

oxford monitor of forced migration
Volume 3 Number 2 November 2013

OX
MO

Editorial Board

Georgia Cole and Kate Ogg
Co-Editors-in-Chief

Nina Weaver and Evan Easton-Calabria
Shadow Co-Editors-in-Chief

—

Maike Graaf and Saskia Blume
Policy Editors

Roxani Roushas and Diletta Lauro
Shadow Policy Editors

—

Kate Ogg and Tess Hellgren
Law Editors

Nath Gbikpi and Katherine Rehberg
Shadow Law Editors

—

Janosch Kullenberg and Yvonne Su
Field Editors

Alexandre Petre and Ilim Baturalp
Shadow Field Editors

—

Isaac Jenkins and Janeen Sawatsky
First Hand Editors

Nina Weaver and Kelsey Murrell
Shadow First Hand Editors

—

Angela Pilath and Georgia Cole
Academic Editors

Jenny Barrett
Shadow Academic Editor

—

Cover designed by **Bernd Bauerochse**

Disclaimer

Opinions expressed by authors in OxMo do not necessarily reflect the views of the Board of Editors. As we are an independent student publication, articles published in OxMo do not represent the views of The Refugee Studies Centre or the University of Oxford.

Copyright for articles published in OxMo rest with the author(s). Materials may be downloaded, reproduced and circulated in entirety provided that the title, author and source (OxMo) is acknowledged.

For more information about OxMo visit our website www.oxmofm.com

Oxford Monitor of Forced Migration

Volume 3, Number 2

November 2013

Table of Contents

Editorial	
KATE OGG AND GEORGIA COLE	5
Academic Articles	7
Expanding the Sphere of Moral Concern: How <i>City of Sanctuary</i> Seeks to Create Solidarity and Protection for Refugees and Asylum Seekers DEBORA GONZALEZ TEJERO	8
Law Monitor	22
The European Union Returns Directive: Does it prevent arbitrary detention? IZABELLA MAJCHER	23
Revisiting Cartagena: Lessons from Ecuador's Refugee Policy HELOISA MARINO	32
Firsthand Monitor	42
The Other Side of Immigration Raids EVELYN G. ALEMAN	43
An Invitation to Cross SARAH DEGNER	45
Field Monitor	47
Preliminary Observations from the Field: Rwandese Refugees' Perceptions of 'Voluntary' Repatriation from Uganda CLEOPHAS KAROOMA	48
Policy Monitor	57
Towards Durable Solutions for Protracted Congolese Refugees in Rwanda EVAN EASTON-CALABRIA and ANNELISA LINDSAY	58
Call for Papers	67

Editorial

Since the last edition of OxMo was published just six months ago, we have witnessed both triumphs and tragedies for the protection of forced migrants in many parts of the globe. In more positive developments, in July 2013 the High Court of Kenya declared void a policy requiring all refugees in Kenya (including those living in urban areas) to relocate to one of Kenya's refugee camps (Martha Marrazza explored this directive in the previous edition). Even more recently, in September 2013 the Israeli Supreme Court of Justice struck down a law that authorised the prolonged detention of asylum seekers, providing an increased measure of protection for those seeking sanctuary within the country.

Such victories, however, only benefit those forced migrants whom make it safely to the borders of these states. In early October 2013, up to 300 asylum seekers lost their lives when their boat sank off the coast of Lampedusa. This tragedy elicited widespread public sympathy for the plight of those forced to make dangerous voyages to seek sanctuary, with Pope Francis describing the deaths at sea as 'shameful'. However, only the following week a similar story was reported in the Mediterranean showing that one can never act fast enough to augment protection for those who must seek asylum in this way. More worrying, however, is that these events occurred almost simultaneously to the Australian Government's announcement in October 2013 that they were reintroducing temporary protection visas with no rights to family re-unification for refugees who arrive by boat.

This brief snapshot of developments in the past six months canvasses the temporally and geographically ever-changing state of protection for forced migrants. It thus highlights the need for persistent and rigorous evaluations of social movements, events, laws, and policies that can impact the experiences and rights of forced migrants. It is this objective to which OxMo is dedicated. This edition in particular sees the contributors examine the impact of some of these movements, laws and policies - both new and ongoing - on the protection of forced migrants.

This edition opens with our *Academic Articles* section in which Debora Gonzalez Tejero considers the philosophical and theoretical underpinnings of the UK's *City of Sanctuary Movement*. Her research importantly analyses how the strategies adopted by the movement aim to quell, as opposed to inflame, anti-asylum sentiment thus fostering understanding and connection between those seeking sanctuary and the communities hosting them. Theoretically, her integration of a Kantian and a Rortian philosophical approach provides a fascinating and novel contribution to the literature.

Following on from this, our two contributors to the *Law Monitor* discuss regional protection regimes. Izabella Majcher critically analyses the pre-removal detention regime under European Union law. Heloisa Marino examines recent reform to refugee protection in Ecuador to explore the contemporary relevance of the Cartagena Declaration of Refugee's in

Latin America. Both articles highlight the benefits and challenges of regional legal approaches to protection.

Our *First Hand Monitor* focuses on the experiences of forced migrants in the United States of America. Evelyn Aleman provides a moving account of learning about her mother's deportation and incarceration in detention centres. Sarah Degner draws on her experience with the forced migrant community in the Midwest to consider strategies for eliciting empathy of her fellow citizens with respect to the experience of forced migration, providing a practical example of the behaviour advocated for in Tejero's contribution to this edition.

In our *Field Monitor* Cleophas Karooma outlines some of the evidence she has collected in her interviews with those involved, stakeholders and refugees, in the repatriation of Rwandan refugees from Uganda to Rwanda. These interviews highlight the need to take into account refugees' voices when formulating law and policy at a national, regional and international level.

Finally, we conclude with our *Policy Monitor* which highlights Rwanda's role of hosting up to 70,000 refugees from the Democratic Republic of the Congo. Authors Evan Easton-Calabria and Annelisa Lindsay examine durable solutions for protracted Congolese refugees in Rwanda. While acknowledging the difficulties presented by the protracted refugee situation, they argue that creative solutions can be found when taking into account not only humanitarian considerations but also interests of states and other key stakeholders.

Altogether, the contributions to this edition of OxMo provide insight into forced migration challenges in four continents: Africa, Europe and North and South America. Collating such a diverse analysis in OxMo has the benefit of highlighting both the contrasts and similarities between these forced migration movements at a variety of scales, and of drawing upon the different scholarly approaches and backgrounds of a diverse group of contributors. Our readers' knowledge of forced migration is enriched by such diversity, and we therefore continue to encourage submissions on any aspect of forced migration.

This concludes the last edition that will be published by the current editorial team. We would like to take this opportunity to thank the team, who have worked with dedication, passion and creativity to deliver Volume 3 of OxMo. We welcome the incoming editorial team and look forward to their contribution to the continuing analysis of crucial issues in the field of forced migration. OxMo is incapable of operating without the generous time and support volunteered by editors new and old, and the insightful and expansive range of contributions made by our authors. With three Volumes of OxMo having passed, expanding the networks of alumni, editors and authors into ever more corners of the globe through our publications, tweets and facebook page, we look forward to its continuing development over Volume 4.

Kate Ogg and Georgia Cole

Oxford, November 2013.

Academic Articles

Expanding the Sphere of Moral Concern: How *City of Sanctuary* Seeks to Create Solidarity and Protection for Refugees and Asylum Seekers

By Debora Gonzalez Tejero

Abstract

Refugees and asylum seekers seeking protection in Western states often find themselves confronted by hostile attitudes and increasingly restrictive asylum policies. Despite the codification of refugee entitlements in international law, finding places where asylum can be enjoyed remains a challenge. This article explores the moral underpinnings of asylum-giving in the West and evaluates how people's solidarity with refugees and asylum seekers can be expanded. To this end, the article draws on two philosophical approaches for eliciting greater understanding and sympathy for the claims of refugees and asylum seekers from the public. The *Kantian* approach emphasises rights and obligations, whereas the *Rortian* approach highlights the importance of sympathy. The article considers how these approaches are visible in the work of the UK's *City of Sanctuary* movement. My analysis suggests that the two approaches are complementary and mutually reinforcing; each is necessary for the creation of true sanctuaries for refugees and asylum seekers.

Introduction

[O]ne could be forgiven for thinking that, at least in Western states, there are no refugees left to claim anything. Everywhere it seems they have been replaced by 'asylum seekers' – mere pretenders to the title of refugee. (Gibney 2006: 140)

In the aftermath of World War II, Western nations drafted and signed the 1951 Convention Relating to the Status of Refugees (hereafter the 1951 Convention), which sets down clear entitlements for individuals with a well-founded fear of persecution on the grounds of nationality, race, political opinion, religion, or membership of a particular social group. Yet, despite the development of a strong legal infrastructure, refugees find it increasingly difficult to find sanctuary in Western states, where 'compassion fatigue', the notion that 'We have done so much and now we need a break' (Steiner 2009: 76) is spreading. There is little talk about refugees and much talk about asylum seekers, who are frequently (and often incorrectly) portrayed as welfare cheats, competitors for jobs, security threats, or abusers of state generosity (Gibney 2006: 141; *cf.* EIN 2012). Refugees merit our attention and welcome particularly because they lack protection in their countries of origin. Yet, societal antagonism and apathy create a harsh environment where refugees' claims to protection are obstructed on various fronts. A restrictionist trend has become apparent in many Western states where visa regimes, carrier sanctions, and other non-arrival measures have been put in place to keep out migrants. Public scepticism or hostility towards asylum seekers is widespread and reinforced by negative media discourse. In this context, this article evaluates the moral underpinnings of asylum-giving in the West and asks how people's solidarity with refugees can be expanded.

The codification of refugee entitlements in international law is certainly impressive and its importance should not be discounted. First established to deal with European refugees in the aftermath of World War II, the refugee regime was subsequently expanded to cover refugees from around the world. In Article 33 of the 1951 Convention, signatory states commit to abide by the principle of *non-refoulement*, i.e. to not expel or return a refugee to the frontiers of territories where his or her life or freedom would be threatened. Claims to protection have been further strengthened through provisions in human rights law and humanitarian law (cf. Durieux & Cantor 2013). However, Western states sometimes tacitly circumvent potential protection obligations through the employment of non-arrival measures. This reveals the paradoxical attitude these states display towards refugees. They acknowledge the rights of refugees but simultaneously criminalise the search for asylum (Gibney 2006). In a political climate which is not receptive to refugees and asylum seekers, little is done to engage the public in an informed debate about why refugees seek and require protection. Misinformation and anti-immigrant hostility make life difficult not only for asylum seekers, but also for those who are recognised as refugees. The legal infrastructure in place entitles the refugee to protection, but it seems to do little to create a welcoming political and social environment where asylum can be enjoyed.

Hostilities towards asylum seekers are not resolved simply by stating a legal right to protection – restrictionism will find other ways of manifesting itself if it remains unaddressed. It is hard to disagree with Gibney (2003: 45) that what seems to be ‘required is a more inclusive politics of asylum, one that goes beyond the law to elicit from the public of Western states greater identification with and respect for the claims of refugees and asylum seekers’. But just how does one create such respect and identification? How can connections between host societies and refugees be established? And what are the ethical implications of different approaches?

To answer these questions, I firstly introduce two philosophical approaches for framing possible modes of connection between host societies and refugees. The *Kantian* approach emphasises rights, duty and obligation, whereas the *Rortian* approach calls for sympathy and the creation of solidarity through ‘imaginative identification’ (Rorty, 1989: 93) with others. Secondly, I investigate how the UK’s *City of Sanctuary* (CoS) seeks to create empathy and solidarity with refugees and asylum seekers. I consider how the movement’s strategy is implicitly underpinned by the Kantian and Rortian approaches. My argument concludes that the two approaches, whilst conventionally interpreted as contrasting, are actually complementary and mutually reinforcing; each is necessary for the creation of true sanctuaries.

Moral underpinnings of asylum giving in the West

In this section, I discuss a Kantian and a Rortian approach to establishing connections with and respect for asylum seekers and refugees. These two approaches provide distinct heuristic frameworks for explaining mechanisms that expand the sphere of moral concern. They help us to situate empirical findings about the methods employed by CoS to create solidarity with

refugees. CoS is a grassroots movement dedicated to developing opportunities for personal encounters and dialogue between local people, asylum seekers, and refugees. It emerged in Sheffield in 2005 and has since spread to other UK cities. I do not claim that CoS's work is explicitly shaped by reflections on philosophical theories, but rather, that its methods for expanding the sphere of moral concern can be better understood and situated in terms of the Kantian and Rortian approaches.

The Kantian approach

The Kantian approach emphasises the *rights* claim of a refugee towards the host society. A moral connection is established on the basis of obligation and duty. Upon entering the host society, the refugee may say 'I am a fellow rational being whose life is in danger, thus you have to give me shelter.' This claim could be made on the basis of Kant's theory of public right as developed in *Toward Perpetual Peace*. Cosmopolitan right, which forms part of this theory, is concerned with the rights and duties of states towards foreign individuals – and vice versa. Under cosmopolitan right, all humans have equal status. The core of Kant's cosmopolitan right is what he calls a right to hospitality – which is not a right to be treated as a guest, but rather a right not to be treated with hostility and not to be expelled if this would cause one's demise. Thus, Kant in effect anticipates the principle of *non-refoulement*.

Kant grounds his cosmopolitan right in the 'original community of the land', seeing the earth as a common possession prior to any particular acquisition of property (Kant 1996). Kant considers the right to hospitality a necessity because he assumes that all humans have a right to freedom and this freedom requires existence, which in turn requires not to be sent away if this would lead to one's death. The Kantian approach emphasises law and principle, duty and obligation. It appeals to people's rational capacities in determining which obligations they have and acting accordingly. Yet without means of coercion, cosmopolitan right is in danger of remaining a mere aspiration. This begs the question whether the right can be enforced. In fact, many of the requirements of cosmopolitan right have been explicitly adopted in international legal documents and institutions, such as the 1951 Convention and 1967 Protocol. Human rights law in particular has strengthened the status of individuals 'as persons' rather than just as state subjects (Kleingeld 2012). Kant holds that such legal institutions also play a crucial role in the development of cosmopolitan moral attitudes (ibid.). By setting a new status quo and new norms, laws can influence moral consciousness.

The Rortian approach

In contrast to Kant's rationalist model, the Rortian conceptualisation of modes of connection emphasises the importance of *sympathy*. It appeals to people's emotional rather than rational capacities, encouraging us to engage in 'imaginative identification' with others, based on shared traits of suffering and pain. Upon entering the society, the refugee may say 'I am not so much unlike you, regard our similarities and have sympathy with me.' In *Contingency, Irony and Solidarity* Rorty claims that it is not philosophical deliberation, but the reading of certain forms of literature, for example novels, which enables us to make connections with

those who are unlike us (Rorty 1989). Thus, the task of the intellectual, with respect to social justice, is to sensitise us to the suffering of others; to refine, deepen and expand our ability to identify with others and to think of others as like ourselves (Ramberg 2009). Moral progress is manifested in a movement to greater human solidarity, which Rorty understands as the ability to see traditional differences between human beings as negligible.

Rorty (1989: 94) puts forward the ideal of an ‘ironist liberal culture’ where the ‘metaphysician’s association of theory with social hope and of literature with private perfection is ... reversed’. A ‘general turn against theory and toward narrative’ becomes manifested as the novel, the movie, and the TV programme gradually but steadily replace the sermon and the treatise as the principle vehicles of moral change and progress (ibid.: xvi). The ability of narrative to elicit compassion or action has been observed for example in the field of humanitarian assistance (Laqueur 1989). The novel has been praised as ‘a much more appropriate vehicle than the political pamphlet or theoretical treatise for communicating and sharing lived experience’ (Horton & Baumeister 1996: 24), and authors such as Alisdair MacIntyre, Charles Taylor, and Martha Nussbaum have supported a “turn to narrative” (Whitebrook 1996: 32). Literature can awaken people to the humiliation and cruelty of particular social practices and individual attitudes and can thus promote a sense of human solidarity. It can allow us to notice suffering through the skill of ‘imaginative identification’ (Rorty, 1989: 93), the ‘ability to see strange people as fellow sufferers’ (ibid.: xvi).

In Rorty’s (1989: 94) account ‘[s]olidarity has to be constructed out of little pieces, rather than found already waiting’. Unlike Kant, Rorty rejects the traditional philosophical understanding of an ‘essential humanity’ which is within each of us and ‘resonates to the presence of this same thing in other human beings’ (ibid.: 189). Human solidarity is not a fact to be recognised by clearing away prejudice, but is a goal to be achieved. Connections with refugees need to be established through ‘sentimental education’, which changes the discourse on refugees and asylum to expand our sense of solidarity (Parker & Brassett 2005: 247).

City of Sanctuary

In this section, I analyse which strategies CoS employs in its efforts to establish connections between host societies and refugees, and how these are linked to the philosophical approaches outlined above. CoS is dedicated to developing opportunities for local people, asylum seekers, and refugees to engage with one another and build ‘mutual relationships of support, learning and friendship’ (Barnett & Bhogal 2009: 11). It seeks to help local people to ‘come to understand the injustices refugees face, and become motivated to support and defend them’ (ibid.: 9). CoS emerged in Sheffield in 2005 and has since spread to 23 additional cities and towns throughout the UK, with 15 more groups currently forming in other cities and seeking official CoS status (City of Sanctuary 2012). CoS avoids explicit political lobbying or campaigning in favour of a more subtle process of transforming culture.

A ‘city of sanctuary’ is understood as ‘a place of safety and welcome for people whose lives are in danger in their own countries’ (Barnett & Bhogal 2009: 9). The key criteria for

achieving CoS status include obtaining resolutions of support from a significant and representative proportion of local groups and organisations, as well as the support and involvement of local refugee communities. Furthermore, a resolution of support from the City Council and an agreed strategy for how the city is continuing to work towards greater inclusion are required. CoS claims to be doing something quite different from existing refugee organisations. It aims to encourage groups and organisations, which do not have a specific focus on refugees, to help with welcoming and including them. Its work is 'based on the assumption that meaningful political change depends upon a shift in the public discussion about people seeking sanctuary in the UK' (Barnett & Bhogal 2009: 70).

