill the protection gaps seen in socio-economic migrants. The incorporation of the Guiding Principles in its daily operations has allowed for the UNHCR to effectively improve IDP protection but also strengthened the Principles as a widely accepted planning tool.<sup>dclx</sup>

The absence of a clear division of institutional responsibility for protection needs in relation to vulnerable irregular migrants is the main challenge for Zimbabweans. The South Africa and Botswana cases depict the lack of integration of Zimbabweans in society and the low priority their protection needs met. Addressing the flow of “survival migrants” as a refugee situation and engaging in individualized RSD has been inadequate.<sup>dclxi</sup> Since the majority of the migrants from Zimbabwe did not leave on the basis of political persecution as defined in the refugee conventions, it is necessary to develop a different approach when seeking to fill the gaps in protecting irregular vulnerable migrants. This “invisible” group must be recognized and states must be held accountable for following human rights norms when addressing non-convention refugees.

### ***Regional***

The Zimbabwean case study shows the regional failure of meeting the needs of non-convention refugees making them invisible. Another strategy would be to develop a new inter-state treaty, negotiated regionally, on the temporary protection of non-refugee survival migrants to supplement the existing refugee regime, given that jurisprudence on the application of international human rights law remains limited.<sup>dclxii</sup> This will allow a stronger commitment among states to comply with obligations. All countries in Southern Africa have ratified the international refugee treaties but implementation needs to be improved. Creating

a treaty tailored more specifically to the needs of non-convention refugees in a certain region would help to solidify state responsibility.

As seen from the inadequate and sporadic protection of Zimbabweans, there is a need for a clear division of responsibilities to address protection gaps. This could be through a collaborative agreement that would divide responsibilities between relevant actors such as the UNHCR, International Organization for Migration (IOM) and International Federation of Red Cross (IFRC).<sup>dclxiii</sup> As mentioned previously, MSF has provided assistance in health care gaps through mobile clinics at the border of South Africa and Zimbabwe, where the UNHCR was unable to reach. The UNHCR is limited in its capacity and creating partnerships with more specialized organizations would help to ensure that the needs of migrants are addressed. International organizations have had problems concerning funding but creating partnerships assisting each other would ideally solve this problem. The role of the UNHCR could be one of a facilitator between organization, states and refugees to fill in gaps in protection without overstretching its sphere of influence. This is also known as the cluster approach and requires solidarity between the UNHCR and partnering organizations.

### ***National***

UNHCR recognizes that mixed migration is still an important issue in Southern Africa and will continue to focus on mixed migration issues, assisting governments to “formulate and implement mixed-migration strategies.”<sup>dclxiv</sup> Other strategies include monitoring national asylum systems and awareness campaigns to counter xenophobia. The UNHCR can work with human rights agencies like Amnesty International to create awareness between local host societies and forced migrants to prevent violence like the attacks seen in Cape Town. Specifically in South Africa, UNHCR will continue to provide short-term material assistance to vulnerable refugees and asylum seekers with no other sources for basic needs; the goal for the longer term includes integrating this population into local government social service programs.<sup>dclxv</sup>

Botswana’s strict encampment policy has limited freedom of movement for migrants and exposes non-Convention refugees to detention and deportation. Legislative reform is a key priority for the government and although the UNHCR has limited influence in the country, it continues to advocate for Botswana to lift its reservations to the 1951 Convention and calls for the government to find alternatives to detention.<sup>dclxvi</sup>

NGOs that work as “hidden protection actors” have been more successful in addressing the needs of “survival migrants,” in Southern Africa as seen with the successfully established mobile health clinic program. Government departments can continue to support this program to address gaps in health care.

Implementation continues to be a problem for the UNHCR as well as lack of funding and capacity to address all the issues on hand concerning vulnerable refugees. The recommendations above would assist the UNHCR in accomplishing its goals in the region and also apply to other regions where “survival migration” is an issue. The goal of each of these recommendations is to protect irregular migrants legally while also addressing protection gaps that can also be applied globally. It is clear there are new causes of displacement that are not addressed by the existing refugee regime. Therefore reform is necessary to fill in existing gaps especially concerning access to documentation, health care, and material assistance. Currently the UNHCR recognizes that mixed migration is a critical issue and has outlined challenges and strategies for 2014. By looking at the past refugee influx of Zimbabwean refugees, it is evident that the UNHCR is overstretched in its capacity to address all of the problems experienced by survival migrants.

## CONCLUSION

“Survival migrants” are becoming more common around the world, as a result of weak governances and natural disasters. In the case of Zimbabwe, political actions caused the collapse of the economy forcing residents to adopt survival strategies including migration. Neighboring countries dealt with the influx of refugees in different ways as seen with Botswana and South Africa but have not been successful in providing the material assistance they need; in this regard, NGOs have been more successful. Although Botswana was more extreme with its tactics, deporting many Zimbabweans, “survival migrants” experience high levels of xenophobia in each country. The experiences of Zimbabwean refugees is a classic example of irregular vulnerable migrants fleeing socio-economic deprivations and the actions of the UNHCR, international organizations, and receiving states, can be a model for similar situation. Socio-economic forced migrants must be recognized by individual states and organizations and there is a need for reform at the institutional, international, and national level to ensure protection. The current framework must be re-conceptualized to include non-Convention refugees.