CoS uses the term 'people seeking sanctuary' (Barnett & Bhogal 2009:10) when referring to asylum seekers, as the latter term frequently carries a negative connotation. The movement distinguishes between four different target audiences and adapts communication strategies accordingly. The first target audience is termed 'survivors' (ibid.: 43-44) people who feel anxiety about the scarcity of resources and potential competition for housing, jobs, and the like with refugees. In conversation with this audience, one strategy is to provide examples, which emphasise that refugees can be good for communities. The second target audience is termed 'traditionalists' (ibid.) those concerned with upholding traditional values. With this audience, emphasising that offering sanctuary is an important, century-old tradition can be helpful. Furthermore, one may appeal to considerations of fairness, emphasising many refugees' motivation to work hard to provide a safe future for their families and emphasise the positive contributions made to society by refugees. The third target audience is termed 'winners' (ibid.) people focused on personal success. With this audience it can be advantageous to highlight the cultural assets brought by refugees: music, food, fashion, etc. Finally, there are the 'strivers' (ibid.), people who want to live ethically and make the world a better place. With this audience, which is already inclined to engage with refugees and asylum seekers, the most important task is to convince them why a collaborative approach is necessary (ibid.).

CoS encourages faith communities to become engaged in welcoming refugees and asylum seekers. The CoS handbook features a whole chapter on how concepts of refuge, sanctuary, and hospitality are underpinned by the customs and traditions of various world faiths. Beyond appeals to religious duty and obligation, CoS also draws on narratives in faiths as diverse as Islam, Sikhism, and Hinduism, which all inspire welcoming and assisting strangers. One story told in Hinduism about Zoroastrians fleeing to India from Iran is particularly striking. The Zoroastrian leader, so the story tells, requested permission from King Rana of Gujarat to settle in his part of the country. The king answered the request with a full glass of milk, suggesting that the country could not accommodate more people. The leader replied by adding sugar to the glass of milk and requesting the king to taste it. The Zoroastrians settled in the country, merging with the local population without doing harm, and helping progress in the country (Barnett & Bhogal 2009: 35).

Examples of CoS initiatives

The work undertaken by different CoS groups is extremely varied and cannot be covered here in its entirety. To name just a few examples, initiatives range from conversation clubs, to gardening projects, ceilidh dances, theatre productions, speaker events, and hosting projects. Organisations throughout each CoS are encouraged to contribute in varied ways, for example by displaying a 'We welcome asylum seekers and refugees' sign, or running food collections for refugee charities. Religious institutions are encouraged to participate in interfaith events promoting sanctuary and hospitality. All CoS initiatives contribute to the goal of creating an environment where sanctuary seekers and local communities can connect and benefit from one another. Some put a stronger focus on transferring skills and others on furthering the host society's understanding of refugee issues.

The bridging of gaps and a desire to emphasise how connections between refugees and host societies can be mutually beneficial are at the heart of all CoS initiatives. Asylum seekers and refugees are offered places of sanctuary and an opportunity to improve their skills. At the same time, locals are given a chance to have their lives enriched by the cultural diversity, skills, and experiences refugees and asylum seekers bring to the community. They gain a better understanding of the issues facing these sanctuary seekers thereby challenging misinformation and negative stereotypes (Bradford CoS 2012).

The sanctuary label is not restricted to cities and towns alone. Since 2011, the concept has been expanded to schools and more recently it has been suggested that the West Yorkshire Playhouse could become the first 'Theatre of Sanctuary'. 'Schools of Sanctuary' (SoS) encourages schools to be places which are proud to provide a place of safety and inclusion for all. SoS seeks to help staff and students understand what it means to be seeking sanctuary and to extend a welcome to everyone as equal, valued members of the school community (Schools of Sanctuary 2012). This goal is pursued by sharing the experiences of asylum seeking children, clarifying facts about refugees, creating displays which celebrate diversity, setting up conversation clubs, and organising projects and plays around the themes of journeys and sanctuary.

SoS encourages teachers to embed asylum and refugee issues into different areas of the curriculum. It offers a resource pack listing a wide range of materials available online to assist and inspire teachers with this task. Furthermore, the resource pack lists children's books, which talk about issues of sanctuary, refuge and asylum. Zephaniah's (2001) *Refugee Boy* is one example, which has been adapted for the stage by Lemn Sissay (2013) and performed at the West Yorkshire Playhouse in Leeds in March 2013. City of Sanctuary used this as an opportunity to engage schools and teachers in learning more about how to promote welcoming and inclusive schools of sanctuary (WYP 2013).

Expanding the sphere of moral concern

As the examples above show, CoS employs a range of measures to create opportunities for connection between refugees and host societies. Many of these focus on direct contact, but art, theatre, and novels are also utilised to broaden the host society's understanding of refugees and asylum seekers. Below I highlight some of the strengths and weaknesses of the Kantian and Rortian approaches. I consider how each is present in CoS's work and suggest that, though conventionally interpreted as contrasting, the two approaches are cumulative.

The Kantian and Rortian approaches revisited

One drawback of the Kantian approach is its reliance on a universal conception of ethics. People who consider the appeal to rights as generally 'little more than an appeal to the moral intuitions of the author dressed up in the language of rights so as to carry more weight' (Singer & Singer 1988: 121) or who like Jeremy Bentham regard a belief in natural rights as 'nonsense upon stilts' might not be convinced by Kant's right to hospitality. By avoiding essentialism and an appeal to a common humanity, the Rortian approach avoids this pitfall. It overcomes the distinction between oneself and the other by creating a sense of identification with the refugee or asylum seeker, thus giving space to emotion and particularity. CoS's approach makes no explicit appeal to duty and obligation, but strives to foster sympathy and understanding. Yet a closer look reveals that CoS's work is not simply 'Rortian'. Rather, it features a Rortian approach within a Kantian framework. CoS operates in a setting where basic rights for refugees are already guaranteed under the 1951 Convention. With the Kantian right to hospitality being enshrined in law, new tasks can be prioritised, such as the creation of contact and mutual understanding between refugees and host society

Another weakness of the Kantian approach is that its enforcement, in the absence of a sovereign in international society, depends on the interest of states (Kleingeld 2012). This could be problematic where developments in international law are contrary to the – perceived or real – interest of the state's citizenry. As I have argued above, asylum seekers and refugees often struggle to find true sanctuaries, despite the legal infrastructure in place. Waldron (1987: 178) argues that one 'cannot preclude the need for firm and explicit constraints and requirements *somewhere* in one's system of moral thought'. Yet he cautions against a reliance on a theory of rights alone: 'A theory of rights....needs to be complemented by a general theory of virtue or moral action' (1987: 194). Geras (1995:93) makes a similar point, emphasising that 'no amount of argument from principle, no effort of purely rationalist inference from general norms to particular courses of action, will make up for the lack in anyone of elementary feeling'. Hence a Rortian approach has much to add to the Kantian approach. By reducing apathy and antagonism, it changes the host environment so that rights can be effectively put into practice. This is also what CoS strives to. By changing the perceptions of host societies, the movement seeks to create places of true sanctuary where refugee rights can be operationalised. By uniting people around the theme of providing sanctuary, CoS creates communities where being hospitable is the norm, rather than the

exception. The movement strives to create a welcoming environment where paper norms can be translated into rights that are actually enjoyed.

The Rortian approach nonetheless has its weaknesses. It may, for example, lead to the privileged treatment of some refugees and asylum seekers, if identification works better with those who share physical or cultural traits. The example of refugees from Kosovo, who were received with a striking openness in Western European countries, indicates that this may be the case. Host societies could possibly better relate to their plight as fellow white Europeans (Gibney 1999). Furthermore, 'imaginative identification' with those who commit crimes, or else differ from the ideals and expectations of the host society, may be rather limited. Thus an approach appealing to sympathy and understanding is no panacea. At least in some situations it needs to be underpinned by a legal protection framework. By providing a universal protection standard which applies independent of individual attributes, the Kantian approach safeguards against such discrimination. As Horton points out, 'the morally odious are as entitled to the protection of their rights and the impartial application of the law as those with whom we sympathise or those whom we admire' (1996: 88). In this regard, Waldron (1993: 374) maintains that a structure of rights offers a valuable 'position of fallback and security'. Consider for example the treatment of children. Whilst one would hope that parental love rather than legal obligations leads to their being treated appropriately, the legal structure enshrining the rights of the child is nevertheless indispensable as a safety mechanism to protect a child from potential abuse and to punish mistreatment. Likewise, the right to hospitality constitutes a duty, which the international community can enforce on itself, whereas 'imaginative identification' remains a voluntary act (*cf.* Carens 1992). Hence CoS relies in its strategy on there being a framework of refugee rights in place, whilst seeking to enhance these rights through the creation of sympathy and mutual understanding.

Rights can strengthen the claim of the refugee by emphasising autonomy and positing the individual not just as an object of sympathy, but as a rights-bearing subject. However, a sense of duty may not always be an adequate substitute for sympathy, solidarity, affection, and love. There may be situations where motive and action are inseparable, where the right thing needs to be done for the right reason (Arblaster 1996: 140). Literature and personal contact can foster sympathy and imagination. They can elicit a response to the protection claim of refugees based on more than a sense of duty and obligation. Yet, the use of literature as a compass for moral behaviour can be problematic. As Mendus (1996) notes, novels simplify and are not independent of ideology. Horton (1996) warns that in reading a novel, the reader brings his own opinions and prejudices and might be in danger of interpreting the story in a way convenient to him. It has been argued that narratives, far from inciting action, 'merely milk sentiment and defer revolutionary action. Moral indignation is spent on fictional suffering, while real suffering is left in peace' (Laqueur 1989: 202). SoS and CoS are cautious to avoid these drawbacks. By framing the use of books and stories through discussions and personal encounters, they increase knowledge and highlight how the audience can take action.

The above analysis highlights that the Kantian and Rortian approaches for establishing connections with and respect for asylum seekers and refugees each have a set of limitations. Interestingly though, the weaknesses of one tend to be balanced by the strengths of the other. Hence, the two approaches complement and reinforce each other.

Creating true sanctuaries

The case study suggests that the creation of true sanctuaries depends on a Rortian as well as Kantian approach. The two approaches are distinct, but they complement and reinforce each other. Indeed, laws can sometimes be a starting point for a change in attitudes; they can offer 'a basis on which people can initiate *new* relations with other people even from a position of alienation' (Waldron 1993: 376). By setting a new status quo, they can change behaviour over time. For example, the extension of women rights in twentieth century Europe preceded a widespread change in societal attitudes towards women as full rights bearers. Thus, strengthening the rights of refugees and asylum seekers, and framing their claims in terms of obligation and justice, can go some way in creating respect and solidarity. Law can shape consciousness and lead to a change in attitude towards those claiming protection.

There are indicators that, vice versa, consciousness can also shape the development of law. The abolition of slavery, which was preceded by a change in people's attitudes towards slavery and the rise of anti-slavery movements, offers a positive historic example of how public awareness can result in the creation of better laws and protection standards. However, a weak public consciousness, or apathy, can also result in a weak application of the law. Australia is a case in point. With political rhetoric fomenting anti-immigration sentiment within the public, an arena is created in which restrictive policies towards asylum seekers can be implemented with limited opposition (*cf.* Burnside 2013). In the absence of a strong national commitment to protect refugees, the enforcement of international protection standards is significantly weakened and undermined.

Currently an interesting case of how public consciousness might positively influence refugee protection standards is underway in the German city of Hamburg. Some asylum seekers who fled the uprising against the Gaddafi regime in Libya and initially spent time in Italian refugee camps have found refuge in some of the cities' churches. The churches, in cooperation with local communities, are now hosting the sanctuary seekers, but their activities put them at odds with local authorities. The latter intend to send the asylum seekers back to Italy as soon as their three-month tourist visa expires. Pointing towards the Dublin II Regulation,¹ which prescribes that the country in which an asylum seeker first enters the EU is responsible for handling the asylum claim, the German authorities are unwilling to assume responsibility for the refugees who have travelled from Italy (Erath 2013). By providing

¹ The Council Regulation (EC) No 343/2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National OJ L 50/1, 25.02.2003 (The Dublin II Regulation) has since been recast and is now known as the Dublin III Regulation.

sanctuary, the host communities put important issues into the spotlight and political debate. They highlight the shortcomings of the Dublin II Regulation and the plight of refugees. By providing protection beyond what is required by law, they push the boundaries and make a case for better refugee protection in Europe. It remains to be seen whether the churches and local communities will be successful in their campaign to grant these asylum seekers a special status so they can remain in Hamburg. Maybe in the long term, however, initiatives like these can indeed result in legal changes.

What this example and the success of CoS in spreading to cities throughout the UK suggest, is that bringing host societies into contact with refugees and asylum seekers can contribute much to establishing respect and understanding for their plight. True sanctuaries can be created where strong legal protection standards go hand in hand with a public commitment to identify with refugees and show solidarity.

Conclusion

“[T]he best moral theory has to ... harmonize justice and care” (Baier 1994: 31).

In this article, I started out by depicting how refugees’ claims to protection are obstructed on various fronts. Despite the legal framework which has been developed to protect individuals with a well-founded fear of persecution on the grounds of nationality, race, political opinion, religion, or membership of a particular social group, refugees and asylum seekers find it increasingly difficult to find sanctuary in Western states. They often encounter a hostile environment and are regarded as outsiders not worthy of moral concern. I introduced two heuristic frameworks for understanding mechanisms that expand the sphere of moral concern, one concerned primarily with duty and obligation, the other with sympathy. In my analysis, I have come to the conclusion that a rights-based approach is indispensable as a position of fallback and security, but is insufficient on its own. Indeed, the Kantian and Rortian approaches are compatible and complementary, law and consciousness can reinforce one another. My findings suggest that both thought and imagination, rationality and emotion, justice and sympathy are necessary for eliciting solidarity from the public of Western states. Just as legal institutions have the potential to contribute to the development of cosmopolitan attitudes, transformations of consciousness can lead to the enshrinement of social change in law.

This suggests that host societies need to do more than commit to a legal framework protecting the basic rights of refugees. The importance of the principle of *non-refoulement* – the embodiment of Kant’s right to hospitality – is certainly not to be neglected. Increasing public awareness of the rights of refugees and asylum seekers is extremely important. If such awareness is created, the legal framework in place may go some way towards strengthening the public’s solidarity with refugees and asylum seekers by setting a new status quo where their claims are acknowledged as legitimate. Yet the public realm also needs to engage with a Rortian approach of ‘imaginative identification’ and sympathy. Thus work like that of the UK’s CoS movement, which seeks to broaden the public’s understanding of refugees and

asylum seekers through personal encounters, narrative, movies, theatre, etc., carries great potential for creating solidarity and improving the operationalisation of refugee rights.

Steiner (2009: 121) argues that we ‘cling too much to the view that there are citizens or foreigners, that people are either in or out, that there is us and there is them’. Maybe these binaries can be overcome when a combination of approaches and strategies are used to elicit respect for those who seek sanctuary. The search for ways of creating a welcoming political and social environment where asylum can be enjoyed is about more than creating connections between host societies and refugees. It is about strengthening the host societies themselves, making them places where people feel safe and able to expand their concern beyond their immediate community to those entering from outside. This is certainly not an easy endeavour, and it might be a good idea to begin on a small scale, on the level of the *polis*, in cities and towns which can find individual paths to creating solidarity, but are united by an overall goal: to make sure that there are places of sanctuary available for those who need them.

Debora Gonzalez Tejero is currently a CCCM intern at the International Organisation for Migration, Geneva. She holds an MA in Refugee and Forced Migration Studies from the University of Oxford, and a BA in Politics and International Business from the University of Liverpool. Her interest in refugee and migration issues arose through volunteer work with Amnesty International UK and Student Action for Refugees. Thoughts and comments are welcome: dgonzaleztejero@gmail.com.

References cited

- ARBLASTER, A.** (1996) ‘Literature and Moral Choice’ pp. 129-144 in Horton, J. and Baumeister, A.T., (ed.) *Literature and the Political Imagination*. London, Routledge.
- BAIER, A.** (1994) *Moral Prejudices: Essays on Ethics*. Cambridge, Harvard University Press.
- BARNETT, C. and BHOGAL, I.** (2009) *Becoming a City of Sanctuary: A Practical Handbook with Inspiring Examples*. Ripon, North Yorkshire, Plug and Tap.
- BRADFORD COS** (2012) Bradford City of Sanctuary (online) Available from: <<http://www.cityofsanctuary.org/bradford>> (accessed 30 April 2013).
- BURNSIDE, J.** (2013) ‘Australia and the UN: Report Card 2013 – Refugees and Asylum Seekers’, *UNAA Report Card 2013* (online) Available from: <http://www.unaa.org.au/release-of-australia-and-the-un-report-card-2013.html> (accessed 11 October 2013).
- CARENS, J.** (1992) ‘Refugees and the Limits of Obligations’, *Public Affairs Quarterly* 6(1), 31–44.

- CITY OF SANCTUARY** (2012) Groups and Movements (online) Available from: <<http://www.cityofsanctuary.org/about/groups>> (accessed 30 April 2013).
- DURIEUX, J-F.** and **CANTOR, D.** (2013) 'Refuge from Inhumanity: Enriching Refugee Protection by Recourse to International Humanitarian Law.' Conference Report, International conference held at All Souls College, Oxford, 11th-12th February 2013 (online) Available from: <<http://www.rsc.ox.ac.uk/publications/rsc-reports/cr-refuge-from-inhumanity-150413.pdf>> (accessed 28 April 2013).
- EIN** (2012) 'Leveson Report Finds Sensational or Unbalanced Reporting in Relation to Immigrants and Asylum Seekers is Concerning', *Electron Immigration Network* (online) Available from: <<http://www.ein.org.uk/news/leveson-report-finds-sensational-or-unbalanced-reporting-relation-immigrants-and-asylum-seekers>> (accessed 02 May 2013).
- ERATH, M** (2013) 'Shelter or Deportation? Refugees in Hamburg' *Deutsche Welle English* (online) Available from: http://www.youtube.com/watch?v=tc1QPC_2r5Q (accessed 11 October 2013).
- GERAS, N.** (1995) *Solidarity in the Conversation of Humankind: The Ungroundable Liberalism of Richard Rorty*. London, Verso.
- GIBNEY, M. J.** (1999) 'Kosovo and Beyond: Popular and Unpopular Refugees', *Forced Migration Review* 5: 28–30.
- GIBNEY, M. J.** (2003) 'The State of Asylum: Democratisation, Judicialisation and Evolution of Refugee Policy', 19–46 in Kneebone, S., (ed.) *The Refugees Convention 50 Years On: Globalisation and International Law*. Aldershot, Ashgate.
- GIBNEY, M. J.** (2006) 'A Thousand Little Guantánamos: Western States and Measures to Prevent the Arrival of Refugees' in Tunstall, K.E. (ed) *Displacement, Asylum, Migration : the Oxford Amnesty Lectures 2004*. Oxford, Oxford University Press.
- HORTON, J.** (1996) 'Life, Literature and Ethical Theory: Martha Nussbaum on the Role of the Literary Imagination in Ethical Thought', 70–97 in Horton, J. and Baumeister, A.T., (ed.) *Literature and the Political Imagination*. London, Routledge.
- HORTON, J.** and **BAUMEISTER, A.T.** (1996) *Literature and the Political Imagination*. London, Routledge.
- KANT, I.** (1996) *The Metaphysics of Morals*. Cambridge, Cambridge University Press.

- KANT, I.** (2006) 'Toward Perpetual Peace: A Philosophical Sketch', in Kleingeld, P., (ed.) *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*. London, Yale University Press.
- KLEINGELD, P.** (2012) *Kant and Cosmopolitanism: the Philosophical Ideal of World Citizenship*. Cambridge, Cambridge University Press.
- LAQUEUR, T.W.** (1989) 'Bodies, Details, and the Humanitarian Narrative', pp. 176-204 in Hunt, L.A. (ed) *The new cultural history*, Berkeley, University of California Press.
- MENDUS, S.** (1996) 'What of Soul was Left, I Wonder? The Narrative Self in Political Philosophy', pp. 53-69 in Horton, J. and Baumeister, A.T. (ed.) *Literature and the Political Imagination*. London, Routledge.
- PARKER, O. & BRASSETT, J.** (2005) 'Contingent Borders, Ambiguous Ethics: Migrants in (International) Political Theory', *International Studies Quarterly* **49**(2): 233-253.
- RAMBERG, B.** (2009) 'Richard Rorty', *The Stanford Encyclopedia of Philosophy* (Spring 2009 Edition) (online) Available from: <<http://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=rorty>> (Edited January 2009, accessed 1 May 2013).
- RORTY, R.** (1989) *Contingency, Irony, and Solidarity*. Cambridge, Cambridge University Press.
- SCHOOLS OF SANCTUARY** (2012) Schools of Sanctuary (online) Available from: <<http://www.cityofsanctuary.org/schools>> (accessed 21 May 2013).
- SISSAY, L.** (2013) *Refugee Boy*, London, Methuen Drama.
- SINGER, P. and SINGER, R.** (1988) 'The Ethics of Refugee Policy', pp. 111-129 in Gibney, M. (ed) *Open Borders, Closed Societies: The Ethical and Political Issues*. New York, Greenwood Press.
- STEINER, N.** (2009) *International Migration and Citizenship Today*. New York, Routledge.
- WALDRON, J.** (1987) 'Nonsense Upon Stilts' : *Bentham, Burke and Marx on the Rights of Man*. London, Methuen.
- WALDRON, J.** (1993) *Liberal Rights : Collected Papers, 1981-1991*. Cambridge, Cambridge University Press.
- WHITEBROOK, M.** (1996) 'Taking the Narrative Turn: What the Novel has to Offer Political Theory', 32-52 in Horton, J. and Baumeister, A.T., (ed.) *Literature and the political imagination*. London, Routledge.

WYP (2013) West Yorkshire Playhouse: What's on: Refugee Boy: Education (online)
Available from: <<http://wyp.org.uk/what%27s-on/2013/refugee-boy/>> (accessed 10 May 2013).

ZEPHANIAH, B. (2001) *Refugee Boy*. London, Bloomsbury.

Legal instruments

Convention Relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) as amended by the *1967 Protocol Relating to the Status of Refugees*.

The Council Regulation (EC) No 343/2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National OJ L 50/1, 25.02.200

Law Monitor

The European Union Returns Directive: Does it prevent arbitrary detention?

By Izabella Majcher

Abstract

This article provides a critical analysis of immigration detention regime under European Union (EU) law. It assesses the relevant provisions of the EU Returns Directive and their domestic implementation in several EU states against the underlying requirement for any deprivation of liberty not to amount to arbitrary detention. Three elements embodied in this requirement are highlighted: the exceptional nature of pre-removal detention, its use as a last resort, and its shortest possible length. The article argues that by using broad terms, the EU Returns Directive falls short of providing for strong safeguards against arbitrary immigration detention. In fact, pre-removal detention imposed in an automatic manner and for lengthy periods is not necessarily incompatible with the EU Returns Directive. Moreover, national authorities may actually use some of its provisions to justify more stringent measures.

Introduction

Systematic detention of non-citizens in the European Union (EU) member states, for periods equivalent to imprisonment terms for petty crimes, with limited procedural safeguards and in substandard conditions is well documented. Yet, since the entry into force of the Amsterdam Treaty in 2004, immigration detention, along with other migration and asylum related measures, is no longer regulated exclusively at the national level. Since then the EU has been provided with shared responsibility for immigration and asylum and has adopted several directives that member states have been required to transpose in their domestic legislation.¹ Detention pending expulsion is dealt with by the EU Returns Directive (Directive).² Defined in article 5(1)(f) of the European Convention on Human Rights (ECHR) as detention ‘of a person against whom action is being taken with a view to deportation’, pre-removal detention is not banned under human rights law. However, it must not amount to arbitrary deprivation of liberty, as arbitrary detention is explicitly prohibited under article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) and at variance with article 5(1) of the ECHR protecting liberty of person. As interpreted by human rights bodies, immigration detention shall be an exceptional tool in the country’s migration policy, resorted to as a last resort in individual circumstances and maintained for the shortest time possible.³

¹ EU directives lay down certain end results that must be achieved in every Member State. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so, see European Commission Website “Application of EU law”, http://ec.europa.eu/eu_law/introduction/what_directive_en.htm, accessed 29 July 2013.

² Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Official Journal of the European Union L 348, 24 December 2008, p. 98-107. The Returns Directive is applicable in all the EU countries except from the UK and Ireland, as well as in the Schengen Associate countries (Iceland, Liechtenstein, Norway and Switzerland).

³ Two remaining sets of standards relate to procedural guarantees and conditions of confinement. Due to space constraints the article does not address them. For information on how they are implemented, see detention country profiles on the Global Detention Project Website, <http://www.globaldetentionproject.org/>.

According to the European Commission, detention sanctioned under the Directive adequately fulfils human rights requirements.⁴ This article aims to challenge this assumption. It argues that by using broad terms, the Directive can be seen as failing to preclude domestic practices amounting to arbitrary detention. In fact, pre-removal detention imposed in an automatic manner and for lengthy periods is not necessarily incompatible with the Directive. Moreover, national authorities may actually use some of its provisions to justify more stringent measures. As the article will show, due to its failure to circumscribe the use of detention by clearly defined grounds, the Directive does not ensure that detention remains exceptional measure. Neither is the use of detention *as a last resort* in individual cases unequivocally required because the Directive lacks a clear obligation to consider alternatives to detention. By setting the maximum detention period at 18 months, in practice the Directive may actually trigger the extension of the length of detention across the EU states.

Exceptional nature of detention

Under the Directive, pre-removal detention goes beyond exceptional migration-related measures that should never be imposed in an automatic fashion. According to the UN Human Rights Committee (HRC), immigration detention may be arbitrary if it is not in line with the principles of necessity and proportionality.⁵ These principles entail that authorities should not consider detention a measure to be used regularly and systematically. Rather, as explicitly stressed by the UN Working Group on Arbitrary Detention (WGAD) and the Special Rapporteur on the Human Rights of Migrants (SRHRM), immigration detention should never be automatic, and, in particular, it should be the exception rather than the rule. Therefore, the grounds justifying detention must be clearly defined and exhaustively enumerated in legislation.⁶ Yet the Directive neither defines the grounds for detention in an exhaustive manner nor requires states to do so in their domestic legislations. Without such clarity, the Directive hardly ensures that detention is not resorted to as a rule. States may even rely on the Directive's broad terms to justify their stringent practices.

There are two grounds allowing detention that are explicitly laid down in the Directive. First, states may detain a non-citizen if he or she represents a risk of absconding (article 15(1)(a)). The risk of absconding is described as 'the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a person under return procedures may abscond' (article 3(7)). The Directive does not define the central term – 'objective criteria', instead leaving its clarification to states' discretion.

⁴ According to the Commission, one of the key features of the Directive, is "limiting the use of detention, binding it to the principle of proportionality and establishing minimum safeguards for detainees", see European Commission Website "Return & Readmission", http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/return-readmission/index_en.htm, accessed 29 July 2013.

⁵ Human Rights Committee, *A. v. Australia*, 560/1993, 30 April 1997, para. 9(2).

⁶ SRHRM, *Report of the Special Rapporteur on the Human Rights of Migrants*, François Crépeau: *Detention of Migrants in an Irregular Situation*, A/HRC/20/24, 2 April 2012, para. 69; WGAD, *Report of the Working Group on Arbitrary Detention: International Trends on Deprivation of Liberty of Concern to the Working Group: Detention of Non-citizens*, A/HRC/7/4, 10 January 2008, para. 51; WGAD, *Report of the Working Group on Arbitrary Detention: Thematic Considerations: Detention of Immigrants in Irregular Situations*, A/HRC/10/21, 16 February 2009, para. 82.

This ambiguity means that the understanding of the risk of absconding varies across the EU. For instance, under Greek law the objective criteria include: non-compliance with a voluntary departure obligation, explicit expression of intent for the non-compliance with the return decision, possession of false documents, providing false information to authorities, conviction for criminal offences, the lack of travel documents or identity documents, prior absconding, and the non-compliance with an existing entry ban.⁷ On the other hand, Slovak legislation stipulates that there is a risk of absconding if it is impossible to identify immediately the non-citizen, if he or she has no residence permit or he or she may be issued an entry ban exceeding three years.⁸ The differences in the meaning of the concept of the risk of absconding are understandable as states enjoy the margin of appreciation in implementation of the EU law. However, it is worrisome that both legislations consider the above criteria to be non-exhaustive, while in other countries, such as Estonia or Finland, they are not enumerated at all.⁹ Thus in practice authorities are free to establish the risk of evasion according to their liking. This weakens the ability of the Directive to ensure that detention is indeed an exceptional measure.

Instead, in order to prevent pre-removal detention from being used in an automatic manner, the Directive should impose a safeguard against a presumption of the risk of absconding on account of irregular stay. The Directive's current failure to do this results in the legislation of some states, like Luxembourg or the Netherlands, to include irregular entry or stay as 'objective criteria'.¹⁰ In practice, deprivation of liberty ordered for the sole reason of irregular status amounts to automatic detention.

The second ground justifying detention under the Directive concerns situations in which a person avoids or hampers the preparation of return or the removal process (article 15(1)(b)). Again, not only are the relevant terms not defined but also the Directive does not obligate states to define them in their national laws. This gap is mirrored in legislations of several states, such as the Czech Republic and Greece, which set forth this ground for detention without clarifying its meaning.¹¹ As a consequence, authorities enjoy a wide discretion to characterise a person's conduct as avoiding or hampering the return process and thus to justify detention. Therefore, the Directive fails to ensure that detention is imposed in only exceptional circumstances.

Moreover, the risk of absconding and avoidance or hampering of return are not listed in the Directive in an exhaustive manner. It thus implicitly allows states to resort to pre-removal detention in other circumstances. Not surprisingly, some member states therefore confine non-citizens pending return on grounds unrelated to immigration, such as public order, crime prevention or public health.¹² These grounds should be regulated by other branches of law

⁷ Greek Law No. 3907/2011 on the Establishment of an Asylum Service and First Reception Service, Article 18.

⁸ Slovak Act No. 404/2011 on Stay of Aliens, Article 88.

⁹ Estonian Act on the Obligation to Leave and Prohibition on Entry, Section 7(2)(2)(8); Finnish Aliens Act No. 301/2004, Section 121.

¹⁰ Luxembourg Law on free movement of persons and immigration, Article 111(3)(c); Dutch Aliens Decree 2000, Article 5(1)(b).

¹¹ Czech Act No 326/1999 on the Residence of Aliens, Article 124; Greek Law No. 3907/2011, Article 30.

¹² Public health: Lithuanian Law No. IX-2206 on the Legal Status of Aliens, Article 113; public order: Czech Act No. 326/1999, Article 124; Latvian Immigration Law, Section 51; crime prevention: Finnish Aliens Act No. 301/2004, Section 121; Greek Law No. 3907/2011, Article 18. In the *Kadzoev* case the Court of Justice of the EU addressed detention on grounds of public order and public safety. The Court found that none of them can constitute in itself a ground for pre-removal detention, without pending return proceeding, see Court of Justice of the European Union, *Kadzoev*, Case C-357/09 PPU, 30 November 2009, para. 70-71. However,

that afford more guarantees to the detainee. Above all, however, it is questionable whether detention on such grounds is necessary for carrying out removal.

Detention as a last resort

The Directive falls short of establishing that pre-removal detention is ordered as a last resort even when grounds for detention are satisfied in the individual case. The principles of necessity and proportionality emphasised by the HRC are relevant to the individual circumstances of a particular case. For the HRC, deprivation of liberty may amount to arbitrary detention if it is not necessary in all the circumstances of a case and proportionate to the goals pursued by the authorities.¹³ In light of this interpretation, the WGAD and SRHRM reiterate that immigration detention should only be imposed as a last resort when there are no less coercive ways to achieve the State's objectives.¹⁴ In particular, the SRHRM stressed that '[g]overnments have an obligation to establish a presumption in favour of liberty in national law, first consider alternative non-custodial measures, proceed to an individual assessment and choose the least intrusive or restrictive measure'.¹⁵ It could be argued that the Directive enshrines this safeguard. It does indeed allow states to resort to detention 'unless other sufficient but less coercive measures can be applied effectively in a specific case' (article 15(1)).

While this rule is welcome, in practical terms it serves as an opportunity for member states to opt for non-custodial measures. Arguably, the presumption in favour of liberty is not clearly set forth – which is also reflected in domestic legislations. Pursuant to the Austrian Aliens Police Act, for instance, authorities may refrain from imposing detention if there is a reason to assume that its purpose can be achieved by use of more lenient measures.¹⁶ This sentiment is stronger in the Danish Aliens Act, which provides that if the non-custodial measures are not sufficient to ensure removal, police may order deprivation of liberty.¹⁷ On the other hand, the Polish Aliens Act merely mentions non-custodial measures, without requiring authorities to examine them in the light of particular circumstances in each individual case.¹⁸ This Polish legislation is still in line with the weak language used in the Directive. It is also disappointing that the Directive does not list any specific alternatives to detention that could lead to more consistency in national practices.¹⁹

arguably this ruling cannot be interpreted as precluding detention under the Directive on these grounds if removal proceedings are ongoing and the maximum length has not been exceeded.

¹³ HRC, *Danyal Shafiq v. Australia*, 1324/2004, 13 November 2006, para. 7(2).

¹⁴ WGAD, *Report of the Working Group on Arbitrary Detention: Thematic Considerations: Detention of Immigrants in Irregular Situation*, A/HRC/13/30, 18 January 2010, para. 59; SRHRM, *Detention of Migrants in an Irregular Situation*, para. 68.

¹⁵ SRHRM, *Detention of Migrants in an Irregular Situation*, para. 68.

¹⁶ Austrian Aliens Police Act, Article 77.

¹⁷ Danish Aliens Act No. 947, Section 36.

¹⁸ Polish Aliens Act, Article 90-91.

¹⁹ The most common alternatives laid down in domestic legislation of the EU States include the obligation to surrender the identity or travel documents (e.g. French Code of entry and residence of foreign nationals and right of asylum, Article 552-4; Italian Consolidated Act No. 286/1998 of measures governing immigration and norms on the condition of foreign citizens, Article 14(1bis)), residence restrictions (e.g. Austrian Aliens Police Act, Article 77; Polish Aliens Act, Article 90-91), reporting requirements (e.g. Finnish Aliens Act, Section 118; German Residence Act, Section 61), and release on bail (e.g. Danish Aliens Act, Section 34; Finnish Aliens Act, Section 120).

Shortest possible period of detention

Although the Directive sets forth that detention shall be as short as possible (article 15(1)), it fails to ensure the application of this requirement in practice. The length of detention can have a bearing on the arbitrariness of the custodial measure. As stipulated in the jurisprudence of the European Court of Human Rights, immigration detention may be considered arbitrary if, among others, its length exceeds a time-span that is necessary for the purpose pursued by authorities.²⁰ Detention sanctioned under the Directive shall not exceed six months but may be extended by another twelve months in two circumstances (article 15(5)-(6)).²¹

On one hand, the maximum time-limit on detention spelled out in the Directive has had a beneficial effect in countries that previously did not provide it in their legislation (for example Denmark, Finland, Lithuania and Sweden) or that allowed longer duration (for example Latvia and Romania). However, some of those states, such as Latvia and Lithuania, introduced or modified the time-limit to comply with the Directive but adopted the maximum permissible length.²² On the other hand, several countries, including Greece, Hungary, Italy and Spain, increased their maximum length of detention. In particular, Greece and Italy, while having previously respectively six-month and three-month maximum length of detention, following the transposition of the Directive both allow detention up to 18 months.²³ These examples suggest that on balance negative implications of the Directive's time-line outweigh its beneficial results. The time-limit served states as justification for extending the length of detention in their legislation. This is worrying because such duration could be considered excessive, as explicitly pointed by ten UN independent experts and Parliamentary Assembly of the Council of Europe.²⁴

The circumstances in which states may prolong the initial detention up to 18 months include the lack of cooperation by the detainee or delays in obtaining the necessary documentation from third countries (article 15(6)). Both grounds are problematic. Extended detention on account the lack of cooperation may operate as a punishment, and authorities may use detention to compel the detainee to cooperate. The lawfulness of latter ground is even more questionable as it is beyond the control of the migrant. In this respect, the WGAD explicitly stressed that detention is likely to be unlawful if the obstacle for carrying out removal does not lie within detainees' sphere of influence.²⁵ Moreover, in practice, the majority of detainees fall within the scope of these grounds. Thus the Directive allows authorities to systematically detain non-citizens for 18 months.

However, article 5(1) of the ECHR circumscribes a state's power to extend detention on account of the practical obstacles to removal. In line with the Strasbourg Court's jurisprudence, pre-removal detention is justified only for as long as deportation proceedings

²⁰ European Court of Human Rights, *Louled Massoud v. Malta*, 24340/08, 27 July 2010, para. 62.