The existing gaps in protection demonstrate that the international refugee regime must be reformed at various levels to protect all types of forced migrants around the world. Forced migrants are entitled to human rights and actors at the various levels must ensure that these rights are protected.

## RECOMMENDATIONS

### *International*

- Use the model of the Guiding Principles of IDPs, build on existing “soft law” rather than creating new “hard law” to address socio-economic migrants or survival migration.
- Strengthen implementation of the cluster approach by allocating responsibilities among international organizations and NGOs based on specialty; this strategy has already started to address gaps in access to health care through the MSF and Red Cross. Other organizations can assume different roles, working together to prevent overstretching of all organizations and support in funding.
- Work with human rights agencies such as Human Rights Watch and Amnesty International to prevent violation of rights by states. <sup>87</sup>
- Increase efforts to decrease anti-immigrant sentiment; creating awareness between local host populations and forced migrants.

### *Regional*

- To address UNHCR challenge of implementation and improve state incentives: develop a treaty negotiated by the states of Southern Africa that host large numbers of Zimbabwean socio-economic migrants to provide specific instruction on temporary protection in the case of another refugee crisis.
- Apply Human Rights norms established in the documents of the “International Bill of Rights” to non-Convention forced migrants.

### **South Africa**

- Governments must protect and monitor Refugee Registration Offices or open more RROs in border towns where there is a high concentration of undocumented forced migrants preventing forced migrants from having to travel to certain cities, decreasing violence and conflict in urban areas.
- The South African Department of Home Affairs must continue to support the mobile health clinic system that was established by MSF and was successful in addressing the gaps in health care of socio-economic migrants.

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<sup>87</sup> “Human Rights Watch believes that Zimbabweans who were targeted by the forced evictions can be considered refugees because their rights to shelter, work, food, education, health care continued to be violated and the Zimbabwean government continues to fail to protect them against the effects of those rights violations” HRW, June 2008 pg. 9

## **Botswana**

- Since “non-refoulement” is a key principle of the UNHCR, Botswana must stop deporting Zimbabwean socio-economic migrants
- Government must also expand encampment policy to include non-Convention refugees and reform legislation to find alternatives to detention.

## CONCLUSION

This Task Force Report demonstrates the possible solutions for forced migrants in different situations across the world on a local, regional, and international scale. The core issues facing forced migrants are a lack of solidarity between nations, NGOs, and the UNHCR, lack of access to information, lack of legal and comprehensive definitions for non-Convention refugees, and the faulty process of documentation. The recommendations presented in this report include solutions to promote cooperation between various entities such as the UNHCR and host nations at the local, regional, and international levels as well as promoting education about the international refugee regime, and streamlining the RSD process. Although some of these recommendations are country specific, it is important to note that even the smallest, most specific adjustment will strengthen the entire refugee regime.

During the process of writing this report, it has come to our attention exactly how much the current refugee regime needs to be strengthened. The actions of Australia towards asylum seekers demonstrate the current cracks within the regime because they are a prime example of a country that is dodging its responsibility. The current Australian administration has built itself on a conservative platform that advocates a stricter immigration policy which has also been interpreted as a stricter refugee regime.<sup>88dclxvii</sup> This stricter refugee regime can be seen in its actions towards asylum seekers: boats originating in Indonesia carrying asylum seekers from Iran, Iraq, and Bangladesh have either had their passengers kept at the detention centers on Christmas and Manus Island, turned back to Indonesia, or have even been blown up.<sup>89dclxviii</sup> There have also been reports of fake RSD processing on Manus Island which has resulted in the denial of refugee status to eligible individuals. Australia, convinced of its own inability to protect refugees has attempted to enlist Cambodia, an impoverished country, to take on Australia's share of refugees.<sup>dclxix</sup>

Australia's forceful aversion of its responsibility as a host nation is indicative of a chronic issue: there are still gaps in the current refugee regime that

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<sup>88</sup> Australian Prime Minister Tony Abbott of the Liberal Party has surrounded his actions towards asylum seekers in secrecy and is focused on stopping boats that carry asylum seekers.

<sup>89</sup> There has also been an instance of the death of an asylum seeker on Manus Island which has caused the Abbott administration, in particular the Minister of Immigration Scott Morrison to face scrutiny from the rest of the country.

have facilitated a lack of cooperation between host countries. In order to combat this issue, the UNHCR and the current refugee regime must create positive precedents that include shared responsibility, particularly in regions of high refugee traffic like the EU and Eastern Africa, and punitive measures for countries that do not take in a fair share of refugees and intentionally hinder RSD processing. By encouraging cooperation between political entities such as the UNHCR, national governments, and other political organizations on the local, regional and international levels, a stronger refugee regime will emerge that in turn will prevent further crises such as the one in Australia.

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