²¹ Detention may be extended up to 18 months on account of a lack of cooperation by the non-citizen or delays in obtaining the necessary documentation from third countries.

²² Latvian Immigration Law, Section 54; Lithuanian Aliens Law, Article 120.

²³ Greek Law No. 3907/2011, Article 31(5)-(6); Italian Consolidated Act No. 86/1998, Article 14.

²⁴ SRHRM, *The annual report to Human Rights Council: Addendum: Communications sent to governments and replies received*, A/HRC/11/7/Add.1, 20 March 2009, para. 90; Parliamentary Assembly of the Council of Europe, *Resolution 1707(2010): Detention of asylum seekers and irregular migrants in Europe*, 28 January 2010, para. 5.

²⁵ WGAD, *Thematic Considerations 2008: Detention of Immigrants in Irregular Situations*, para. 82.

are being conducted. In the case where expulsion is not feasible due to detainee's lack of cooperation or the failure to issue travel documents by the countries of destination, continued detention cannot be said to be effected with a view of deportation. Such situations lack a 'realistic prospect of expulsion' and detention becomes unlawful under article 5(1) of the ECHR, thus arbitrary.²⁶ It is striking that the Directive sanctions extension of detention in such cases.

Although the Directive also sets forth that detention is no longer justified if a reasonable prospect of removal no longer exists (article 15(4)), this concept is read in conjunction with the maximum permissible length of detention. As interpreted by the Court of Justice of the EU, a reasonable prospect of removal means that removal can be carried out successfully within the 18-month period and such prospect does not exist where it appears unlikely that the detainee will be admitted to a third country within that period.²⁷ This position is inconsistent with the European Court's case-law. Once return is no longer feasible (meaning there is no realistic prospect of removal), continued detention becomes unlawful under article 5(1) of the ECHR. It is, however, permitted under the Directive as long as it does not exceed 18 months. As a consequence, member states may become even more inclined to consider the maximum length of detention as a rule rather than exception.

Conclusion

The Returns Directive arguably falls short of providing strong safeguards against arbitrary immigration detention. It fails to definitely preclude lengthy, unnecessary and disproportionate detention in the EU states. Without disregarding the Directive's provisions, states may systematically detain non-citizens with no account of last-resort requirement. Additionally, the excessively long maximum period of detention laid down in the Directive risks becoming a rule across the EU. It is questionable whether the Directive has improved detention-related practices in member states. This discussion is timely because the European Commission shall present the evaluation of the Directive's application at the end of 2013. The possibility exists that the Commission will also propose amendments to the Directive. The recently adopted amendments to the EU asylum directives and regulations that strengthened some standards laid down therein may be seen as an example to follow.²⁸

As this article has demonstrated, the Directive's detention provisions warrant amendment. In keeping with the principles of necessity and proportionality the Directive shall prevent domestic practices amounting to arbitrary deprivation of liberty. It shall thus ensure that pre-removal detention remains an exceptional measure, ordered as a last resort in individual circumstances of the case and maintained for the shortest period possible. To this end it should clearly and exhaustively enumerate grounds for detention and require authorities to assess the alternatives to detention before imposing custody. It should also shorten the

²⁶ European Court of Human Rights, *Mikolenko v. Estonia*, 10664/05, 8 October 2009, para. 59, 64-65 and 68; *Louled Massoud v. Malta*, para. 60, 67, 69 and 73-74.

²⁷ Court of Justice of the European Union, *Kadzoev*, Case C-357/09 PPU, 30 November 2009, para. 67.

²⁸ European Commission, Communication on the evaluation of the common policy on return and on its future development: Roadmap, http://ec.europa.eu/governance/impact/planned_ia/docs/2011_home_047_communication_and_report_return_policy_en.pdf, accessed 29 July 2013. The adopted in June 2013 "Asylum Package" encompasses the recast Asylum Procedures, Reception Conditions and Qualification Directives, as well as the Dublin and Eurodac Regulations, see European Commission, *A Common European Asylum System: Memo*, http://europa.eu/rapid/press-release_MEMO-13-532_en.htm, accessed 29 July 2013.

maximum length of detention. Only by placing the right to liberty of persons at its heart, will the Directive reflect the common values on which, as the EU Charter of Fundamental Rights recalls, the EU is founded: human dignity, freedom, equality, solidarity, democracy and the rule of law.

Izabella Majcher is a Polish national and a PhD candidate in international law at the Graduate Institute of International and Development Studies (IHEID) in Geneva, Switzerland. Her doctoral research focuses on the European Union laws and policies addressing irregular migrants. Izabella also works as a research assistant at the Global Detention Project/ Programme for the Study of Global Migration.

References cited

EUROPEAN COMMISSION (2013) 'A Common European Asylum System: Memo'. Available at: <http://europa.eu/rapid/press-release_MEMO-13-532_en.htm> (accessed 29 July 2013).

EUROPEAN COMMISSION (2011) 'Communication on the evaluation of the common policy on return and on its future development: Roadmap'. Available at: <http://ec.europa.eu/governance/impact/planned_ia/docs/2011_home_047_communication_and_report_return_policy_en.pdf> (accessed 29 July 2013).

EUROPEAN COMMISSION Website 'Application of EU law'. Available at: <http://ec.europa.eu/eu_law/introduction/what_directive_en.htm> (accessed 29 July 2013).

EUROPEAN COMMISSION Website 'Return & Readmission'. Available at: <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/return-readmission/index_en.htm> (accessed 29 July 2013).

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (2010) *Resolution 1707(2010): Detention of asylum seekers and irregular migrants in Europe*, 28 January 2010.

SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS (2012) *Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau*, A/HRC/20/24, 2 April 2012.

SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS (2009) *The annual report to Human Rights Council: Addendum: Communications sent to governments and replies received*, A/HRC/11/7/Add.1, 20 March 2009.

WORKING GROUP ON ARBITRARY DETENTION (2010) *Report of the Working Group on Arbitrary Detention*, A/HRC/13/30, 18 January 2010.

WORKING GROUP ON ARBITRARY DETENTION (2009) *Report of the Working Group on Arbitrary Detention*, A/HRC/10/21, 16 February 2009.

WORKING GROUP ON ARBITRARY DETENTION (2008) *Report of the Working Group on Arbitrary Detention*, A/HRC/7/4, 10 January 2008.

Case Law

COURT OF JUSTICE OF THE EUROPEAN UNION, *Kadzoev*, Case C-357/09 PPU, 30 November 2009.

EUROPEAN COURT OF HUMAN RIGHTS, *Louled Massoud v. Malta*, 24340/08, 27 July 2010.

EUROPEAN COURT OF HUMAN RIGHTS, *Mikolenko v. Estonia*, 10664/05, 8 October 2009.

HUMAN RIGHTS COMMITTEE, *A. v. Australia*, 560/1993, 30 April 1997.

HUMAN RIGHTS COMMITTEE, *Danyal Shafiq v. Australia*, 1324/2004, 13 November 2006.

Legal Instruments

Austrian Aliens Police Act.

Czech Act No. 326/1999 on the Residence of Aliens.

Danish Aliens Act No. 947.

Dutch Aliens Decree 2000.

Estonian Act on the Obligation to Leave and Prohibition on Entry.

Finnish Aliens Act No. 301/2004.

French Code of Entry and Residence of Foreign Nationals and Right of Asylum.

German Residence Act.

Greek Law No. 3907/2011 on the Establishment of an Asylum Service and First Reception Service.

Italian Consolidated Act No. 286/1998 of Measures Governing Immigration and Norms on the Condition of Foreign Citizens.

Latvian Immigration Law.

Lithuanian Law No. IX-2206 on the Legal Status of Aliens.

Luxembourg Law on Free Movement of Persons and Immigration.

Polish Aliens Act.

Slovak Act No. 404/2011 on Stay of Aliens.

Revisiting Cartagena: Lessons Learned from Ecuador's Refugee Policy

By Heloisa D. Marino

Abstract

As Latin America prepares to celebrate the thirtieth anniversary 1984 Cartagena Declaration on Refugees, Ecuador has recently shifted its refugee policy by discarding the Declaration's expanded regional refugee definition and pushing forward other restrictive reforms. After providing a brief overview of the framework for regional protection and the Declaration's expanded regional definition, this article will evaluate how Ecuador has at times incorporated the so called 'spirit of Cartagena' into its refugee policy, while disregarding it at others. To illustrate this, it will examine Ecuador's response to the Colombian armed conflict, which has also shifted overtime. Ultimately, this article provides a starting point for a reflection on Latin America's refugee protection regime in an attempt to re-examine the relevance of the Declaration today.

Introduction

In May 2012, shortly before the 1984 Cartagena Declaration on Refugees' (hereinafter Cartagena Declaration) thirtieth anniversary, Ecuador shifted its refugee policy by passing Presidential Decree 1182. By doing this, Ecuador discarded Cartagena's expanded refugee definition (discussed below) and pushed forward other restrictive reforms. Considered the Latin American state which has been the most committed to regional protection, Ecuador's recent policy shift caught many by surprise and raised significant protection challenges, such as the risk of *refoulement* and arbitrary detention. This shifts compels us to examine the relevance of the Cartagena Declaration thirty years on. This article addresses the impact of the Ecuadorian refugee policy shift in regional refugee protection, tentatively opening the debate for a much needed reflection on Latin America's regional refugee regime.

I will first revisit the Cartagena Declaration by drawing upon its historical background in the Central American protracted refugee situation. I will highlight how the Cartagena Declaration created a humanitarian and protection response to that particular predicament. I will then revisit the expanded regional refugee definition proposed by the Cartagena Declaration and will discuss how it has been interpreted. I will proceed by examining the extent of the Cartagena Declaration's inclusion in Ecuador's refugee policy, emphasising the incorporation at times of the 'spirit of Cartagena' into its policy and disregard at others. To illustrate this, I will evaluate Ecuador's response to the Colombian armed conflict which has equally shifted over time. I will conclude by highlighting the need for a re-assessment of the current relevance of the 'spirit of Cartagena' in the region.

Revisiting the Cartagena Declaration

A framework for regional protection

In the period between 1980 and the early 1990s, nearly two million Guatemalans, Salvadorans and Nicaraguans were displaced in Central America, out of which two million were displaced and 150,000 were recognised as refugees by neighbouring countries (Betts 2006: 8). The entwined civil wars and widespread human rights violations led to the

disappearance of approximately 200,000 Guatemalans between 1960 and 1996 (De Rivero 2001).

In an effort to provide a concerted political response to the mass displacement of Central American refugees, a group of academics, lawyers, governmental and UNHCR officials gathered in November 1984 in *Cartagena de las Índias*, Colombia, for the ‘Colloquium on the International Protection of Refugees in Central America, Mexico and Panama’. During this Colloquium, the Cartagena Declaration was officially adopted. The Cartagena Declaration is most frequently acknowledged for proposing a wider refugee definition than that stipulated by the 1951 Convention Relating to the Status of Refugees¹ (hereinafter the 1951 Convention, discussed below). Nevertheless, the Cartagena Declaration should also be understood as a ‘process driven by protection needs’ (Reed-Hurtado 2013). Given the context of mass displacement of Central American refugees around the region, the Cartagena Declaration offered a framework for regional protection (Cantor et al 2013). In large measure, the Cartagena Declaration provided ‘a practical framework that contributed to make humanitarian action possible on a daily basis, even under adverse conditions, particularly given that there were more people in need of protection and humanitarian assistance than those covered by the 1951 Convention and the 1967 Protocol’ (Reed-Hurtado 2013: 10).

The Cartagena Declaration developed therefore from a need to establish and consolidate those ‘humanitarian practices and principles’ that delivered protection to a mass influx of Central American refugees having fled their countries in large numbers (Franco et al 2004). Despite being a soft law instrument,² it should be understood both as a framework capturing protection practices which addressed the Central American refugee crisis and as a process setting the foundation for the development of international refugee law in Latin America (Reed-Hurtado 2013: 10).³ Significantly, the Cartagena Declaration provided a humanitarian space for states to discuss root causes of displacement in the region and find political solutions. As a result, the International Conference on Central American Refugees (CIREFCA)⁴ represented a ground breaking Concerted Plan of Action (CPA) which addressed these political causes of displacement in Central America. It represents ‘the single most successful historical example of a multilateral response to a protracted refugee situation’ (Betts 2008: 167). The ‘spirit of Cartagena’ refers precisely to this humanitarian space created by states to focus on political and lasting solutions to displacement in the region.

In celebration of the Cartagena Declaration’s twentieth anniversary, states gathered in 2004 in Mexico City in an attempt to revitalise the ‘spirit of Cartagena’ and focus attention on the

¹ Article 1A(2) of the 1951 Convention defines a refugee as a person who: ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.’

² Soft law instruments have no legally binding force. Therefore states have no legal obligation to incorporate them into domestic law.

³ Franco and Santistevan note that Latin America’s initial scepticism and reluctance towards the 1951 Convention and gradual adherence to it relates to governments’ resistance ‘to be subject to any kind of international supervision’ (Franco and Santistevan 2004: 74).

⁴ Significantly, CIREFCA was a process which recognised the need for durable solutions in light of prospective peace in Central America. CIREFCA was therefore conceived as a follow-up to the Cartagena Declaration, but also gathered new momentum with the peace agreement in 1987, allowing ‘UNHCR to draw on the commitment to peace and development of both countries in the region and donors, and to channel this into a commitment to finding solutions for the displaced’ (Betts 2006: 9).

more recent refugee influx in the region: the Colombian refugees and internally displaced people. The ‘Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America’ (hereinafter, the Mexico Plan of Action) re-established humanitarian practices envisioned by the Cartagena Declaration, and launched the principle of ‘solidarity’ as the driver for regional protection of Colombian refugees in Latin America.⁵ Thus, the main goal of the Mexico Plan of Action was to re-harmonise protection practices in the region. However, as will be further discussed below, its implementation over the past ten years has been challenging.

The expanded refugee definition

The expanded refugee definition proposed by the Cartagena Declaration is probably its best-known contribution to regional refugee protection, although, as previously noted, not its only legacy. The definition arose from regional protection needs, allowing for more expedited protection grants. As states were ‘(l)ess concerned with individual refugee status determination procedures, the main purpose was to offer a point of reference that justified humanitarian engagement’ (Reed-Hurtado 2013). Thus, the Cartagena Declaration defines refugees as:

‘Persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order’ (Conclusion No. 3 of the Cartagena Declaration).

While the 1951 Convention does not directly address any procedural aspect for conducting RSD, UNHCR guidelines have indicated that both a subjective and objective assessment is necessary for the determination of refugee status. The objective assessment of the individual’s well-founded fear of persecution is generally made in light of relevant country of origin information. It is also necessary that the individual establishes a causal link to a Convention ground.⁶ Conversely, one relatively common interpretation of the Cartagena definition given by states in the region focuses on the phrase ‘have been threatened by’, which suggests a causal nexus between the objective causes of flight and the personal experiences of asylum seekers.⁷ This jurisprudence reflects the debate also affecting the 1951 Convention’s concept of ‘persecution’, and whether ‘persecution’ must be individualised or may apply equally to groups (UNHCR 2004a; Durieux 2009). Interpretations which equate ‘threat’ in the Cartagena Declaration and ‘fear of being persecuted’ in the 1951 Convention to the same analytical process are at risk of eroding the effectiveness and the ‘spirit of

⁵ The three pillars of refugee protection practices in the Mexico Plan of Action are: *Cities of Solidarity* (a programme which envisions the promotion of refugees’ self-reliance and livelihoods and local integration through concerted policies across the region), *Borders of Solidarity* (formulation of a regional strategic plan to address protection needs within a framework of responsibility-sharing among bordering states) and *Solidarity Resettlement Programme* (a concerted resettlement programme, in an attempt to increase the responsibility-sharing with states in the region which receive larger populations of Colombian refugees) (UNHCR 2004b).

⁶ For reference on procedures under the 1951 Convention, see: ‘Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.’

⁷ The ‘Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America’ was a benchmark document adopted in the CIREFCA which, among other things, provided the legal guidance on refugee protection obligations in the region. It is the document most frequently used by governments in the application of the Cartagena expanded definition.

Cartagena’.⁸ In fact, the ‘spirit of Cartagena’, in principle, proposed a humanitarian framework which could enable a balanced approach to assessing both group and individual circumstances.

The Cartagena Declaration’s intention is thus not to substitute the 1951 Convention definition, but rather to find a middle ground between a ‘highly individualistic’ and a ‘highly collective’ assessment (Durieux 2009: 160). The Cartagena Declaration allows for protection where the well-founded fear of persecution or the causal link between persecution and one of the Convention grounds have not been fully established, but where the person is still in need of protection because their lives, security or freedom are at risk (UNHCR 2013b). Significantly, the Cartagena definition extends protection to those persons who, despite not qualifying for international protection under the 1951 Convention are still perceived to be in need of protection. This is particularly important given that there will always be situations where a ‘group-based’ analysis will not perfectly fit the ‘persecution’ threshold allowed by the 1951 Convention (Durieux 2009: 160).

Contextualising Ecuador’s refugee policy

From Enhanced Registration to Presidential Decree 1182

Among Latin American states, Ecuador recognises the largest number of refugees, out of which 98% are fleeing the Colombian armed conflict. As of mid-2012, Ecuador had registered a total of 55,791 refugees (UNHCR 2013a). In 2009 the national government implemented an innovative refugee policy entitled the Enhanced Registration Programme (Roldán 2011). In a one year period, nearly 28,000 Colombian refugees were recognised under the Cartagena expanded refugee definition in the Northern border area.

The Enhanced Registration Programme was envisioned according to the humanitarian framework established by the Mexico Plan of Action. It was thus primarily thought of as a registration programme that combined an individual eligibility system with the expanded Cartagena definition (UNHCR 2011; Cantor et al 2013). As previously noted, one of the contributions of ‘the spirit of Cartagena’ was that it enabled this balanced assessment of individual circumstances under the expanded definition.

Geographical and thematic⁹ criteria were used to evaluate refugee claims, cross-referenced with objective threats and risk factors, such as human rights violations, presence of armed groups and other sources of violence within the context of the internal armed conflict (Reed-Hurtado 2013). A general perception of threat was sufficient, without the need for asylum seekers to provide details of individual risk. This complied with the general ‘spirit of Cartagena’, while allowing some procedural efficiency (Cantor and Trimiño 2013).

⁸ For an analysis of such an interpretation, see: Corcuera, S. (2004) ‘Reflections on the application of the extended refugee definition of the Cartagena Declaration in individual refugee status determination procedures’ in *Memoir of the Twentieth Anniversary of the Cartagena Declaration on Refugees*, San Jose, Costa Rica: UNHCR.

⁹ The following 12 thematic criteria were used to establish the reasons for flight: (1) Acts of war, (2) Attacks to civil infrastructure, (3) Forced recruitment, (4) Explosive artefacts and anti-personal mines, (5) Intimidations and threats, (6) Forced labour victims; (7) Kidnappings extortions or other forms of property confiscation, (8) Civilian attacks, massacres, killings or other acts creating terror, (9) Forced disappearances, (10) Lack of state protection or effective access to justice, (11) Aerial spraying of glyphosate, made by the Colombian government in order to eradicate illicit crops and (12) Forced displacement, confinement or other restrictions to freedom of movement (Reed-Hurtado 2013)

On the other hand, the expedited nature of the Enhanced Registration Programme created a perception of a security risk to many critics, as it focused on procedural efficiency ‘without sufficient security screenings to ensure that members of [irregular armed groups] and criminal organizations did not gain legal status in Ecuador’¹⁰ (McGrath 2011: 10). There is still little quantifiable evidence, however, to verify that persons who would have been excluded from protection under Article 1(F) of the 1951 Convention gained legal status in Ecuador.¹¹

A perception that the Enhanced Registration Programme was too lenient and mismanaged thus arose in public opinion and was used by the Ecuadorian administration soon after the programme’s conclusion in March 2010 (McGrath 2011). It was not too long before refugees, particularly ‘Colombian refugees’, became a security concern to the Ecuadorian government. As early as 2011, the government began reviewing refugee visas approved through the Enhanced Registration Programme, suggesting the use of stricter controls in eligibility procedures (CODHES 2012). A Ministerial Agreement that same year declared that ‘manifestly unfounded’ or ‘abusive’ asylum claims could be non-admitted to the refugee eligibility procedures without any further consideration. The government indicated that it would give the asylum seeker a document of ‘non-admittance’, meaning that the asylum seeker would only have 30 days to legalise her situation in the country.¹² This has led asylum seekers with strong refugee cases to seek alternative visas in Ecuador, as the *Visa de Amparo*,¹³ often at great expense. This undermined not only their right to asylum and international protection, but also the refugee institution more generally (McGrath 2011).

These protection concerns have only intensified with the recent passing of Presidential Decree 1182 in May 2012, which eliminated the expanded refugee definition proposed by the Cartagena Declaration and adopted in the Enhanced Registration Programme.¹⁴ It also accelerated the reforms that had begun with the previous Ministerial Agreement discussed above. The new legislation thus stipulates that asylum seekers have only fifteen days within which to present themselves to authorities and claim asylum. Those who fail to do so are immediately excluded from being registered.¹⁵ It is also worth mentioning that in doing so, Presidential Decree 1182 potentially breaches Ecuador’s *non-refoulement* obligations as contained in the 1951 Convention, of which Ecuador is a signatory. Asylum seekers whose

¹⁰ It is worth noting, however, that the vast majority of literature on the Enhanced Registration Programme highlights the security safeguards in place during the existence of the programme, so as to guarantee its integrity (Refugees International 2009; CODHES 2012; Roldán 2011; Reed-Hurtado 2013). Despite that, it is unclear what exclusion consideration under Article 1(F) of the 1951 Convention was given to these cases.

¹¹ Article 1(F) of the 1951 Convention states that: ‘The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; c) he has been guilty of acts contrary to the purposes and principles of the United Nations.’

¹² See Ministerial Agreement 000003/2011.

¹³ The *Visa de Amparo* or Visa 9-VI is a migratory visa in Ecuador proposed for non-Ecuadorian citizens with Ecuadorian family members willing to immigrate to the country. While an important tool and path for naturalisation, it should not jeopardize or undermine the value of the refugee status. The *Visa de Amparo* does not recognise the person as a refugee, and should be used with caution so as not to downplay the severity of refugee situations (McGrath 2011)

¹⁴ One question that remains unanswered is to what extent Colombian refugees who would otherwise fall under the protection threshold of Cartagena are falling short of such protection due to the Presidential Decree 1182.

¹⁵ See Presidential Decree 1182/2012.

life or freedom would be threatened are precluded from accessing the RSD procedures and as a result may face arbitrary detention and forced return.

Ecuador's response to the Colombian armed conflict

Given Presidential Decree 1182's disregard of the 'spirit of Cartagena', Ecuador's current understanding and response to the Colombian armed conflict is in need of a deep review. There is no doubt that the diplomatic relationship between Ecuador and Colombia has been tense at times. In fact, it is worth remembering that both countries ceased diplomatic relations for nearly three years, including during the time of implementation of the Enhanced Registration Programme.¹⁶ Several factors have conditioned the spill-over of conflict between the neighbouring countries. Firstly, for years irregular armed groups (IAGs) have easily crossed Ecuador's porous borders. Also, the Ecuadorian Northern provinces have traditionally received little attention from the government, enhancing the vulnerabilities caused by underdevelopment. Hence, for many years this 'passive neglect' of the State at the border allowed for IAGs from Colombia to cross over and establish their presence (IDMC 2009: 4). Since 2008 though, the increased presence of IAGs led both Ecuador and Colombia to increase the presence of their troops at the border, paying more attention to that historically forgotten space (ICG 2011).

Historically, the porous nature of Ecuador's Northern border has also welcomed Colombian refugees, not necessarily as a conscious choice, but as part of the governmental 'passive neglect' in that particular region (IDMC 2009: 5). As was, however, previously noted, Ecuador's refugee policy under the Enhanced Registration Programme accommodated the regional humanitarian 'spirit of Cartagena' and discharged Ecuador's 'passive neglect' in the Northern border by actively engaging in refugee issues.

Since 2011, the previously described process of securitisation of 'Colombian refugees' by the Ecuadorian government and public opinion has prompted the policy shift from the humanitarian Enhanced Registration Programme to more restrictive policies. Since then, the stigma and xenophobia faced by Colombian refugees in Ecuador has increased (CODHES 2012; FLACSO 2013). For example, according to research conducted by CODHES¹⁷ in 2011, Ecuadorian authorities persistently associate criminal offenses in the country to foreigners, particularly Colombian nationals. Despite this stereotype, CODHES found that in 2010, 95% of all criminal detainees were of Ecuadorian nationality, while only 3.4% were of Colombian nationality (CODHES 2012). Although it has yet to be acknowledged that Ecuador, as a country bordering Colombia, does carry a heavy burden in refugee protection, framing 'Colombian refugees' as a potential national security threat misrepresents the actual situation of most displaced persons.

Turning to the current situation in Colombia, the Colombian government and FARC leaderships¹⁸ have been gathered in Habana, Cuba since 2012 discussing a peace agreement

¹⁶ The Colombian military incursion in Ecuador in 2008 to capture FARC's guerrilla members led to a diplomatic crisis between the countries, which came to a close in late 2010.

¹⁷ CODHES is a leading human rights and displacement research institution on the Colombian armed conflict.

¹⁸ While most displacement caused by the Colombian armed conflict is a consequence of confrontations between the FARC (Revolutionary Armed Forces of Colombia), the ELN (National Liberation Army) and the national public force, the humanitarian crisis is also greatly impacted by other IAGs equally participating in the conflict and consequent displacement. Thus, the attack on civil society, the dispute between IAGs on occupied territory and the structural control of land and property are fundamental to understanding the dynamics of forced displacement and the rupture of the social fabric. In this context and after the demobilisation of other IAGs such

which would put an end to the 50 year long Colombian conflict. Even if negotiations have advanced and the first of a five point agreement has been reached,¹⁹ it remains to be seen what this will mean to the armed conflict in general and specifically to refugee influx to Ecuador. It remains however certain that vulnerability and instability continue to be high in Colombia, and that a peace agreement would not necessarily mean the end of violence (OCHA 2013).

Conclusion

This article proposed a re-evaluation of the Cartagena Declaration's significance in light of Ecuador's refugee policy shift. Ecuador has been the Latin American state most committed to refugee protection for Colombian refugees, coming closer to fully actualising the potential of the Mexico Plan of Action and the 'spirit of Cartagena'. Yet, Ecuador's recent policy shift and disregard of the 'spirit of Cartagena' calls for a reflection on the applicability of Cartagena today, in particular as we prepare to celebrate its thirtieth anniversary. More broadly, Latin America has not fully embraced the Mexico Plan of Action to reach a 'regional consensus' that responds to the Colombian refugees and IDPs.

If the 'spirit of Cartagena' epitomised a humanitarian spirit, not restricted to an expanded regional definition, but extending to frame regional political responses to mass influxes of refugees, it is imperative to reflect upon its applicability in the region today. Taking into account that a peace agreement between the Colombian government and the FARC's would not necessarily entail the immediate (or sustainable) end to violence in specific departments of the country, the challenge for Ecuador as well as Latin America will be to re-address Colombian refugees in a humanitarian manner.

Heloisa D. Marino is a Brazilian national holding a B.A. in International Relations from the IRI at the Pontifical Catholic University of Rio de Janeiro (PUC-Rio) and a MSc in Refugee and Forced Migration Studies from the Refugee Studies Centre at the University of Oxford, where she focused her studies on protracted refugee situations in Latin America and refugee integration discourses in Brazil. After graduating, she was a Protection Intern with UNHCR Ecuador. The views expressed in this article are entirely her own.

References Cited

BETTS, A. (2006) 'Comprehensive Plans of Action: Insights from CIREFCA and the Indochinese CPA', *UNHCR Policy and Analysis Unit, Working Paper No. 120*.

____ (2008) 'Historical lessons for overcoming protracted refugee situations' in Loescher, G., Milner, J., Newman E. and Troeller, G. (eds.) *Protracted Refugee Situations: Political, Human Rights and Security Implications*, Tokyo: United Nations University Press.

as the AUC (United Self-Defense Forces of Colombia), more recent narco-paramilitary groups such as 'Los Rastrojos', 'Águilas Negras' and 'Los Urabeños' are significant actors in generating violence and causing displacement (CODHES 2012).

¹⁹ The peace talks in Habana have reached a final decision on the first point in the peace agreement, regarding land reform, with the redistribution of land illegally obtained by irregular guerrillas to rural farmers. The negotiations are currently discussing the second point in the peace agreement, with reference to the reformation of the FARC's into a political party (Foreign Affairs 2013).

- CANTOR, D. and TRIMIÑO, D.** (2013) 'A Simple Solution to War Refugees? The Latin American Expanded Definition and its relationship to IHL' *Paper for Refugee Law Initiative/Refugee Studies Centre Conference on 'Refuge from Inhumanity'*, February, 2013. Available from: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2306129> (Accessed on 02 August 2013).
- COHEN, R. and SANCHEZ-GARZOLI, G.** (2001) 'Internal Displacement in the Americas: Some Distinctive Features', *Brookings-CUNY Project on Internal Displacement*. Available from: <http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:2598> (Accessed on 27 August 2013).
- CONSULTORIA PARA LOS DERECHOS HUMANOS Y EL DESPLAZAMIENTO** (2012) 'Desplazamiento creciente y crisis humanitaria invisible.' *CODHES Documento* 25. Bogotá, noviembre 2012. Available from: <http://www.codhes.org/index2.php?option=com_docman&task=doc_view&gid=223&Itemid=50> (Accessed on 27 August 2013).
- DE RIVERO, J.** (2001) 'Reinventing communities: The resettlement of Guatemalan refugees'. *Forced Migration Review* 11:8-11.
- DURIEUX, J-F.**, (2009) 'The many faces of "prima facie"' *Refuge* 25(2):151-163.
- FACULTAD LATINOAMERICANA DE CIENCIAS SOCIALES.** (2013) 'Expectativas de futuro de la población colombiana refugiada en las ciudades de Ibarra, Lago Agrio y Esmeraldas.' *FLACSO and UNHCR Ecuador*. Available from: <<http://www.acnur.org/t3/fileadmin/Documentos/Publicaciones/2013/9116.pdf?view=1>> (Accessed on 10 August 2013).
- FRANCO, L. and SANTISTEVAN, J.** (2004) 'Contributions of the Cartagena process to the development of international refugee law in Latin America', in *Memoir of the Twentieth Anniversary of the Cartagena Declaration on Refugees* San José, Costa Rica: UNHCR.
- FOREIGN AFFAIRS** (2013) 'Peace Signs in Colombia: Can Bogotá and the FARC Finally Overcome Their Differences?' *Foreign Affairs website*. August 4, 2013. Available from: <http://www.foreignaffairs.com/articles/139620/anne-phillips/peace-signs-in-colombia?cid=soc-twitter-in-snapshots-peace_signs_in_colombia-080713> (Accessed on 27 August 2013).
- GROS ESPIEL, H., PICADO, S. and VALLADARES LANZA, L. H.** (1990) 'Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America' *International Journal of Refugee Law* 2(1): 83-117.
- INTERNAL DISPLACEMENT MONITORING CENTRE** (2009) 'Conflict Beyond Borders: Humanitarian Impact of the Colombian Conflict in Ecuador', IDMC 10 October 2009

Briefing Paper. Available from: <<http://www.refworld.org/pdfid/4ae591972.pdf>> (Accessed on 12 September 2013).

INTERNATIONAL CRISIS GROUP (2011) 'Moving Beyond Easy Wins: Colombia's Borders', International Crisis Group Latin America Report N.40. Available at: <<http://www.crisisgroup.org/~media/Files/latinamerica/colombia/40%20Moving%20Beyond%20Easy%20Wins%20%20Colombias%20Borders.pdf>> [Accessed on 12 September 2013].

McGRATH, I. (2011) 'Enhanced registration and human security in northern Ecuador', *PDES Research Paper No. 198*. Available from: <<http://www.unhcr.org/4d35556e9.html>> (Accessed on 13 August 2013).

OCHA (2013) 'Monthly Humanitarian Bulletin: Colombia', 18 July 2013. *ReliefWeb website* Available from: <http://reliefweb.int/sites/reliefweb.int/files/resources/130806_Monthly_Bulletin_July_2013_2_.pdf> (Accessed on 10 August 2013).

REED-HURTADO, M. (2013) 'The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America', *UNHCR Legal and Protection Policy Research Series*. Available from: <<http://www.refworld.org/docid/51c801934.html>> (Accessed on 02 August 2013).

REFUGEES INTERNATIONAL (2009) Colombia: Crisis Bubbling over Colombians Seeking Refuge in Ecuador and Venezuela. *Refugees International*. 7 July 2009. Available from: <<http://refugeesinternational.org/sites/default/files/070709%20colombia%201.pdf>> (Accessed on 27 August 2013).

ROLDÁN, J. (2011) 'El Registro Ampliado de Refugiados en la Frontera Norte del Ecuador: Un proyecto pionero en la protección internacional de refugiados en la región', in *La protección internacional de refugiados en las Américas*. Available from: <<http://www.acnur.org/t3/fileadmin/Documentos/Publicaciones/2012/8340.pdf?view=1>> (Accessed on 10 August 2013).

UNHCR (2004a) 'The refugee situation in Latin America: Protection and Solutions based on the pragmatic approach of the Cartagena Declaration on Refugees of 1984', in *Memoir of the Twentieth Anniversary of the Cartagena Declaration on Refugees*, San Jose, Costa Rica: UNHCR.

(2004b) 'Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America'. 16 November 2004. Available from: <<http://www.refworld.org/docid/424bf6914.html>> (Accessed on 27 August 2013).

(2011) 'Política del Ecuador en materia de refugio', in *La protección internacional de refugiados en las Américas*. Available from: <<http://www.acnur.org/t3/fileadmin/Documentos/Publicaciones/2012/8340.pdf?view=1>> (Accessed on 10 September 2013).

_____(2013a) '2013 UNHCR country operations profile – Ecuador'. Available from:
<<http://www.unhcr.org/pages/49e492b66.html>> (Accessed on 25 August 2013).

_____(2013b) 'Protección de Refugiados en América Latina: Buenas Prácticas Legislativas: Definición regional de refugiado.' Available from:
<<http://www.acnur.org/t3/que-hace/proteccion/proteccion-de-refugiados-en-america-latina-buenas-practicas-legislativas/>> (Accessed on 26/09/2013).

Legal Instruments:

1951 Convention Relating to the Status of Refugees

1984 Cartagena Declaration on Refugees

Ministerial Agreement 000003/2011

Ecuadorian Presidential Decree 1182/2012

Firsthand Monitor

The other side of Immigration Raids

By Evelyn G. Aleman

As news reports of immigration raids throughout the country continue to make headlines and fuel the immigration debate, I am confronted with my own story and that of my mother - an emigrant from El Salvador.

In 1967, my mother entered the U.S. on a tourist visa. The oldest daughter of a middle-class family from San Salvador, she had successfully convinced her parents to sponsor her visit to the United States which - she had assured them - would be brief. Unlike other undocumented immigrants who cross the border under perilous conditions, my mother arrived at LAX and was greeted by fellow Salvadorans. Like many undocumented immigrants, she truly believed that her desire to remain in this country of great opportunity - albeit illegally - coupled with a strong work ethic would outweigh any risks of deportation.

However, she would soon discover that integration meant more than a desire to work hard and prosper. Three years later I was born in Hollywood, and six months later my mother's embroidery factory was raided.



This shows my mother, father and I before the deportation occurred.

As a young child living in Los Angeles, there was never any question of my nationality. My father emphasized the fact that my sisters and I were Americans and that they were naturalized citizens. My father would often say, 'You have just as much right as anyone else to call yourself an American', and I strongly believed this.

I remember the excitement my parents felt when they were finally naturalized, but I also remember sitting in front of the television set and watching news about immigration raids and deportation. I remember my mother's mood change from her bubbly, rosy demeanor to one of anger and hurt. When I questioned her about this change, she would push me away and tell me that I did not need to know. I could not really make sense of this, and did not learn of her experience until I was a teenager. I stored the story somewhere deep in my psyche for a time when I knew I would better understand the pain of her experience.

Back in December of 1970, my mother was caught working at the factory - along with several other women - in an Immigration and Naturalization Service raid. Only 6 months old, I was at home with my aunt, my mom's younger sister, who cared for me while Mom was away at work.

My mother later told me how during the raid she pleaded with immigration officers to allow her to return home for her baby, but that they did not seem to care. She was sent to what she described at the time as a detention center in downtown Los Angeles, and was subsequently moved to a detention center in Tijuana, Mexico, where she remained for a week, while my father desperately tried to locate her. When my father finally found her, she was pale and had lost weight. My mother never forgot that experience, and although she went on to become first a U.S. resident, then a naturalized citizen and an active voter, I always got the impression that her feelings were mixed about this country, her host country, and ultimately the country where she and her husband would someday be buried.

As for her children, my sister and I went on to graduate from college. I earned a postgraduate degree and established my own business. My sister went on to work in local government. We are both deeply involved in public service.

The raids I now read about remind me of my mother, and how much she sacrificed to ensure that we, as well as her family back home, would have better opportunities. I think about those mothers and fathers who are now being whisked away from their places of work, not knowing if they will see their children or who will care for them and about the great anxiety that they may feel. As a parent, my heart breaks to know that this is happening to our society and, more importantly, that we allow such undemocratic, inhumane, and un-American policies under our watch.

I also think about the young men and women in our current education system that are talented and wish to make a positive impact in our communities, but cannot attend college because of their legal status. I often wonder when we will acknowledge their talent and courage, and help them achieve their dreams.

I think of all immigrants who have struggled in various ways to make the United States of America a strong country, a role model of unity for the world to follow - *E Pluribus Unum* - and how quickly we have forgotten the lessons that they have taught us throughout our history.

An Invitation to Cross

By Sarah Degner

Working with the Latino community in my medium-sized university town in the Midwest, near Chicago, I have heard many first-hand stories about the harrowing international trip from Central American and Mexico into the USA. A climate of fear reigns here regarding immigrant stories, especially among middle-aged adults and older, who are not eligible for legislation to create a temporary protected status. Many of my friends don't feel comfortable or safe, due to the controversy surrounding immigration, the misunderstandings about whether moving from country to country can be done legally at all by people of ordinary means, and due to the climate of fear for immigrants who wish to stay where they live but fear being found out and deported. For these reasons, they tell their stories in hushed tones. As I have worked as an advocate beside immigrant people in my town, shared trust has been earned over time. I would like to share their stories with others, in an anonymous way, creating a composite picture of what the journey between nations looks like for some migrant people. My community needs understanding and compassion---especially in a week like this one, when a racial slur was just flung from a passing car to attack a stranger on the street, and when a politician speaks on TV with ignorance and a lack of sensitivity. These are the days that I wish that I could re-trace the steps of my friends and family, to share the human trials that have been shared with me in the quest to make a new home of promised opportunities. If I could take a person through that voyage, I would invite them to take my hand and cross.

Cross. Cross the border. Not in a Jeep, not in a helicopter, not sitting in a pickup truck with a cattle rancher. Each migrant carries a backpack, a few photos, a Bible, and a bottle of water. First, at home, the men and women wishing to have an immigration immersion experience might kneel beside an elderly grandmother, and kiss a sleeping toddler goodbye, and then ride on a train, or curled up hiding in the trunk of a car for hours or days. These would-be migrants would need to do some walking, maybe to the point that shoes fall apart. No cell phones. No catered lunches. No cars. No receptionists. No internet. No contact with family. With an understanding of Spanish and also some indigenous languages, our pilgrims would hear the fear, risks, losses, and human rights violations that others before have faced. It might take a month to actually get their bodies across the border, once each had saved up for the cost of it. They would prepare mentally to lose every cent, no credit cards allowed. These travellers ought to experience the fear, exhaustion, hunger, thirst and isolation of the desert, to approach that border fence without the familiar comfort of a passport and visa in a pocket, in an undocumented way - like how our forefathers from elsewhere migrated into this land over the centuries and right up until now.

We all would benefit from this opportunity to walk in another's shoes. We would feel the injustice of being a migrant fleeing for economic survival, trusting strangers, trudging for days through the desert, feeling the helicopters with searchlights bearing down. Perhaps we'd take along a preschool-aged daughter, too young to understand, hand her over to strangers, say goodbye hoping for the best, that she makes it to the meeting point on the other side. Perhaps before kissing her forehead, we could weigh her options again; either starving at home, being carried by parents through the desert for weeks, or risking unspeakable horrors that befall trafficked girls. To understand the meaning of immigration, each person with a vote should have the opportunity to be detained, fingerprinted, and deported, to try again to cross when we'd each paid our debts and earned more cash. We should each hear the voices

and smell the breath of the border agents calling us "illegal" and then lie down to sleep in the desert and look death in the face.

All voluntarily, for the hope of a better life, for the dream of survival and the hope that a reunited family represents. If we see that side of the journey, then we will know the courage that immigrant families' lives are built upon. We will then be able to say that we really understand what the borders between nations represent, and we will be able to work for justice. If citizens who have forgotten their roots or who have no sense of other-ness want the full migration experience, they might do well to live as divided families for years on end, having said goodbye forever to family at home, feeling disillusioned by a minimum-wage job to send money to a sick relative each month. It takes courage and determination to settle down in a big city or a small town, to learn a new language under the pressure of survival, without any tutor except for the storekeepers of shops you frequent for groceries and gas. One might work months of six days a week, two eight-hour shifts back to back, laboring in the fields under the hot sun to harvest the food to feed and clothe others. Maybe we'd have other jobs, too, whatever we'd find without running into bureaucratic roadblocks that might prevent our employment. We'd learn the laws and language by making one little mistake at a time. Some arrests for not knowing the system might be part of the deal, or maybe just the frustration of not knowing the rules or how to learn them.

That field trip would give each insider another perspective on the role of migrant people living together in the world, and the kinds of economic and immigration policies that benefit everyone, even (to quote the plaque on the Statue of Liberty that was a gift from France to the United States) to bring a better life to "the tired, the poor, the huddled masses yearning to breathe free." Only when we have lived as "other" can we really claim to have understood the idea of a borderland with our own eyes and to know why some believe these human-placed marks are deep political scars across the surface of the planet. When we put on the experience of another, get into her shoes and walk around for a while, we'll know the weight of being a refugee and the role that migrant people have in securing others' comfortable lives.

If we regard these voiceless poor with mercy and hospitality, we may entertain angels unawares. If we show kindness to immigrants, we will depend on shared labor and human loyalty for generations to come as we live as one family. Let's not cut off the source of human lifeblood that for centuries through migration has allowed nations and countries to grow, breathe, and be renewed.

Field Monitor

**Preliminary Observations from the Field:
Rwandese Refugees' Perceptions of 'Voluntary' Repatriation from Uganda**

By Cleophas Karooma

Introduction

Since October 2002, the Government of Rwanda (GoR), the Government of Uganda (GoU) and United Nations High Commissioner for Refugees (UNHCR) have been playing an active role in promoting the voluntary repatriation of Rwandan refugees from Uganda (Human Rights First 2004; UNHCR 2011:2; MIDIMAR 2011:5). To this end, several steps have been taken, such as: the signing of ten tripartite agreements,¹ issuing several joint communiqués, and sensitisation campaigns whereby Rwandan refugees are encouraged to go back to Rwanda and see for themselves what conditions are like within the country and then return to tell fellow refugees. Refugees have, however, felt that coercive measures have been used to encourage their return, including the reduction in food rations and the forced repatriations of October 2007 and July 2010 (Interviews 2011). These efforts, despite their limited success, formed part of the Comprehensive Strategy which culminated in the UNHCR's recommendation for the invocation of the Cessation Clause (UNHCR 2011:1), which was finally due to be invoked on 30 June 2013. Nonetheless, despite the attempts to return Rwandan refugees to Rwanda, considerable numbers are still reluctant to return. The Rwandan refugees interviewed noted that although some of the repatriations (citing in particular those in 2004 and 2009) have been claimed to be voluntary by the GoU and UNHCR, they have not been carried out in safety and dignity as stipulated under international standards. This piece documents Rwandan refugees' perceptions of repatriation from the early 2000s up to now, both generally and regarding specific incidences of return, as understood from my research in the field. It constitutes a description of preliminary research findings, drawing upon the voices and experiences of refugees, which I will later analyse for my Doctorate.

Methodology

This research seeks to identify and analyse the repatriation processes for the post-genocide Rwandan refugees in Uganda since 2003, as understood through their eyes and available documentation on these events. It draws upon my Ph.D. research which was conducted between 2009 and 2012 in Nakivale and Oruchinga refugee settlements in South-western Uganda, though this account is purely a description of my observations from the field. Over 100 respondents were purposively selected for expert interviews and focus group discussions: Rwandan refugees, asylum seekers, recyclers (former repatriates) and returnees, as well as government and UNHCR representatives. Clearance by the Uganda National Council of Science and Technology and the Office of the Prime Minister was obtained to carry out this research. Voluntariness, confidentiality and informed consent of the respondents were observed during interviews.

Post-Genocide Rwandan Refugees in Uganda

¹ So far ten tripartite agreements have been signed between the GoU, GoR and UNHCR since 2003. Minutes of the 1st to 10th Tripartite Agreements are on file with the author.

In 1994, the Rwandan genocide started following the death of the then President Juvenal Habyarimana in a plane crash on 6 April 1994, leading to a new influx of Hutu refugees into Uganda (Newbury 2005: 283; Van der Meeren 1996; Mamdani 2002; Mushemeza 1998, 2007). The period of the 1994 Rwandan Genocide and its aftermath saw many, but by no means all Tutsi refugees in Uganda and throughout East Africa, returning to Rwanda while large segments of the Hutu population, fearing retribution, escaped and sought asylum throughout Africa. After the genocide, the new Rwandan Patriotic Front (RPF) government has been conducting campaigns to encourage Rwandan citizens to return, but many remain in exile (Refugee Law Project 2010).

Over 50,000 Rwandan refugees are understood to be living in exile within the broad Great Lakes Region (Iyodu 2011). As of 1 July 2012, approximately 20,565 of these were in Uganda (Uganda UNHCR Statistics 2012). The majority are hosted in Nakivale and Oruchinga refugee settlements - 9,574 and 1,413 respectively – whilst the rest are in urban centres or other camps within Uganda (Uganda UNHCR Statistics 2012). The GoR is said to have exerted pressure on most of the region's governments hosting its nationals to sign tripartite agreements to implement return, and has been accused of pushing for the implementation of articles 1C(5) and (6), subsections of the cessation clause, in the 1951 Convention Relating to the Status of Refugees (hereafter the 1951 Convention) (Refugee Law Project 2010:1).

Repatriation of Rwandan Refugees in Uganda: How Voluntary?

They force us to return with guns, threatening words, and deny us humanitarian assistance with the aim of pushing us out of Uganda (Statement of a Rwandan refugee in Nakivale, January 2011).

The refugees pointed out that while the current conditions in Rwanda are not yet conducive for a safe return, they felt nonetheless that the GoU, GoR and UNHCR had resorted to pressures and restrictions to push them out of Uganda. Refugees expressed that policy makers had resorted to *refoulement*, ultimatums, verbal abuses, deadlines, anti-Rwanda refugee rhetoric, destruction of crops and huts, restriction of access to humanitarian assistance, bars on granting of refugee status, starvation, abductions, money extortions, arbitrary arrests and internments, restrictions on humanitarian assistance, and UNHCR was considered to have failed to listen to objections to repatriation (Interviews: Rwandan Refugees in Nakivale and Oruchinga 2011). Furthermore, the refugees said their failure to succumb to these pressures has culminated in their forced deportations as well as the threat of invoking Articles 1C (5) and (6) of the 1951 Convention (Interviews: Rwandan refugees 2011).

Some of the returns conducted so far under the agreements were thus characterised by use of force, threats, deceit and coercion (Interview: Rwandan refugees 2011; see also Human Rights Watch 2004; Refugee Law Project et al 2010; Harrell-Bond 2011; Minter 2013). For instance, an interviewee said: 'Can the whole process of repatriation be characterised by all we have mentioned and you call it voluntary? How voluntary is it? If it was voluntary, nobody would be surrounded and forced on trucks to return or...[the] cessation clause would not have been invoked' (Interview: 2011).

A group of asylum seekers interviewed said that the GoU has rejected their applications for refugee status (Interviews: April 2010). Amnesty International (2010) has reported that the Uganda Refugee Eligibility Committee (REC) rejection rate for Rwandan refugees' application is at 98%. Another group of recyclers/former repatriates noted that the GoU and UNHCR are refusing to lodge their cases in order to show the international community that return is successful (Interviews 2011). My interviews found out that failure by the GoU and UNHCR to recognise the new asylum seekers and recyclers has induced Rwandan refugees to disguise themselves as Congolese refugees or as Ugandans in order to acquire a refugee status or at least avoid being returned to Rwanda.

According to the Ministry of Disaster Management and Refugee Affairs (MIDIMAR) in Kigali, 14,705² Rwandan refugees have returned to Rwanda from Uganda since 2003 (MIDIMAR Statistics Report 2012). While Rwandan and Ugandan officials assert that repatriation is a positive step, reports of coercion and forced removals have raised questions concerning the voluntariness of the operation (IRRI 2008). Four repatriations will be analysed in this next section, as understood from my experience in the field.

Repatriation of 2004

The first repatriation followed the signing of the first Tripartite Agreement—in Kigali on 24 July 2003—between the GoU, GoR and UNHCR which was designed to 'voluntarily repatriate' 25,000 Rwandan refugees (Minutes of the first Tripartite Agreement 2003). However, only 2400 refugees returned to Rwanda in early 2004. This was reportedly due to the fact that most refugees viewed the programme with suspicion or even fear since they believed that the conditions back home were not conducive to return (Refugee Law Project 2003). Moreover, many of those who had repatriated quickly returned to Uganda;³ their renewed flight was explained, amongst other things, by arbitrary arrests and detentions over alleged genocide charges,⁴ issues with the *gacaca* justice system, ethnic divisions, fear and mistrust, persecution and the inability to acquire their properties (Human Rights First 2004).

As one interviewed recycler noted:

Having gone through the Tanzanian experience⁵ in December 1996, I did not want to follow suit of [another] forced repatriation. This forced me to register for repatriation to go back to Rwanda. However, on return to Rwanda in January 2004, the conditions were still not favourable for me to stay following genocide allegations by the *gacaca* court, hence ...[I fled] Rwanda for the third time. I will never return to Rwanda because the conditions that led to our flight have not abated (Interview: 2011).

Despite the official emphasis on the voluntariness of repatriation of 2004, interviewees who were involved reported considerable pressure from the GoU and UNHCR to repatriate them,

² While the number of those who have repatriated has been documented, no clear statistics have been obtained for those who have repatriated and returned to Uganda, and/or the new asylum seekers.

³ William (2004) reported about 700 hundred people having returned to Uganda by August 2004.

⁴ This violates Article IV of OAU Convention, 'Refugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations'.

⁵ The majority of Rwandan refugees now in Nakivale and Oruchinga are those who were forcibly repatriated to Rwanda from Tanzania and Democratic Republic of Congo in 1996 and then either escaped to Uganda and those that learned from their peers experiences and directly left Uganda for Rwanda.

in particular regarding the threats of camp closure and intimidating language used during sensitisation. Misleading information about Rwanda was also said to have been portrayed during the repatriation campaigns (Williams 2004, Human Rights First 2004). The refugees said that the majority who repatriated during 2004 were imprisoned, killed or disappeared, while others immediately returned to Uganda. In the midst of such reports, government officials and UNHCR continue to insist that the repatriation was voluntary. As Zieck (2004:37-40) points out:

UNHCR is getting actively engaged in the repatriation of refugee groups even in cases when it was questionable whether the refugees were given the opportunity for truly free choice to return under the 'conditions of security and dignity'.

Refoulement of 'Kibati' Group October 2007

On 4 October 2007, a group of 3000 Rwandan refugees referred to as 'Kibati'⁶ was *refouled* in the early hours of the morning (Interviews with Rwandan refugees Nakivale 2011; *The Daily Monitor* October 5, 2007). This followed the consensus reached by the GoU, GoR and UNHCR in the fifth meeting of the Tripartite Commission,⁷ that the 'Kibati' group were to be taken back home (International Refugee Rights Initiative 2008).

A returnee in Rwanda and former 'Kibati' refugee stated that 'the policemen were deployed and we were forcibly loaded on lorries at about 2 a.m. and driven across the border'. He reported having been separated from his family - wife and two children - in the process and has not heard from them since 2007. He added that most refugees escaped and some died on the way having committed suicide by taking poison to avoid return. He affirmed that the majority who were repatriated escaped back to Uganda. He too wishes to return to Uganda citing re-integration problems and persecution of returnees (Interview: Rwanda, August 2012).

Minister Kabwegyere's⁸ Deadline of 31 July 2009

If Rwandan refugees insist, we shall chase them or they can contact UNHCR so that they are relocated elsewhere. This is the government position, UNHCR knows about it and they should arrange with Rwandan refugees and take them to another country (A statement by Minister Tarsis Kabwegyere, as quoted in IRIN 2010).

During the 6th Tripartite Commission meeting on 22 April 2009, the repatriation deadline of 31 July 2009 was set to repatriate all the Rwandan refugees from Uganda. In this meeting, all the assistance for Rwandan refugees was said to cease by that deadline (Minutes of the 6th Joint Communique 2009). Parties involved recommended a ban on cultivation, a ban on humanitarian assistance, a ban on their children going to school and a reduction on food

⁶ *Kibati* comes from the words *Ibaati* or *Amabaati*, meaning 'corrugated iron sheets' in the local language Runyankole. Few of the rough shelters had such coverings. These were composed of over 7000 Rwandan refugees who were repatriated from Tanzania in late 1990s and came to Uganda instead of heading to Rwanda. They were forcibly repatriated to Rwanda in October 2007.

⁷ See Minutes of the fifth Tripartite Commission Meeting 2007 held in Kigali on 26 July 2007.

⁸ Minister Tarsis Kabwegyere is the former Minister of Disaster Preparedness, Relief and Refugees in Uganda. The Rwandan refugees named the repatriation day of July 31, 2009 after him because of the strong and intimidating language he was using during the repatriation process.

rations. As an interviewee said, although they called the repatriation voluntary, it has been characterised by push factors. They mentioned that the NGOs and UNHCR stopped supporting them and they were further deprived of land, food and social services (Interview: Male, Oruchinga, 2011). In the context of the ban on agriculture, a Ugandan official explained that refugees usually delay repatriation with reasons and excuses of their unharvested crops, that's why we put a ban on cultivation.

Furthermore, threatening, abusive and intimidating language allegedly used by the official authorities to persuade refugees to leave also compromised the veneer of voluntariness. Moreover, refugees noted that their letters of appeal to UNHCR protection officers had remained unanswered, leaving refugees frustrated at the lack of communication.

One refugee said:

If UNHCR and GoU that are responsible for our protection ...can intimidate us to this extent; what about Rwanda where we have not lived for more than seventeen years? (Interview: Nakivale March 2011).

However, the majority of those who were repatriated came back to Uganda by October 2009. Those I interviewed in October 2009 said that they chose to be repatriated for fear of forced repatriation following the threats during the repatriation campaigns. They said they came back to Uganda due to uncondusive conditions in Rwanda. For example, a man reported having been imprisoned and released with no case, a woman reported disappearance of her two sons, while another reported the murder of her husband on return (Interviews with recyclers: October 2009).

Refoulement of 14 July 2010

In Nakivale, a large number of Rwandan refugees had arrived in early 2010 citing persecution and violation of human rights in Rwanda. I interviewed some of them in April 2010. By the time of the interview, the majority had applied for refugee status and were waiting for the decision. On 14 July 2010, about 1700 Rwandans were gathered together in Nakivale on the pretext that they were to be informed of the results of their refugee status claims. However, they were herded onto lorries at gunpoint and forcibly repatriated to Rwanda in broad daylight (Field Interviews 2011; Harrell-Bond 2011). Two people were reported to have jumped off the lorries for fear of returning to Rwanda, and subsequently died (IRIN 2010).

Ugandan officials insisted that those who had been deported had exhausted all the refugee status appeals and had been unsuccessful. They were said to have become a security threat in Uganda following the twin bombings on 11 July 2010 that killed 76 people during the World Cup final. 'Lack of land, famine, poverty have never been grounds for asylum as advanced by asylum seekers from Rwanda' said an official (Interview: May 2011; See also Human Rights Watch 2010; *The New Vision*, Tuesday 20, July 2010). However, Leslie (2011) states that refugees say Rwanda's problems do not stem from economics or access to land – rather, they are a result of a lack of peace. Contrary to the assertions of Ugandan authorities that people who were forcibly deported on 14 July 2010 were only asylum seekers whose procedures for

refugee status application were exhausted, it is obvious that the subsection (2) of section 23 of the 2006 Uganda Refugee Act was not respected.⁹

Cessation Clause

In 2009, UNHCR announced a comprehensive strategy¹⁰ to bring to a proper closure the Rwandan situation. The cessation clause, contained in Article 1C of the 1951 Convention Relating to the Status of Refugees, defines the situations in which refugee status ends (UNHCR 2011:1). According to UNHCR Executive Committee Conclusions on the Cessation of Status (1992), the cessation clause should not be implemented until the recipient country has undergone ‘fundamental, stable and durable changes’ needed to remove all well-founded fear of refugee persecution. However, as judged by recent reports of different human rights bodies e.g. Amnesty International, Human Rights Watch, Human Rights First, Fahamu, as well as from personal statements by Rwandan refugees, refugees do not feel that such structural changes have yet taken place (See also Minter 2012; McMillan 2012).

The Rwandan refugees I had interviewed were afraid of the cessation clause deadline. The refugees had a variety of concerns. To begin with, the authorities told them that they would lose their refugee status after implementation of the cessation clause. In addition, those who remain in Uganda would be considered illegal immigrants (Interviews: 2011). However, refugees were also afraid of likely persecution in Rwanda. As one refugee said, ‘How can one return to Rwanda, when those who have repatriated have come back having faced persecution and even new asylum seekers come here on a daily basis fleeing human rights violations in Rwanda?’ (Interview: Refugee, female, 42 years, 2011).

However, the Government of Uganda has not declared the Cessation Clause as of 30 June 2013 due to a number of challenges, especially the gaps and contradictions within the Ugandan laws. According to a Ugandan official, ‘the Refugee Act and the Immigration Acts reveal gaps that create challenges in applying some of the proposals especially on local integration and citizenship. For example, while the Refugee Act provides for eligibility for Citizenship for refugees who have stayed in the country for 10 years, for the Immigration Act, a refugee is permanently a refugee including his/her offspring. Therefore, the existing legal gaps have to be addressed before the GoU announces the Cessation Clause for Rwandan Refugees in future’ (MIDIMAR 16 July 2013).

Conclusion

In conclusion, a number of factors were raised during my fieldwork which suggest that Rwandan refugees have not seen attempts to repatriate them as voluntary. The examples above evidence the generalised perception of the forced nature of these return processes. Rwandan refugees nonetheless said that they shall not succumb to the pressures of returning to Rwanda because they believe that Rwanda has not met the fundamental changes for return

⁹ 2006 Uganda Refugee Act Section 23 (2): Where a person has exhausted the right of appeal in relation to an application and refugee status has not been granted, that applicant shall be allowed to stay in Uganda for a period not exceeding ninety days to enable her/him to seek asylum or admission to a country of her/his choice.

¹⁰ Four components of the strategy are: enhancing promotion of voluntary repatriation and reintegration of Rwandan refugees in Rwanda; pursuing opportunities for local integration or alternative legal status in countries of asylum; continuing to meet the needs of those individuals unable to return to their country of origin for protection-related reasons; and elaborating a common schedule leading to the cessation of refugees status.

due to persecution and violation of human rights. This was exemplified by the presence of a considerable number of Rwandan refugees, recyclers and new asylum seekers within the settlements in Uganda, and through the narrative accounts of refugees' experiences that I encountered during my research.

Cleophas Karooma is a Ugandan national, a PhD Student and lecturer at Mbarara University of Science and Technology (MUST) in Uganda. She holds a Masters Degree in Development Studies from MUST. Currently she is a visiting fellow at the Refugee Studies Centre at the University of Oxford where she is writing her Ph.D. thesis on the attitudes and responses of Rwandan Refugees towards repatriation (1994-2012).

References cited

HARRELL-BOND, B. E (2011) 'The Cessation Clause Uganda Style'. Keynote Speech Delivered at the Northwestern University Conference on Human Rights, January 23.

HUMAN RIGHTS WATCH (2010) 'Uganda/Rwanda: Halt Forced Returns of Refugees. Uganda Forces more Than 1,700 Back to Rwanda', *Human Rights Watch*, July 17 2005.

INTERNATIONAL REFUGEE RIGHTS INITIATIVES (2008) 'Repatriating the Kibati Group: Some Return, but Solutions Remain Elusive'. *Refugee Rights News*, Volume 4, Issue 1 January 2008 Available from: <<http://www.refugee-rights.org/Newsletters/GreatLakes/V4N1KibatiRepatriation.html>> (accessed on: 18/05/13).

IRIN (2010) 'Rwanda-Uganda: Refugees Face Hunger as Farming Ban Bites', 18 March 2010. Available from: <<http://www.Irinnews.Org/Report/88472/RWANDA-UGANDA-Refugees-Face-Hunger-As-Farming-Ban-Bites>> (accessed on: 03/03/11).

IRIN (2010) 'Rwanda-Uganda: Refugees Face Hunger as Farming Ban Bites', March 2010. Available from: <<http://www.irinnews.org/report.aspx?Reportid=88472>> (accessed on: 18/10/2011).

IYODU, B. (2011) 'State, Return and Home: The Need to Rethink the Concept of 'Home' and Return in Forced Migration-Rwandans in Uganda as a case Study'. Unpublished Paper Presented at the 13th International Association for the Study of Forced Migration (IASFM) Conference hosted by the Refugee Law Project (RLP), Munyonyo, Kampala, Uganda. Munyonyo, Kampala, 3 to 6 July 3rd 2011.

KAROOMA (2011) 'Reluctant to Return? Primacy of Social Networks of Rwandan Refugees in Uganda'. Unpublished Paper Presented at the 13th International Association for the Study of Forced Migration (IASFM) Conference hosted by the Refugee Law Project (RLP), Munyonyo, Kampala, Uganda. Munyonyo, Kampala, 3 to 6 July 2011.

LESLIE, ROBYN (2011) 'Rwandan Refugees Fear Cessation Clause', *Inter Press Service News Agency*, Available from: <<http://www.ipsnews.net/2011/11/op-ed-rwandan-refugees-fear-cessation-clause>> (accessed on: 19/08/13).

- MAMDANI, M.** (2001) *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*. Princeton: Princeton University Press.
- MCMILLAN, KELLY E.** (2012) 'Uganda's Invocation of Cessation regarding its Rwandan Refugee Caseload: Lessons for International Protection', *International Journal of Refugee Law*, 24(2): 231-262.
- MESIC, MILAN AND DRAGAN, BAGIC** (2011) 'Minority Return to Croatia - Study of an Open Process'. United Nations High Commissioner for Refugees (UNHCR) Representation in the Republic of Croatia. Radnicka Cesta 41, 10000 Zagreb, Hrvatska.
- MINISTRY OF DISASTER MANAGEMENT AND REFUGEE AFFAIRS (MIDIMAR)** (2011) 'An Overview of Progress towards the Social and Economic Development of Rwanda'. Available from: <www.midimar.gov.rw/index.php/cessationclausecentre/cessation> (accessed on 14/08/12).
- MIDIMAR STATISTICS REPORT** (2012) 'Rwandan Returnees from Uganda (from 2003-August 2012)'. MIDIMAR, Kigali.
- MIDIMAR** (2013) 'Uganda to Harmonize Laws to Implement the Cessation Clause for Rwanda Refugees'. July 2013. Available from: <<http://www.midimar.gov.rw/index.php/news/270-uganda-to-harmonize-laws-to-implement-the-cessation-clause-for-rwanda-refugees>> (accessed on 21/09/13).
- MINTER, MALLORY** (2012) 'A Cessation of Choice for Rwandan Refugees'. *The Fletcher Forum of World Affairs*. Available from: <http://www.fletcherforum.org/2012/12/28/minter> (accessed on 19/08/13).
- MUSHEMEZA, E.D.** (1998) 'Refugees and International Relations: the Case of Uganda and her Neighbours, 1960-90'. In Gingyera-Pinywa (ed.), *Uganda and the Problem of Refugees*. Makerere University Press, Kampala.
- MUSHEMEZA, E.D** (2007) *The Politics and Empowerment of Banyarwanda Refugees in Uganda 1959-2001*. Fountain Publishers, Kampala.
- NEWBURY, D.** (2005) 'Returning Refugees: Four Historical Patterns of "Coming Home" to Rwanda', *Comparative Studies in Society and History*, 47: 252-285.
- REFUGEE LAW PROJECT** 2003, 'Ongoing Repatriation of Rwandese Refugees in Rwanda', Available from: <<http://www.refugeelawproject.org/Rwanda%20update.doc>> accessed on 20/10/08).
- THE MONITOR, UGANDA** (2007) 'Country Deports 3000 Rwandans', 5 October. Available from: <<http://allafrica.com/stories/200710050012.html>> accessed on 22/02/11).

THE NEW VISION, (2007) 'Some 5,000 Rwandese Refugees in Uganda to Return Home Next Month' 30 July. Available from: <<http://reliefweb.int/report/uganda/some-5000-rwandese-refugees-uganda-return-home-next-month>> (accessed on 17/12/2012).

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (1996) *Handbook on Voluntary Repatriation: International Protection*, Geneva, UNHCR. Available from: <<http://www.unhcr.org/publ/PUBL/3bfe68d32.pdf>> (accessed 5/08/12).

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (1980) *Note on Voluntary Repatriation*, 27 August 1980, EC/SCP/13, available from: <<http://www.refworld.org/docid/3ae68cce8.html>> (accessed on 18/08/12).

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (2011) 'Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, Including UNHCR's Recommendations on the Application of the "Ceased Circumstances' Cessation Clauses', 31 December 2011. Available from: <<http://www.unhcr.org/refworld/docid/4f33a1642.html>> (accessed on 10/09/12).

VAN DER MEEREN, RACHEL (1996) *The Rwandan Emergency: Causes, Responses, Solutions?* Oxford, Oxford University Press.

WILLIAMS, D. (2004) 'Is Rwanda Safe? An Inquiry into the Reluctance of the Rwandan Refugee Community to Repatriate'. Jesuit Refugee Service, 16 August. Available from: <<https://www.jrs.net/assets/Publications/File/Rwanda.pdf>> (accessed on 02/12/13).

Policy Monitor

Towards Durable Solutions for Protracted Congolese Refugees in Rwanda

By Evan Easton-Calabria and Annelisa Lindsay

Abstract

The on-going instability in the Democratic Republic of Congo (DRC) has displaced millions of Congolese over the past two decades. For the uprooted, repatriation has often proved infeasible, especially for those from Eastern DRC who have been refugees for almost twenty years. This article examines the main actors involved in both perpetuating the conflict in the Eastern DRC and in potentially resolving the protracted refugee situation of Congolese refugees in camps in Rwanda. These refugees include persecuted groups such as the Banyamulenge, who, due to contested citizenship in DRC, constitute a group in dire need of a more durable solution. The restoration of peace in parts of Eastern DRC with the October disbanding of the M23 rebel group may increase the chance of repatriation for refugees who recently fled. However, thousands of refugees will remain in protracted displacement unless other resolutions are sought. This article explores alternatives to protracted displacement and presents a recommendation to end the life of encampment that many Congolese refugees in Rwanda currently face.

Introduction

Presently, about 400,000 Congolese refugees live outside of the Democratic Republic of the Congo (DRC); nearly 70,000 of whom have sought refuge in neighbouring Rwanda. While 20,000 of these individuals have been displaced only recently due to renewed violence in Eastern DRC, tens of thousands of Congolese refugees in Rwanda have faced the challenges of protracted displacement for nearly twenty years.

While Congolese refugees enjoy safety and protection in their Rwandan refuge, many would prefer to lead more sustainable, independent lives where they are settled or even better: in their home country. However, most protracted Congolese refugees in Rwanda are dispersed between three camps (Gihembe, Nyabiheke, and Kiziba), each hosting between 10,000 and 15,000 refugees. Here they have few options for sustainable livelihoods in addition to facing a myriad of other encampment difficulties, including land shortage, crowded shelters, strained water and sanitation resources, limited educational opportunities, and lack of freedom of movement (UNHCR 2003; 2013a). Some Congolese refugees have locally integrated into urban areas or communities along the Rwandan-Congolese border, but are self-sustaining and without international protection. Only 1,948 Congolese refugees are reported to live in and around Kigali (UNHCR 2013a).

While the durable solution of choice for many Congolese refugees would be to return home, parts of their homeland remain embroiled in a conflict that has resulted in the deaths of at least two million civilians (IRRI 2010). Despite a tripartite agreement in 2010 between Rwanda, DRC, and the United Nations High Commissioner for Refugees (UNHCR) for the reciprocal return of refugees from each country, returns to have continued to be hindered by instability, land ownership conflict, and citizenship issues in the eastern province of DRC,

from which many of these refugees initially fled (UNHCR 2010). Thus, options for durable solutions have been limited.

In order for durable solutions to be achieved for these refugees, creative solutions must be sought. For example, until this year, Congolese refugees did not have the option of third-country resettlement. However, it is only through careful consideration of the interests of all stakeholders in the problems causing displacement as well as the options for solutions that such protracted displacement may be resolved. Stakeholders include first and foremost the refugees themselves, the host and home states, and other international actors who provide protection and work towards durable solutions for the refugees. By devising solutions that take into account the common interests of all stakeholders, refugees may have a future where they enjoy protection, self-sustainability, and the rights, freedoms, and dignity they deserve. This article assesses the viability of the three durable solutions for refugees by examining the current situation as well as the interests pertaining to protracted displacement.

Congolese Refugees and Protracted Displacement

In order to understand possible durable solutions for Congolese facing protracted displacement in Rwanda, it is necessary to understand their reasons for fleeing DRC, their demographics, and preferences regarding durable solutions.

For the last twenty years in the DRC (formerly Zaire), intermittent conflict has led to the death or displacement of millions of civilians. Cross-border movement of Congolese refugees seeking safety in Rwanda has continued periodically since 1994. Many Congolese refugees in protracted displacement in Rwanda fled during a few critical upsurges in violence. Beginning in 1994, the post-genocide exodus of approximately one million Hutus from Rwanda into Eastern Zaire sparked instability and ethnic violence around the Kivus. Since this time, the *Interahamwe* and former Hutu genocidaire militias have used Eastern Zaire as a base for cross-border attacks against Tutsi in Rwanda and further fuelled ethnic conflict in Kivu region. In Eastern Zaire, the Kinyarwanda-speaking Zairois, or Banyamulenge, have a long history of contested citizenship, and persisting tensions between Hema and Lendu populations meant that ethnic violence by the *Interahamwe* contributed to instability (Boeck 2003). Thus, thousands of Banyamulenge have fled to seek protection in Rwanda, Uganda, Burundi, and Tanzania. After 1994, later caseloads of Banyamulenge arrived in Rwanda following increased conflict in North Kivu in 1997 (IRRI 2011). Hema and Lendu arrivals in Rwanda began following ethnic violence and massacres during 1997-2003, a period of internationalised violence in the DRC also known as Africa's World War. These groups have thus come to comprise 99% of refugees in Rwanda (UNHCR 2013a).

Research has shown that many of these refugees would prefer to return to DRC if they could live safely. However, due to regular outbreaks of violence and continued persecution, return to Eastern DRC has not presented a viable durable solution for many of the thousands of refugees in Rwanda. Nevertheless, small numbers do decide to return to Eastern DRC, despite warnings from UNHCR and the Rwandan government (UNHCR 2012). The present situation holds a tenuous peace, with the disbanding of the M23 rebel group in late October, a militia reportedly supported by the Rwandan government and responsible for the dramatic increase in violence in the Kivus over the last year (Stearns 2013). However, the volatile pattern of peace and chaos in the region causes repatriation to often represent a precarious, instead of durable, solution.

Many Congolese view third country resettlement as the only possibility to re-establish normal life. This is particularly true for Banyamulenge, many of whom doubt that, after a long history of contested citizenship, their rights in DRC will ever be recognised or they will ever be safe if they return home. Despite speaking Kinyarwanda and being of similar ethnic identity to Rwandan Tutsi, these individuals do not consider local integration as a possible durable solution due to their continual treatment as foreigners by the government and people of Rwanda (IRRI 2011). With repatriation being possible only for a few, and local integration not providing a full sense of freedom and belonging for these refugees, we now discuss the relevant stakeholders and interests necessary to consider in order to seek other creative, yet realistic, options for durable solutions for the Congolese facing protracted displacement in Rwanda.

Stakeholders and Interests

In addition to considering the opinions of the refugees themselves, the following entities are stakeholders with critical roles to play in securing durable solutions for Congolese refugees facing protracted displacement in Rwanda. The analysis below includes an assessment of their interests in regard to the three typical durable solutions: repatriation, local integration, and third-country resettlement.

Government of Rwanda (GoR)

The GoR, like most governments, has primary interests in meeting the needs of its own population and maintaining the security and stability of the country. Providing land and resources to accommodate 70,000 Congolese refugees and increasing arrival numbers in addition to dense population of 11 million has challenged Rwanda's already limited land and natural resources. For example, while Rwanda is a party to the 1951 Convention, it has filed reservations regarding the freedom of movement and residence of refugees 'for reasons of public order' (World Refugee Survey 2009). Thus, the GoR has been unable to provide extensive local integration opportunities for refugees and is supportive of additional options for durable solutions (UNHCR 2013b). Furthermore, border security with the DRC has long been a concern for the state, and if mass repatriation were the solution of choice for the refugees, the GoR would likely support their return in a measured and controlled manner.

The Rwandan Population

Rwandan citizens have sometimes been reported by Congolese refugees as hostile to sharing land and resources. Congolese refugees have expressed feeling that, despite the fact that many share the same language as the Rwandan population, they are treated as outsiders and excluded from social and economic opportunities (IRRI 2011).

Government of the Democratic Republic of the Congo (GDRC)

The GDRC has demonstrated minimal capacity for restoring security in Eastern DRC, despite, according to the 2010 Tripartite Agreement, its requirement for the refugees' return. It has not advocated for the repatriation of its citizens as Rwanda has for its own, indicating a general disinterest in the return of refugees to their homelands and a satisfaction with the status quo. Thus, these conditions render the possibility of government-supported repatriation unlikely. The GDRC also has reason to be sceptical of refugee returns from Rwanda as the

result of several 'internal uprisings' in the East which have allegedly been Rwandan-supported (Stearns 2012).

Congolese in Eastern DRC

Research has shown that other Congolese nationals in DRC have perceived the repatriation of Congolese refugees from Rwandans as a veil for Rwandan invasion. Some Congolese groups have mobilised attacks against Banyamulenge and other Kinyarwanda-speaking returnees (IRRI 2011).

Rebel Groups

Rebel groups in Eastern DRC, including the Forces Democratiques De Liberation Du Rwanda (FDLR) and M23, have often had divergent interests relating to the Congolese refugees in Rwanda. The FDLR consists of a small number of Hutu militants remaining from the former Rwandan government and *Interahamwe* forces that fled to Zaire in 1994 and have used the DRC as a base for operations against Rwanda since. The FDLR have often fuelled ethnic violence against Banyamulenge and between other ethnic groups (IRRI 2011). Other rebel groups have intermittently arisen to advocate for the return of Tutsi Congolese and the allocation of citizenship and land rights to all Congolese, including the recently disbanded M23 group which had roots in a formerly very active group, the National Congress for the Defence of the People (CNDP) (BBC 2012; Stearns 2013).

Key Donor States

Key donors in international refugee protection including the United States, Australia and the European Union, face increasing fiscal austerity. The expense of continuing to provide assistance to encamped Congolese refugees may soon be too much of a financial burden as donors balance domestic concerns and face donor fatigue in an increasingly challenging economic environment.

UNHCR

As the guardian of the 1951 Convention, UNHCR is committed to providing protection, durable solutions, and assistance to these refugees in a principled manner. UNHCR already plays a key role negotiating interests between Rwanda and the DRC to promote a political resolution to end the protracted refugee situation as well as with other donors to support international protection of the refugees in the meantime.

Assessment of Durable Solutions

The interests of the Congolese refugees themselves and the key stakeholders above must all be taken into consideration in order to find a truly durable solution. This section assesses the feasibility of the three classic durable solutions while also proposing some creative approaches to help bridge otherwise seemingly divergent interests between stakeholders to overcome the challenges that have led to the protracted situation of the Congolese refugees in Rwanda.

Repatriation

The Eastern DRC's persisting conflict, along with concerns regarding citizenship and land rights, has prevented many refugees from returning (Sylla 2010). Beginning in 2012, the rebel group M23 sparked new surges of violence that displaced nearly one million people inside DRC and tens of thousands as refugees (BBC 2013). As of late October, M23 ended their insurgency after defeat by the Congolese military. However, persistent violent activity of other armed groups including Hutu militias indicates that stability in the region is still not guaranteed (BBC 2013).

Elsewhere in the DRC, however, repatriation has been successful. UNHCR has assisted with the beginning stages of repatriation for approximately 81,000 refugees who sought safety in the Republic of Congo to the Equateur province in the northwest DRC (UNHCR 2013c). Such cases demonstrate the possibility for coordinated, successful return to stabilized parts of the country, with UNHCR and UNDP playing cooperating roles in assisting with returns and land re-allocation (UNHCR 2013c). However, as the Congolese refugees who wish to return to DRC desire return to their exact land of origin, mostly in the North and South Kivu provinces, repatriation does not seem viable.

Were peace and stability to be restored to Eastern DRC, Congolese refugees in Rwanda would face citizenship issues upon return if the GDRC does not amend and enforce equal citizenship laws. The 2004 law established by the transitional government to permanently clarify who is and is not a national of the DRC is rarely applied. It has, however, contributed to a rhetoric of exclusion and on-going contested notions of belonging. In order for these refugees to return, changes thus must occur at both the national and local level. A new citizenship law clarifying who is a Congolese national is needed, and local power structures based on ethnicity must be addressed (IRB 2013).

Rwandan participation in a mass repatriation process would be critical to its success. However, given Congolese perceptions of Rwandan intervention in the East as a threat, this would be problematic and likely promote further conflict and thus would need to be carefully negotiated to balance Rwandan security interests, territorial sovereignty, and the safety of the Congolese returnees.

Local Integration

In Rwanda, refugees enjoy neither the right to freedom of movement nor the right to determine their own place of residence (World Refugee Survey 2009), thus local integration is likely to present even more of a burden for the GoR than internationally-maintained refugee camps. Given Rwanda's interest in stability and provision for its nationals, the containment of refugees in camps is likely more preferable than allowing Congolese refugees to compete with Rwandan citizens for limited land, resources, and employment. Rwanda may also face an increased likelihood of cross-border movements, which may contribute to further regional instability.

If Rwanda were to allow more freedoms for Congolese refugees outside of camps, local integration could succeed. Given tensions between refugees and the local population in Rwanda, however, efforts to smooth relations between these groups would be necessary to prevent conflict. International investment in joint development for host communities and integrated refugees could potentially outweigh the costs of prolonged encampment as well as providing incentives for the local Rwandan population to welcome integration of Congolese (Crisp 2003; Jacobsen 2001). The common language between the groups might facilitate this

option. For example, a model of successful local integration was demonstrated by the International Conference on Central American Refugees (CIREFCA), which coordinated development and integration at international, national, and local levels (Betts 2006). Furthermore, promoting self-reliance of refugees promotes the reduction of donor financial commitments and offers a preferred solution to displacement by allowing individuals to determine their own futures, rather than remaining dependent on international assistance.

Resettlement

Resettlement, the third possible durable solution, is usually reserved for the most vulnerable of cases in very protracted situations and requires political and financial commitment from third countries to welcome refugees to resettle in their country. Host states might favour resettlement as an amenable solution as it significantly reduces the space and resource burden born by the host government. Prior to 2012, third-country resettlement was not an option for Congolese refugees. However, UNHCR and several resettlement countries have recently agreed to offer resettlement as an option for individuals in this population who have been in protracted refugee situation for over 14 years. By the end of 2012, UNHCR Rwanda had referred 2,238 cases for resettlement, and 704 individuals had departed to receiving countries (UNHCR 2013b).

While these initial numbers are small compared with the need, the United States has pledged to allow resettlement for thousands more Congolese refugees in the coming years (U.S. Department of State 2013). Thus, resettlement is currently providing the most viable option for a durable solution for refugees who are in the most intractable of situations and are willing to move to a country to which they potentially have no or few ties.

Conclusion

Repatriation does not currently represent a durable solution. While the end of the M23 insurgency may offer hope for more stability in the East, the activity of other armed groups still makes return for refugees in Rwanda untenable. Therefore, given continued violence, repatriation of all Congolese refugees from Rwanda must not be encouraged. However, freedom of movement should always be an option for refugees, and voluntary repatriation may continue to be an option for refugees who have recently fled, such as the 6,000 of the 20,000 Congolese refugees who arrived in Rwanda in 2012 (UNHCR 2013b). Such return should be supported by UNHCR with return packages and allow for refugees to make their own determinations regarding where they return. Given perceptions of Rwandan intervention in Eastern DRC, successful voluntary return should also be contingent on no or minimal Rwandan involvement, thus minimising unintended consequences of sparking violence.

The most viable solution for the most protracted of Congolese refugees in Rwanda is presently third-country resettlement. However, UNHCR should continue and broaden its policy of promoting third country resettlement to those who have been displaced for over 14 years. Since UNHCR has typically considered 'protracted' to refer to situations of displacement for more than five years, UNHCR should work with donor and receiving countries to promote the resettlement of Congolese refugees in Rwanda who are unable or unwilling to return to the DRC and for whom local integration is not a possibility and who have been displaced for longer than five years. For those in the most protracted situations, such as the Banyamulenge, for whom 'home' in the DRC no longer exists, resettlement is the best possible option for living a dignified life with full freedom and protection.

Finally, given the precarious peace in Eastern DRC and the inability of all refugees in protracted situations to resettle in third countries, a more creative solution entails offering Rwanda incentives to encourage further local integration opportunities. Support from UNHCR and international donors for services, education, and infrastructure to benefit both refugee and local populations could possibly overcome Rwandan concerns about resource scarcity and security that make it averse to local integration. Unless Eastern DRC becomes more stable and the option of safe repatriation is restored, the possibility of a joint solution of local integration and resettlement could end displacement for most protracted Congolese refugees in Rwanda. Continued instability and insecurity in Eastern DRC, however, will likely continue until governance and peace prevail. As this unfortunately remains a long-term endeavor, the international community should continue to provide support to Rwanda in the case of new refugee arrivals.

Evan Elise Easton-Calabria is a research assistant for the Humanitarian Innovation Project, based at the Refugee Studies Centre, University of Oxford, and holds an MSc in Refugee and Forced Migration Studies from the University of Oxford. In January she will begin work as an intern in Tanzania for the nonprofit organisation Terre des Hommes. She plans to pursue research on East African refugees, development, and the private sector.

Annelisa Lindsay currently works as a Refugee Officer for the U.S. Department of Homeland Security and has previously worked on U.S. foreign policy regarding democracy, human rights, and refugees at the U.S. Department of State.¹¹ Her research interests include the evolving legal and operational architecture of humanitarian systems, U.S.-Africa relations, and conflict and displacement in the Great Lakes Region. Annelisa was a J. B. and Maurice C. Shapiro Fellow at the Refugee Studies Centre, University of Oxford, where she received an MSc in Refugee and Forced Migration Studies. She also holds an MA and BA in International Relations from The George Washington University.

The authors welcome feedback at: evan.easton-calabria@qeh.ox.ac.uk.

References Cited

BBC NEWS (2012) 'Q&A: DR Congo's M23 rebels', 23 November, <<http://www.bbc.co.uk/news/worldafrica-20438531>> (accessed 11 February 2013).

_____ (2013) 'Q&A: DR Congo's M23 rebels', 5 November, <<http://www.bbc.co.uk/news/worldafrica-20438531>> (accessed 15 November 2013).

BETTS, A. (2006) 'Comprehensive Plans of Action: Insights from CIREFCA and the Indochinese CPA,' *New Issues in Refugee Research*, Working Paper no. 120, January.

BOECK DE, F. 'Postcolonialism, Power and Identity: Local and Global Perspectives from Zaire,' in: R. Werbner and T. Ranger (eds.), *Postcolonial Identities in Africa* (London and New Jersey: Zed Books, 1996): 75.

¹¹ The views presented in this article do not represent official policy of the U.S. Government.

CRISP, J. (2003) 'No solution in sight: the problem of protracted refugee situations in Africa,' *New Issues in Refugee Research*, Working Paper No.75, Geneva: UNHCR, January.

ENOUGH PROJECT (2003) Eastern Congo, <http://www.enoughproject.org/conflicts/eastern_congo> (accessed 10 February 2013).

HUMAN RIGHTS WATCH (2003) 'Ituri: Covered in Blood: Ethnically Targeted Violence in Northeastern DR Congo', Democratic Republic of the Congo 15(11) (A) - July, <<http://www.hrw.org/sites/default/files/reports/DRC0703.pdf>> (accessed 14 February 2013).

IMMIGRATION AND REFUGEE BOARD OF CANADA (2013) 'Democratic Republic of Congo (DRC): Procedure and conditions for Congolese nationals of Rwandan origin to reinstate their nationality,' Research Directorate, Immigration and Refugee Board of Canada, Ottawa, <http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=449918&l=e> (accessed 15 February 2013).

INTERNATIONAL REFUGEE RIGHTS INITIATIVE (2010) 'Who Belongs Where: Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo', *Citizenship and Displacement in the Great Lakes*, Working Paper no. 3, March, <<http://www.refugeerights.org/Publications/Papers/2010/Who%20Belongs%20Where.EN.March2010.pdf>> (accessed 10 February 2013).

INTERNATIONAL REFUGEE RIGHTS INITIATIVE (2011) 'Shadows of Return: The Dilemmas of Congolese Refugees in Rwanda', *Citizenship and Displacement in The Great Lakes Region*, Working Paper 6, July 2011, <[http://www.refugeerights.org/Publications/2011/Shadows%20of%20Return-FINAL%20\(1\).pdf](http://www.refugeerights.org/Publications/2011/Shadows%20of%20Return-FINAL%20(1).pdf)> (accessed 11 February 2013).

JACKSON, S. (2007) 'Of "Doubtful Nationality": Political Manipulation of Citizenship in the D.R. Congo', *Citizenship Studies*, 11(5), November: 484.

JACOBSEN, K. (2003) 'The forgotten solution: local integration for refugees in developing countries,' *New Issues in Refugee Research*, Working Paper no. 45, July.

KIGAMBO, G. (2012) 'Disquiet among Congo refugees over repatriation,' Rwanda Today, <www.theeastafrican.co.ke/Rwanda/News/Disquiet-among-Congo-refugees-over-repatriation/-/1433218/1615944/-/m4wmjhz/-/index.html> (accessed 11 February 2013).

REFUGEES INTERNATIONAL (2013) DR Congo Brief, <<http://refugeesinternational.org/where-we-work/africa/dr-congo>> (accessed 11 February 2013).

STEARNS, J. (2012) *CNDP to M23: The evolution of an armed movement in eastern Congo*, London: Rift Valley Institute: Uslama Project.

SYLLA, O. (2010) Forced Migration Review, Land and property disputes impeding return and reintegration, 36, November, <<http://www.fmreview.org/DRCongo/sylla.htm>> (accessed 11 February 2013).

UNITED NATIONS (2009) 'Final Report of the Group of Experts on the Democratic Republic of Congo', 7 December.

UNHCR (2003) 'Feature: Refugees in Uganda move towards self-reliance,' News Stories, 13 October, <<http://www.unhcr.org/3f8aa81e4.html>> (accessed 15 February 2013).

_____(2010) UNHCR Global Report for Rwanda 2010, <<http://www.refworld.org/pdfid/4e52379813.pdf>> (accessed 14 November 2013).

_____(2012) UNHCR Position on Returns to North Kivu, South Kivu, and Adjacent Areas in the Democratic Republic of the Congo Affected by on-going Conflict and Violence in the Region, 15 November, <www.unhcr.org/refworld/docid/50a369022.html> (accessed 11 February 2013).

_____(2013a) UNHCR Global Appeal for Rwanda, 2013 Update, <<http://www.unhcr.org/50a9f81fb.html>> (accessed 11 February 2013).

_____(2013b) UNHCR country operations profile – Rwanda <<http://www.unhcr.org/pages/49e45c576.html>> (accessed 11 February 2013).

_____(2013c) UNHCR Global Appeal for Democratic Republic of the Congo, 2013 Update, <www.unhcr.org/50a9f81f0.html> (accessed 11 February 2013).

U.S. COMMITTEE FOR REFUGEES (2009) World Refugee Survey 2009: Rwanda, <www.refugees.org/resources/refugee-warehousing/archived-world-refugeesurveys/2009-wrscountry-updates/rwanda.html> (accessed 13 February 2013).

U.S. DEPARTMENT OF STATE (2013) U.S. Reaches its Refugee Admissions Target for The First Time Since 1980, 21 October 2013, <<http://www.state.gov/r/pa/prs/ps/2013/10/215709.htm>> (accessed 13 November 2013).

CALL FOR PAPERS

Oxford Monitor of Forced Migration, Vol. 4, No. 1

OxMo, the student journal dedicated to protecting and advancing the human rights of refugees and forced migrants, is accepting submissions for our seventh issue. We welcome articles fitting within the following sections. For further information and to read the latest edition of OxMo, please visit www.oxmofm.com.

OxMo Monitors

Policy Monitor: critically examines policies and practices implemented by governments, (I)NGOs and UN agencies in all phases of forced migration

Law Monitor: critically analyses national and international laws, rulings and governmental policies as well as legal developments taking shape and their possible implications for the rights of forced migrants.

Field Monitor: critically explores direct experiences of working with forced migrants, including in field work or research in camps, or engagements with forced migrants in your local community.

Submissions to Monitor sections should be no longer than [1,500 words](#).

Academic Articles

This section provides a forum for students to explore practical and conceptual issues pertaining to forced migration. Submissions must engage with and interrogate existing literature on forced migration, present in-depth research in a given area, and offer original insights into a situation or trend. As OxMo recognises and values the multidisciplinary nature of Forced Migration Studies, we encourage submissions from across academic disciplines, including but not limited to: political science, law, anthropology, ethics and philosophy, sociology, economics and media studies. Submissions to the Academic Articles must not exceed [6,000 words \(including footnotes\)](#).

First Hand

This section encourages individuals to share personal reflections on experience(s) of displacement, presenting the opportunity to those directly affected by the laws, policies and activities of governments and agencies we monitor to give expression to their insights and perspectives. We seek critical, balanced analyses that allow the reader to gain an understanding of the context in which the report is written and that engages with wider implications of the situation described. Articles for First Hand should be no longer than [1,500 words](#).

Closing date for submissions is [15 February 2014](#).

For any queries, please do not hesitate to contact us at oxmofm@googlemail.com.

